The Pragmatic Justifications for Extending Additional Statutory Protection to Animals

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“The history of the world will, one day, be defined by the people who witnessed the tragedy of impending extinction and were able to turn humanity’s destructive patterns into creative solutions.”

I. INTRODUCTION

Human beings began domesticating animals around 3500 B.C.E. People have relied on the companionship and consumption of animals for survival, and our relationship with animals has evolved alongside our own genetic and societal evolution. Yet what has not evolved—or at least not comprehensively enough—is the protection we offer the animals that we share our lives with and

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depend on. Human beings globally exploit animals to further their own interests with little to no regard for the pain and suffering we cause them. This Article advances the position that such rampant exploitation of animals needs to end because our actions are also profoundly hurting us. There are admittedly many moral and philosophical reasons for why human beings need to end the systematic exploitation of animals, and this Article will explore those justifications. Philosophers and ethicists, however, have been advancing moral theories of animal welfare for decades with little-to-no-luck convincing the general public to change its exploitative ways. Instead, this Article will primarily explore the human-centric reasons for why our society needs to stop exploiting animals, and why we must grant animals greater legal protections.

Part II of this Article will provide a detailed overview of animals’ current treatment under American law. Part III will outline three philosophical and moral theories that accommodate and argue for an extension of broader legal protections for animals. Part IV will advance the non-moral reasons for extending animals protections. Specifically, Section IV.A will focus on the reasons for extending further protections to companion animals. Then, Section IV.B will provide justifications for extending statutory protections for animals raised for consumption, and will ultimately advance the position that advocates for the phasing out of factory farms. Finally, Part V will conclude this Article.


5. See Matthew Zampa, How Many Animals Are Killed for Food Every Day?, SENTIENT MEDIA, https://sentientmedia.org/how-many-animals-are-killed-for-food-every-day/ (providing statistics regarding animal deaths per day because of humans). “More than 200 million [land] animals are killed for food around the world every day.” See id. These numbers do not account for the animals that suffer and die due to animal testing, for clothing, because of habitat destruction, and through regular cruelty or neglect. See Doris Lin, How Many Animals Do Humans Kill Each Year?, THOUGHTCO. (Oct. 23, 2019), https://www.thoughtco.com/how-many-animals-are-killed-each-year-127631 [https://perma.cc/E2CN-PZ26] (giving additional statistics regarding yearly animal deaths).


8. See infra Part II.

9. See infra Part III.

10. See infra Part IV.

11. See infra Section IV.A.

12. See infra Section IV.B.

13. See infra Part V.
II. OVERVIEW OF ANIMAL WELFARE LAW IN THE UNITED STATES

American law treats all animals as personal property. Because animals are considered a type of property, they have virtually no independent legal protections, and any remedies the law affords on their behalf exist merely as an extension of human property rights. Given human beings’ historic use of animals for food, hunting, clothing, and experimentation, animals’ legal classification as personal property is not surprising—otherwise, it would be incredibly difficult to justify and continue using animals for our benefit to the degree to which our society has become accustomed to.

A. Consequences of Property Designation on Companion Animals

1. Market Value Damages

The American legal system’s designation of animals as property has many far-reaching consequences on how people may get justice for their animals when someone causes them harm. Due to animals’ property classification, humans have extremely limited options when they sue on behalf of their companion animals. For instance, a person whose companion animal is either injured or


15. See Property, BLACK’S LAW DICTIONARY (11th ed. 2019) (providing definitions of different types of property). Generally, property is defined as “[a]ny external thing over which the rights of possession, use, and enjoyment are exercised.” Id. Personal property is further defined under property. See id.


18. See Mariner, supra note 4 (noting limitation of damages for pet injury or death because of property designation).

19. See Marcella S. Roukas, Determining the Value of Companion Animals in Wrongful Harm or Death Claims: A Survey of U.S. Decisions and Legislative Proposal in Florida to Authorize Recovery for Loss of Companionship, 3 J. ANIMAL L. 45, 46 (2007) (outlining difficulty humans have when pursuing legal claim on behalf of companion animals). It is important to note that I, like Marcella Roukas, will refer to “pets” as “companion animals” throughout the rest of this Article because referring to these animals as “pets” inherently
killed through the acts of another can traditionally only recover economic damages to compensate for the harm caused to the animal. This is because noneconomic damages are generally not available to people whose only injury involves property damage. When a companion animal is injured or killed, a plaintiff can generally recover economic damages based on the animal’s fair market value to restore the plaintiff back to the position he or she would have been in prior to when the animal’s injury or death occurred. Because courts generally use the animal’s pedigree and breed to help identify its market value, in cases where the animal is considered mixed breed, the market value is typically very low. In such instances, some courts may determine the animal’s “actual value” instead of its “market value” by calculating the amount of money the plaintiff spent on vet bills, other “previous expenditures[,] and future economic losses.”

2. Infliction of Emotional Distress and Loss of Companionship Damages

Because plaintiffs whose animals are injured or killed generally cannot recover noneconomic damages, they cannot recover for emotional or psychological pain experienced as a result of their companion animal’s injury or death. Nevertheless, some jurisdictions allow plaintiffs to recover under a theory of infliction of emotional distress, which aims to compensate plaintiffs for the pain and suffering they experience as a result of their companion animal’s injury or death. Recovery for infliction of emotional distress in such instances is jurisdiction-specific. Some jurisdictions are more willing to allow a plaintiff to recover damages under intentional infliction of emotional distress where the defendant intentionally injured or killed the animal, and where the plaintiff saw the act occur. Although there are also jurisdictions that allow recovery for negligent infliction of emotional distress, they are in the minority, and often imply their status as property, which I believe is a detrimental paradigm to continue advancing and condoning.

Cf. id. at 45 n.2 (choosing to call “pets” “companion animals” instead).

20. See Sirois, supra note 14, at 1207-08 (providing framework for system of damages involving injured or killed companion animals).

21. See id. (explaining plaintiffs whose property damaged cannot recover noneconomic damages); see also Randolph, supra note 16 (providing reason for plaintiffs’ inability to recover noneconomic damages for companion animal’s injury or death).

22. See Sirois, supra note 14, at 1208 (explaining how market value determined). In the case of companion animals, these kinds of damages generally take the form of the fair market value of the animal that was injured or killed. See id. In injury cases, “the fair market value . . . compensate[s] the plaintiff for the difference between the market value of the animal before and after the injury.” Id.

23. See id. (describing problem with “market value” theory for mixed-breed companion animals).

24. See id. at 1208-09, 1215-16 (explaining “actual value” alternative to “market value” theory).

25. See id. at 1207 (noting noneconomic damages typically not available for injury or death of companion animals).

26. See Sirois, supra note 14, at 1209 (explaining emotional distress damages while introducing and differentiating from loss of companionship damages).

27. See Randolph, supra note 16 (noting owners’ ability to succeed depends on jurisdiction).

28. See id. (describing different jurisdictional options for infliction of emotional distress damages).
require the plaintiff to prove that the defendant’s actions were grossly negligent or reckless.²⁹ Finally, a minority of jurisdictions allow plaintiffs to recover for loss of companionship—namely “to help [the plaintiff] ‘fill the void’ created by the loss of a loved one.”³⁰

B. Consequences of Property Designation on Animals Raised for Consumption

Currently, no federal laws exist that enforce or regulate “humane care standards for animals in factory farms.”³¹ The United States Department of Agriculture (USDA), however, regulates animal food production in the country through sub-agency programs.³² The USDA’s Animal and Plant Health Inspection Service (APHIS) administers “the Animal Welfare Act (AWA) and the Animal Care Program (ACP).”³³ The ACP “[r]egulates food safety and slaughter of food production animals[,] . . . [e]nsures quality of the nation’s commercial supply of meat, poultry, and egg products[,] . . . [and] [e]nsures the labels of meat, poultry, and egg products are truthful and accurate.”³⁴ Yet farm animals’ living conditions are not subject to federal regulations, and are exclusively dictated by state law.³⁵ Currently, only twelve out of fifty states have enacted any laws extending limited protections to animals raised for consumption.³⁶

III. PHILOSOPHICAL AND MORAL ARGUMENTS FOR EXTENDING LEGAL PROTECTIONS TO ANIMALS

Although this Article primarily advances practical and human-centric justifications for extending greater legal protections to animals, it is important to note that philosophers and ethicists have written volumes on philosophical and moral reasons to justify such extensions. The following sections will briefly survey three of the leading moral and philosophical arguments in favor of

²⁹. See id. (providing jurisdictional options for infliction of emotional distress damages).
³⁰. Sirois, supra note 14, at 1209 (explaining “loss of companionship” damages). “[L]oss of companionship can be raised as a specific cause of action against a defendant . . . [or] as an element of damages calculated to award a plaintiff for his or her loss.” Id. (footnote omitted) (explaining two meanings of loss of companionship under tort law). Only a handful of jurisdictions allow plaintiffs to recover damages under a theory of loss of companionship. See id. at 1211. These jurisdictions include Tennessee and Illinois. See id. at 1212-13; see also Randolph, supra note 16 (discussing some states beginning to recognize sentimental value and loss of companionship).
³². See id. (outlining USDA’s regulation of food production).
³³. Id. (explaining USDA’s sub-agencies).
³⁴. Id. (detailing ACP’s duties).
³⁶. See id. (detailing types of protection certain states offer farm animals).
granting animals additional protections.37

A. Animals Can Feel Pain and Experience Profound Suffering

Animals are physiologically capable of feeling pain. Pain is a phenomenon “involving sensory and emotional components: [I]t is not just about how [something] feels, but also how it makes you feel.”38 While many people agree that animals likely experience the physiological aspects of pain, some still debate whether animals have the necessary cognitive ability to recognize their own pain.39 Science, however, is moving in a direction that recognizes animals’ ability to comprehend the pain they feel—both physically and cognitively.40 Such a recognition of animals’ ability to understand pain exists because scientists are finally researching animals’ ability to experience a range of complex emotions we historically believed only humans were capable of experiencing.41 This means that animals are certainly able to cognitively appreciate the gravity of their circumstances when they are being abused, neglected, and when they are awaiting their slaughter—as in the case of animals raised for consumption.42

37. See infra Sections III.A-C.
41. FRANS DE WAAL, MAMA’S LAST HUG: ANIMAL EMOTIONS AND WHAT THEY TELL US ABOUT OURSELVES 166-70 (2019) (describing prevalence of complex emotions in animals). De Waal writes that although emotions like “pride, shame, guilt, revenge, gratefulness, forgiveness, hope, and disgust . . . may be more developed in [humans], . . . they aren’t fundamentally new.” See id. at 166. In fact, De Waal provides detailed examples of primates exhibiting all of these emotions. See generally id. (providing examples of primates expressing empathy and forming relationships). Further, animals are “reasonably viewed as being not only conscious but self-conscious.” See TOM REGAN, THE CASE FOR ANIMAL RIGHTS 80-81 (1983) (arguing animals experience range of emotions and cognitive states).
Thus, because animals are capable of feeling pain, experiencing suffering, and understanding their pain and suffering, many philosophers and ethicists argue they should be legally protected from experiencing routine and profound pain and suffering.43

B. Human Connection to Animal Companions Goes Beyond Mere Property Rights

Anybody who has ever loved and lost a companion animal can attest to the overwhelming trauma a human being endures upon the death of his or her animal.44 This is because humans form incredibly strong bonds with their companion animals, which are often stronger than their human-to-human bonds.45 Human-animal relationships are not just simple companionships, but actually consist of multiple separate types of codependent relationships.46 Companion animals provide people with unconditional love, develop codependent routines with their humans, and provide scientifically-measurable support during difficult times.47 In fact, people frequently refer to their companion animals as their “children” because the care and investment people dedicate to these relationships mirror what parents do for human children.48 The law, however, fails to account for the profoundly personal and intimate relationships people form with their companion animals.49 Thus, a logical...
extension of the fact that animals form incredibly close bonds with humans is to require greater legal protections that account for animals’ inherent value as companions. This can be done by extending the ability for human beings to file wrongful death suits on behalf of their animals; broadening the scope of tort liability to allow recovery for the harming of animals based on their value as companions, not property; and expanding the application of loss of companionship damages to incorporate more crimes and advocating that states adopt such frameworks.

C. Under a Theory of Utilitarianism, Animal Suffering Likely Outweighs Human Benefits Arising out of Animal Exploitation

Although many different philosophical theories support an extension of additional legal protections to animals, one of the most successful is utilitarianism. Utilitarianism, in its basic form, is the philosophical theory advancing the position that the action or policy that is most “moral” is whatever brings about the best result to the most amount of people—or in this case, living beings. As applied to animal wellbeing, a theory of utilitarianism can easily accommodate and advance the position that policies that lead to animal suffering are immoral. Because animals are capable of suffering, and because the average American eats approximately 222 pounds of meat per year, it is not hard to imagine the number of animals that suffer and ultimately die to feed one person in America. This is especially true when we consider the fact that every single day on a factory farm is awful for the animals. We can further imagine that animals’ prolonged suffering almost certainly outweighs the comparatively brief enjoyment we get from eating them. This application of utilitarianism, however, is quite subjective, which poses a number of difficulties that are outside injury or death).

50. See Act and Rule Utilitarianism, INTERNET ENCYCLOPEDIA PHIL., https://www.iep.utm.edu/util-a-e/ [https://perma.cc/W9MH-6JX3] (providing overview of utilitarianism). Morality in the context of utilitarianism refers to an objective standard of goodness, such that an action is not considered morally appropriate if it does not minimize suffering or increase net happiness. See id.

51. See SINGER, supra note 7, at 21 (endorsing minimization of animal suffering under theory of utilitarianism).

52. See Chase Purdy, The Average American Will Eat the Equivalent of 800 Hamburgers in 2018, QUARTZ (Jan. 4, 2018), https://qz.com/1171669/the-average-american-will-eat-the-equivalent-of-800-hamburgers-in-2018/ [https://perma.cc/6S82-CKUE] (projecting amount of meat Americans predicted to eat in 2018); see also Alex Thornton, This Is How Many Animals We Eat Each Year, WORLD ECON. F. (Feb. 8, 2019), https://www.weforum.org/agenda/2019/02/chart-of-the-day-this-is-how-many-animals-we-eat-each-year/ [https://perma.cc/GM44-FWZS] (providing statistics on humans’ animal consumption in America per year). Americans slaughter an estimated 50 billion chickens, 1.5 billion pigs, and 545 million sheep per year for food alone; thus under a theory of utilitarianism, we may have a moral duty to minimize the amount of animal suffering (at least in this country). See Thornton, supra; see also Prober, supra note 6, at 49 (noting utilitarianism argues for extending animals protection based on their ability to suffer).

53. This does not even account for the animals who suffer as a result of our exploitation within the fashion and cosmetic industries, and for other various human purposes.
the scope of this Article.54

IV. HUMAN-CENTRIC REASONS FOR EXTENDING GREATER STATUTORY PROTECTION TO ANIMALS

While all of the moral reasons for extending significantly more legal protections to animals ought to be convincing, the reality is that they are not. Nevertheless, there are a multitude of pragmatic and selfish reasons why human beings would benefit from such changes in the law.

A. Companion Animals

1. Violent Criminals and Domestic Abusers Are More Likely to Also Abuse Animals

People have long been aware of the connection between animal cruelty and subsequent cruelty to humans.55 In fact, individuals who torture animals are much more likely to be domestic abusers and violent criminals.56 Additionally, many individuals who commit mass shootings and who are classified as serial killers, are also animal abusers.57

The correlation is so well known, that the FBI tracks incidents of animal abuse

54. See Prober, supra note 6, at 44-45 (discussing problems with utilitarianism’s attempt to measure suffering and pleasure).


57. See Arluke & Madfis, supra note 55, at 12 (noting around 50% of school shooters have history of torturing animals); see also Naseem Stecker, Domestic Violence and the Animal Cruelty Connection, Mich. B.J., Sept. 2004, at 36, 36 (noting most infamous serial killers were animal abusers).
through its National Incident-Based Reporting System (NIBRS), which monitors an array of illegal behaviors—such as “gambling, prostitution, and drug violations,” among others. The actual statistics are incredibly troubling. According to various studies, women who reported being abused by their sexual partners “were 11 times more likely to report that their partner had hurt or killed a pet . . . and 4 times more likely to indicate that their partner had threatened” those animals. Other studies put that number much higher, reporting that 71% of women who live in domestic violence shelters and who reported having companion animals, also reported that their partners “threatened, hurt[,] or killed their companion animals.”

Although the connection between violent criminals and animal abusers has been public knowledge for quite some time, this country currently has no comprehensive federal scheme for monitoring animal cruelty across jurisdictions. This is incredibly troubling for a number of reasons. Many crimes against animals are not prosecuted, and most that are, end up with defendants pleading out, resulting in an “agreement usually involving a misdemeanor, probation, no pet ownership, and some sort of fine or restitution.” Yet many victims of domestic abuse refuse to leave their abusers fearing the safety of their companion animals. When the abuse is not prosecuted, however, little-to-no record exists to document the combination of the animal abuse linked with the domestic violence. The lack of such crucial documentation prevents victims of domestic violence from getting the help they need, which in turn increases their risk of further physical harm or death at the hands of their partners. It also prevents other members of the community from receiving adequate notice about the abuser’s violent tendencies, which allows the

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58. See How the FBI Is Tracking Animal Cruelty: An Update, supra note 56 (describing FBI’s method of tracking animal abuse, along with other various crimes).

59. See DeGue & DiLillo, supra note 55, at 1039 (providing statistics regarding percentage of women in domestic violence shelters who also experienced animal abuse).

60. See Understanding the Link Between Animal Abuse and Family Violence, supra note 56 (listing information from different study conducted).

61. See How the FBI Is Tracking Animal Cruelty: An Update, supra note 56 (detailing FBI’s reporting system). Although animal abuse is factored into the FBI’s reporting system, states are not actually required to report incidents of animal abuse, and therefore the database—as it pertains to animal abuse—is incomplete. See id.

62. See Stecker, supra note 57, at 36 (noting typical procedural trend in animal abuse cases).

63. See id. (explaining victims of domestic violence often reluctant to leave relationships out of fear for animals’ safety).

64. See Fink, supra note 56 (claiming researchers “call for greater interagency coordination and cross-training/reporting . . . to intervene earlier”).

65. See Kingston, supra note 55, at 114 (explaining reason why domestic abuse victims fail to get help when animal abuse not known); see also Fink, supra note 56 (stating healthcare providers can help domestic abuse survivors if they know about animal abuse). According to Kingston, because the legal system is not adequately equipped to document and report animal abuse, “[b]atterers can perform these actions with relative impunity” and “[a]s a result, identifiable assaults on animals that indicate the presence of domestic violence go unexamined, and both animals and humans continue to be harmed, and even to be killed, in the cycle of domestic violence.”
abuser to continue similar patterns of animal and domestic abuse.66

2. Policy Proposal: Creation of a National Animal Cruelty Registry

Currently, all fifty states prohibit “malicious cruelty to animals” and classify such actions as felonies.67 The problem, however, is that there is no interstate mechanism that allows states or the federal government to monitor cross-border animal cruelty crimes.68 Despite tracking animal cruelty and categorizing such crimes as “crimes against society[,]” the FBI’s NIBRS does not mandate state participation, and therefore does not provide an accurate accounting of animal cruelty data.69 In fact, as of 2016, “[o]nly one-third of all law enforcement agencies” participated in the NIBRS, “only 76% of states . . . report[ed] their crimes to the FBI and of those, 13% ha[d] 5 or less agencies reporting into the FBI within their states.”70 This lack of reporting, coupled with the nonexistence of any actual mandatory database registry for convicted animal abusers, creates many loopholes for abusers to avoid getting caught, simply by moving across state lines.

Federal legislation needs to account for the undeniable link between violent criminals and domestic abusers and their subsequent propensity to harm animals. The federal government needs to better monitor animal abuse as a result. Recently, Congress successfully passed a bipartisan bill—the Preventing Animal Cruelty and Torture Act (PACT Act)—that makes “crushing, burning, drowning, suffocating, impaling, or sexual[ly] exploit[ing]” animals federal felonies, and “[p]rovide[s] for . . . fines, and up to seven years in prison” for individuals convicted of engaging in such acts of cruelty.71 This legislation, which was ultimately enacted into law on November 25, 2019, is certainly a step in the right

66. See Animal Abuse Registry Supporters Hoping for National Database, CBS SACRAMENTO (Jan. 1, 2018, 1:43 PM), https://sacramento.cbslocal.com/2018/01/01/animal-abuse-registry-gains-momentum/ [https://perma.cc/Q267-MLGD] (arguing individuals have right to know which members of community abuse animals). Many owners of companion animals believe that convicted animal abusers should be required, by law, to have their name put on a registry where anyone can look them up. See id.
68. See id. (outlining problem with lack of federal legislation mandating reporting of animal abuse).
69. See How the FBI Is Tracking Animal Cruelty: An Update, supra note 56 (providing statistics regarding state participation in FBI’s NIBRS).
direction. Nevertheless, given the link between violent crime and animal abuse, the law does not go far enough. Most importantly, the federal legislation should require defendants convicted of animal cruelty to put their names on either a specially-designed animal abuse registry or on the NIBRS. If their names were to go on the NIBRS, however, the FBI would have to change the NIBRS reporting standards so that all states and agencies would be federally mandated to report individuals convicted of the new federal felonies to the database.

B. Animals Raised for Consumption

1. Unhealthy and Stressed Animals Cause Sickness in People

Americans eat a lot of meat. In fact, the country’s meat production hit a record high in 2018. Yet recent studies suggest that meat consumption in general is detrimental to human health—which is certainly true for meat consumption at increased rates. This is the case because the meat produced by American factory farms contains high amounts of “saturated fat and cholesterol.” Additionally, the consumption of processed meat—such as the meat found in hamburgers, hot dogs, and bacon—increases one’s chances of getting colorectal cancer.


73. See § 2(a), 133 Stat. at 1151-52 (omitting any mandatory reporting provisions when drafting new law); see also Kingston, supra note 55, at 148 (explaining mandatory reporting statutes most effective tool against domestic violence).


[The International Agency for Research on Cancer] estimates that 34,000 cancer deaths per year worldwide are attributable to diets high in processed meat, and if the reported associations with red meat were proven to be causal, then diets high in red meat could be responsible for 50,000 cancer deaths per year worldwide.


76. See Meat Consumption: Trends and Health Implications, supra note 75 (explaining why meat consumption detrimental to human health).
cancer; thus it is no surprise the World Health Organization (WHO) actually classifies processed meat as a carcinogen.\footnote{77}{See id.; see also Johns Hopkins Univ., The Health and Wellness Connection 2 (2019), https://clf.jhsph.edu/sites/default/files/2019-10/global-meatless-monday-health_0.pdf [https://perma.cc/DA69-MYKW] (noting WHO considers processed meat carcinogenic).} While the correlation between simply consuming meat and various health risks is truly troubling, it does not even account for the illnesses humans can contract by consuming animals that have been improperly and inhumanely confined in factory farms.

“[A]round 99% of US farmed animals live on factory farms.”\footnote{78}{See Matthew Zampa, 99% of U.S. Farmed Animals Live on Factory Farms, SENTIENT MEDIA (Apr. 16, 2019), https://sentientmedia.org/u-s-farmed-animals-live-on-factory-farms/ [https://perma.cc/2E5N-VESF] (providing statistics regarding factory-farmed meat).} To keep up with the demand, animals raised for consumption are kept in horrible conditions that restrict their movement, but increase meat, milk, and egg output.\footnote{79}{Stuart McDonald, Factory Farms Make Animals, People, and the Environment Sick, COMPASSION OVER KILLING (Sept. 20, 2018), http://cok.net/blog/2018/09/factory-farms-make-animals-people-environment-sick/ [https://perma.cc/L6LH-73E2] (discussing impacts of factory farm conditions on human health).} Egg-producing hens are crammed into tiny cages or live in crowded warehouses.\footnote{80}{See Animals on Factory Farms, ASPCA, https://www.aspca.org/animal-cruelty/farm-animal-welfare/animals-factory-farms [https://perma.cc/9SF7-Y9HN] (detailing conditions for egg-producing hens).} Chickens used for meat are pumped full of hormones to grow bigger, and are similarly kept in extremely crowded conditions, where many die and are not removed.\footnote{81}{See id. (providing information regarding lives of chicken used for meat).} Female pigs are confined to gestation crates, which are “barely bigger than the sow[s’] bod[ies,] and prohibit [them] from turning around.”\footnote{82}{See id. (explaining what happens to cows’ babies upon birth).} Meat cows are generally kept on feedlots “[w]ithout vegetated pasture and often without shelter,” which results in the cows suffering from “heat stress, muddy conditions and respiratory issues from dust.”\footnote{83}{See id. (discussing cows’ health).} Dairy-producing cows, on the other hand, are kept indoors and are typically chained around their necks with “tie stalls.”\footnote{84}{See id. (providing information regarding lives of female pigs).} They are constantly inseminated, and their babies are torn away from them right after birth and are then either used for veal (if the baby is male) or are raised to be dairy cows (if the baby is female).\footnote{85}{See id. (explaining differences between meat and dairy cows).} Dairy cows’ nonstop lactation causes frequent and painful bacterial infections in the cows’ udders.\footnote{86}{See id. (providing information on turkeys’ lives in factory farms).} Male calves are kept alone—sometimes chained to keep their meat tender—and are slaughtered for their meat soon after their birth.\footnote{87}{See id. (detailing origins of veal).} Turkeys are kept in similar conditions as chickens, and live in crammed warehouses, where they often “develop abnormal behaviors in these environments, which can result in cannibalism.”\footnote{88}{See Animals on Factory Farms, supra note 80 (providing information on turkeys’ lives in factory farms).} In addition to the housing conditions of farm animals, to treat
constant illnesses, the animals are regularly pumped with antibiotics and meat-producing animals are further pumped with hormones to increase their meat production. Thus, it is no surprise that factory-farmed meat is linked to an increased rise in E. Coli, MRSA, Mad Cow Disease, and Salmonella outbreaks in the country. Additionally, the animals’ poor living conditions are perfect breeding grounds for new strains of swine and bird flu, while their constant exposure to antibiotics increases the risk of breeding antibiotic-resistant bacteria that is easily transmittable to humans.

2. The Elimination of the Factory Farming Industry Will Help Feed More People

Currently, “[m]ore than 37 million people struggle with hunger in the United States, including more than 11 million children.” Various systemic societal and political issues contribute to hunger, such as income inequality, and this Article does not discredit the effects of such institutional problems. Nevertheless, the current system of industrial farming only worsens the situation. In fact, if the country were to move away from factory farming towards a plant-

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90. See Outbreak of Salmonella Infections Linked to Butterball Brand Ground Turkey, CDC (May 7, 2019, 2:00 PM), https://www.cdc.gov/salmonella/schwarzengrund-03-19/index.html [https://perma.cc/ME32-58WV] (warning customers not to buy Butterball turkey). Upon the discovery, Butterball had to recall “approximately 78,164 pounds of raw ground turkey products.” Id.; see JONATHAN SAFRAN FOER, EATING ANIMALS 188 (First Back Bay paperback ed. 2010) (providing statistics regarding pig health on factory farms); Abigail Geer, 5 Modern Diseases on the Rise Because of Factory Farming, ONE GREEN PLANET (Jan. 9, 2014), https://www.onegreenplanet.org/animalsandnature/5-modern-diseases-on-the-rise-because-of-factory-farming/ [https://perma.cc/3AUK-EACG] (detailing rise of diseases because of factory farming practices); Chris Morris, Salmonella Outbreak Forces Recall of 6.5 Million Pounds of Ground Beef, FORTUNE (Oct. 4, 2018, 10:37 AM), http://fortune.com/2018/10/04/ground-beef-recall-salmonella-fears/ [https://perma.cc/VC7Q-5AQE] ( reporting on meat contamination). Foer writes that “30 to 70 percent of the pigs will have some sort of respiratory infection by the time of slaughter” and that “this constant sickness promotes the growth of new influenzas.” FOER, supra, at 188. The continuous exposure to illness and horrible living conditions leads to “entire hog populations of entire states . . . sometimes ha[ving] infection rates of 100 percent from deadly new viruses created among these densely packed sick animals.” See id.


based diet, we would be able to feed many more Americans. Twenty-six percent of the Earth’s “terrestrial surface is used for livestock grazing.” In America, “56 million acres of land [are used] for animal agriculture.” This translates into “70 percent of grain in the U.S. [being] fed to farmed animals rather than to people.” Further, to sustain factory farms, we use “4,200 gallons of water PER DAY[,] . . . [and] a whopping 70 percent of our domestic freshwater goes directly to animal agriculture.” Such a system wastes a significant amount of resources because while “one acre of land can produce 250 pounds of beef[,] . . . the same acre of land can produce 50,000 pounds of tomatoes or 53,000 pounds of potatoes.” This misuse of resources directly impacts the amount of food we can provide for American citizens without any loss in nutritional value.

3. The Factory Farming Industry Is a Leading Contributor to Global Warming

As well as being inefficient, factory farming contributes greatly to global warming. Primarily cows—but sheep and goats included—emit a lot of methane as part of their natural digestive process, and to keep up with consumer demand for food, nearly 545 million sheep alone are slaughtered per year. The animals themselves, however, are not even the main contributors to global warming. Carbon dioxide emissions constitute “the most significant direct-warming impact on global temperature because of the sheer volume of its

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95. See Buff, supra note 93 (explaining resources expended on factory farming operations).

96. See Bland, supra id. (noting grain use on factory farms).

97. See id. (explaining amount of water used for meat farms).

98. See id. (comparing use of land for meat with more productive use of same land for vegetables).

99. See SINGER, supra note 7, at 166 (discussing waste of resources on meat farms). A former United States Assistant Secretary of Agriculture said that “merely reducing the U.S. livestock population by half would make available enough food to make up the calorie deficit of the nonsocialist underdeveloped nations nearly four times over.” Id. Further, different types of vegetables contain many more nutrients than meat alone. See id. For example, “[o]ats produce more than twenty-five times as many calories per acre as beef[,] . . . an acre of broccoli produces twenty-four times the iron produced by an acre used for beef[,] . . . and provid[es] five times as much calcium as milk.” Id.


101. See id. (discussing farm animals’ digestion); see also Thornton, supra note 52 (providing percentage of animals killed per year to feed Americans). Without factory farming, these animals would not exist in such high numbers, and would not produce so much methane. See Koneswaran & Nierenberg, supra note 100, at 578-79 (elaborating on impacts of growing livestock population).
According to the Food and Agriculture Organization of the United Nations (FAO), factory farms “account[] for approximately 9% of total [carbon dioxide] emissions.”102 In addition to the industry’s direct contribution to increases in carbon dioxide and methane emissions, factory farming also causes “[d]eforestation, land degradation, . . . and desertification[,]” which threatens animal species and human beings worldwide.104


a. Applications for Health Reasons

This Article admittedly advances a radical position that calls for the phasing out of all factory farms and a gradual shift away from a meat-based diet. The industrial farming complex’s contribution to the increase of many incredibly dangerous diseases and the negative health implications of meat consumption should serve as strong reasons for implementing policies advancing movement away from our reliance on meat. Nevertheless, these reasons alone are almost certainly not strong enough to justify a complete legislative divestment from factory farming. Prohibiting the consumption of all meat products because of the health risks associated with meat would likely constitute impermissible government overreach into state sovereignty, despite the meat industry’s business almost certainly constituting interstate commerce.105 In fact, history teaches us that it is incredibly difficult to completely ban a practice or a substance just because it negatively impacts human health.106 This is a lesson this country

102. See Koneswaran & Nierenberg, supra note 100, at 579 (noting carbon dioxide main contributor to global warming).

103. See id. (providing additional findings). Factory farms emit so much carbon dioxide because of “fertilizer production for feed crops, on-farm energy expenditures, feed transport, animal product processing and transport, and land use changes.” See id.

104. See id. (explaining factory farming causes land loss and deforestation); see also Brad Plumer, Humans Are Speeding Extinction and Altering the Natural World at an ‘Unprecedented’ Pace, N.Y. TIMES (May 6, 2019), https://www.nytimes.com/2019/05/06/climate/biodiversity-extinction-united-nations.html [https://perma.cc/B6X8-EJTS] (stating humans risking mass extinction event). According to recent findings, “as many as one million plant and animal species are now at risk of extinction.” See Plumer, supra. It is important to note that while this Article focuses on factory farming, the effects of issues like overfishing pose a similarly grim prognosis for the planet. See Michael Pellman Rowland, Two-Thirds of the World’s Seafood Is Over-Fished—Here’s How You Can Help, FORBES (July 24, 2017, 11:00 AM), https://www.forbes.com/sites/michaelpellmanrowland/2017/07/24/seafood-sustainability-facts/#5f34b8764bbf [https://perma.cc/ZRG3-VWSA] (noting prevalence of overfishing). While catching fish in the ocean is posing serious problems, fish farms pose similar environmental problems as factory farming, and thus are not suitable long-term alternatives to catching fish from the oceans. See id. As a result, the proposals advocated for in this Article relating to the eventual termination of factory farming also apply to fish farms.

105. See Stathopoulos, supra note 91, at 436-37 (arguing Food and Drug Administration (FDA) may have authority to regulate factory-farmed meat).

learned during Prohibition.107 The history of Prohibition, coupled with current, permissive tobacco law working as precedent, creates incredibly difficult obstacles to passing any sort of legislation that would set in motion the phase out of factory farming due to health concerns alone.108 Although difficult to implement, simple government regulations could likely solve a lot of the health problems caused by factory farming. Some of the following potential regulations should be heavily considered:

(1) setting a standard for clean living conditions on farms and proper disposal of animal waste; (2) eliminating extreme confinement systems, such as battery cages, and overcrowding; (3) requiring that all animal feed be vegetarian and free of arsenic; (4) prohibiting the prophylactic administration of antibiotics to animals, unless they are prescribed by a veterinarian to treat an actual illness; (5) prohibiting the administration of growth hormones to cattle; and (6) requiring that cattle be grass-fed.109

While the proposal mentioned above would certainly help control the spread of dangerous diseases and increase the quality of life for farm animals, further steps could be taken. For example, an additional policy measure that would help raise awareness of the health issues associated with meat consumption would be to require all distributors of factory-farmed meat to include similar information on meat packaging that tobacco manufacturers have to include on cigarette packages—such as the risks of consuming meat in general and the potential risks associated with consuming meat from a sick animal.110 Additionally, meat packaging ought to contain photographs from factory farms depicting the conditions animals are kept in to fully alert consumers to the potential hazards they may be ingesting.

b. Application to Combat Hunger and Global Warming

Although banning the use of factory farms would likely not work if the justification was solely that factory-farmed meat was unhealthy and posed

107. See id. (discussing difficulty to enforce ban on liquor).

108. See id. (summarizing ultimate demise of Prohibition). Legislation prohibiting alcohol did not work during Prohibition, and similar regulation banning factory-farmed meat likely will not work either. In fact, such regulation’s application to marijuana use is currently crumbling country-wide, and will likely end on the federal level very soon. See Map of Marijuana Legality by State, DISA GLOBAL SOLUTIONS, https://disa.com/map-of-marijuana-legality-by-state [https://perma.cc/G8NQ-MTKF] (providing statistics regarding marijuana legalization by state); see also Regulate Marijuana Like Alcohol Act, H.R. 420, 116th Cong. (2019) (proposing to treat marijuana like alcohol).


significant health risks; it might work if the justification centered on the notion of necessity. If the American government had to phase out factory farms to feed more Americans, and because the fate of the Earth depended on it, then perhaps a move in a radical direction would be more accepted.

Such a direction could potentially begin with the Green New Deal.\(^{111}\) The Green New Deal—introduced by New York House Representative Alexandria Ocasio-Cortez and Massachusetts Senator Edward J. Markey—was created as part of a concerted effort to combat climate change.\(^{112}\) Specifically, it focuses on drastically reducing greenhouse gas emissions, and recognizes that “the entire world needs to get to net-zero emissions by 2050.”\(^{113}\) Currently, the most relevant provision in the Green New Deal to phase out factory farming states that the government will need to:

(G) work[] collaboratively with farmers and ranchers in the United States to remove pollution and greenhouse gas emissions from the agricultural sector as much as is technologically feasible, including—

(i) by supporting family farming;

(ii) by investing in sustainable farming and land use practices that increase soil health; and

(iii) by building a more sustainable food system that ensures universal access to healthy food.\(^{114}\)

Because the Green New Deal is only a resolution, its purpose is to merely outline the direction in which Congress should go when enacting environmentally-motivated policies. The section quoted above could easily serve as justification for starting a legislatively-mandated phase out of factory farming and fishing practices.\(^{115}\) Through reasons mentioned earlier in this Article, factory farming directly increases methane and carbon dioxide emissions, contributes to deforestation and ocean pollution, and fails to use land efficiently.\(^{116}\) Thus, the termination and phasing out of factory farming would


\(^{112}\) See Kurtzleben, supra note 111 (explaining Green New Deal provisions).

\(^{113}\) See Friedman, supra note 111 (discussing aspects of Green New Deal).

\(^{114}\) See H.R. Res. 109 § (2)(G) (outlining policy changes required in area of farming).

\(^{115}\) See supra note 104 (discussing Fishing practices in United States).

\(^{116}\) See supra Section IV.B.3 (providing details of negative impacts on Earth from factory farming).
satisfy subsections (2)(G)(ii) and (iii) of the Green New Deal directly, as soil health would necessarily improve, carbon dioxide and methane emissions would go down, and more Americans would have greater access to food. Further, it would indirectly satisfy subsection (i) because Americans wanting to continue eating meat would have to rely on smaller local farms, as there would be no industrial farms available. Additionally, through the Green New Deal’s focus on creating jobs, the Legislature would also create policies that would retrain factory farm employees to work on fruit and vegetable farms, as these kinds of farms would be the necessary and logical alternatives to meat farms.

Critics of the Green New Deal, however, worry that the resolution is too ambitious and that it does not actually account for the economic and technologic realities facing America. Many people do not believe that the country is at a stage where it can drastically limit its reliance on and production of fossil fuels because the technology to make such a shift is lacking. Instead, many opponents of the resolution believe that a simple carbon tax is the way to go to persuade companies to reduce their carbon footprint. It is unlikely, however, that a carbon tax would dissuade factory farms from continuing their operations because demand for meat would still be too high, and the profits would likely outweigh any taxes the companies would endure. Other opponents argue that the resolution does not account for American geography and Americans’ need for transportation. This concern is valid, as many Americans live in parts of the country that require them to have and use cars routinely. Ultimately, the Legislature will have to approve a public transportation system project that allows Americans in rural communities to get around using transportation that cuts down on carbon emissions, but a discussion of such legislative policies is outside the scope of this Article. Finally, some critics disapprove of the resolution because they fear the government will ban the use of all animal products. This reason for disliking the Green New Deal is also valid, but may


119. See id. (endorsing carbon tax as alternative to Green New Deal).

120. See Alex Baca, This Is the Green New Deal’s Biggest Problem, MOTHER JONES (Feb. 11, 2019), https://www.motherjones.com/environment/2019/02/this-is-the-green-new-deals-biggest-problem/ [https://perma.cc/93M7-LB74] (explaining resolution does not factor need for highways and cars). The issue with the Green New Deal, according to Baca, is the fact that many Americans live in areas that require them to have and drive a car regularly. See id.

121. See Friedman, supra note 111 (providing some criticisms of Green New Deal). Some critics merely have problems with the Green New Deal’s creators. Patrick Moore, the co-founder of Greenpeace, called Ocasio-Cortez a “pompous little twit” and stated that “if fossil fuels were banned, it would ‘bring about mass death.’” See Melanie Arter, Greenpeace Co-Founder: AOC Is a ‘Pompous Little Twit,’ Green New Deal Would Be ‘Worse Than WWII,’ CNSNEWS (Mar. 4, 2019, 11:55 AM), https://www.cnsnews.com/blog/melanie-arter/greenpeace-co-founder-aoc-pompous-little-twit-green-new-deal-would-be-worse-wwii [https://perma.cc/MZ
not win if the effects of global warming get too severe, because factory farming is a leading contributor to greenhouse gasses, and greenhouse gasses directly cause climate change. If we get to a point where Congress needs to take immediate action to slow the progression of climate change, eliminating factory farms may be one of the quickest ways to do so.

V. CONCLUSION

Human beings have grown accustomed to a world in which our exploitation of animals has no practical consequences. But the time has come where our mistreatment of the animals we share the world with poses real and existential problems for us, for our country, and for our planet. Our reluctance to extend legal protections to the most vulnerable beings on this planet must end if we expect to protect victims of violent crimes, if we wish to feed every citizen in our country, and if we want our descendants to get a chance to live on a habitable planet.

S4-M6JT]. Moore was heavily criticized for his comments, and Greenpeace claimed that Moore’s views did not represent the organization’s position. See Greenpeace Lashes Out at Co-Founder Patrick Moore for Opposing the Green New Deal, LIBERTARIAN REPUBLIC (Mar. 12, 2019), https://thelibertarianrepublic.com/greenpeace-lashes-out-at-co-founder-patrick-moore-for-opposing-the-green-new-deal/ [https://perma.cc/3TYN-FAEG].