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# Equine Welfare as a Mainstream Phenomenon

Bernard E. Rollin

The 20th century has witnessed a bewildering array of ethical revolutions, from civil rights to environmentalism to feminism. Often ignored is the rise of massive societal concern across the world regarding animal treatment. Regulation of animal research exists in virtually all Western countries, and reform of “factory farming” is regnant in Europe and rapidly emerging in the United States. In 2012, a series of articles in *The New York Times* focused welfare attention squarely on the horse industry. Opponents of concern for animals often dismiss the phenomenon as rooted in emotion and extremist lack of appreciation of how unrestricted animal use has improved human life. Such a view ignores the rational ethical basis for elevating legal protection for animals. Author’s address: Department of Philosophy, Colorado State University, Fort Collins, CO 80523; e-mail: Bernard.rollin@colostate.edu. © 2013 AAEP.

## 1. Introduction

Businesses and professions must stay in accord with social ethics or risk losing their autonomy. A major social ethical issue that has emerged in the past four decades is the treatment of animals in various areas of human use. Society’s moral concern has outgrown the traditional ethic of animal cruelty that began in biblical times and is encoded in the laws of all civilized societies. There are five major reasons for this new social concern, most importantly, the replacement of husbandry-based agriculture with industrial agriculture. Other concerns include demographic changes in society, ethics changes in recent history, rise of scholarly literature on ethics and animals, and media interest. The loss of husbandry to industry has threatened the traditional fair contract between humans and animals and resulted in significant amounts of animal suffering arising on four different fronts. Because such suffering is not occasioned by cruelty, a new ethic for animals was required to express social concerns. Because ethics proceeds from preexisting ethics

rather than being created *ex nihilo* (out of nothing), society has looked to its ethic for humans, appropriately modified, to find moral categories applicable to animals. This concept of legally encoded rights for animals has emerged as a plausible vehicle for reform.

## 2. Background

Although society has always had an articulated ethic regarding animal treatment, that ethic has been very minimalistic, leaving most of the issue of animal treatment to people’s personal ethic rather than to the social ethic. Since Biblical times, that limited social ethic has forbidden deliberate, willful, sadistic, deviant, purposeless, unnecessary infliction of pain and suffering on animals, or outrageous neglect, such as not feeding or watering. Beginning in the early 19th century, this set of prohibitions was articulated in the anti-cruelty statutes of the laws in all civilized societies.<sup>1</sup> Even in Biblical and medieval times, however, the social ethic inveighed against cruelty. The *Old Testament* injunctions

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## NOTES

against yoking an ox and an ass together to a plow, or muzzling the ox when it is being used to mill grain, or seething a calf in its mother's milk, all reflect concern with and abhorrence for what the Rabbinical tradition called *tsaar baalei chaim*; the suffering of living things. In the Middle Ages, St. Thomas Aquinas, while affirming that, lacking a soul, animals enjoyed no moral status, nonetheless strictly forbade cruelty on the grounds that permitting such behavior toward animals would encourage its spreading to human beings, an insight buttressed by more than two decades of recent research.<sup>2</sup> For the overwhelming majority of human history, until some four decades ago, the anti-cruelty ethic served as the only socially articulated moral principle for animal treatment.

The past 50 years have witnessed a dazzling array of social ethical revolutions in Western society. Moral movements such as feminism, civil rights, environmentalism, affirmative action, consumer advocacy, children's rights, the student movement, anti-war activism, and public rejection of biotechnology have forever changed the way governments and public institutions comport themselves. This is equally true for private enterprise: to be successful, businesses must be seen as operating solidly in harmony with changing and emerging social ethics. For example, it is arguable that morally based boycotting of South African business was instrumental in bringing about the end of apartheid, and similar boycotting of some farm products in the United States led to significant improvements in the living situations of farm workers.

Not only is success tied to accord with social ethics but, even more fundamentally, freedom and autonomy are as well. Every profession—be it medicine, law, or agriculture—is given freedom by the social ethic to pursue its aims. In return, society basically says to professions it does not understand well enough to regulate, “you regulate yourselves the way we would regulate yourself if we understood what you do, which we don't. But we will know if you don't self-regulate properly and then we will regulate you, despite our lack of understanding.” For example, some years ago, Congress became concerned about excessive use of antibiotics in animal feeds and concluded that veterinarians were a major source of the problem. As a result, Congress was about to ban extra-label drug use by veterinarians, a move that would have killed veterinary medicine as we know it. However, through extensive efforts to educate legislators, such legislation did not proceed to law.

One major social ethical concern that has developed over the past four decades is a significant emphasis on the treatment of animals used by society for various purposes. It is easy to demonstrate the degree to which these concerns have seized the public imagination. According to members of both the US National Cattlemen's Beef Association and the National Institutes of Health (the latter being

the source of funding for the majority of biomedical research in the United States)—both groups not inclined to exaggerate the influence of animal ethics—by the early 1990s, Congress had been consistently receiving more letters, phone calls, faxes, e-mails, and personal contacts on animal-related issues than on any other topic.<sup>3,b</sup> Whereas 30 years ago one would have found no bills pending in the US Congress relating to animal welfare, recent years have witnessed dozens of such bills annually, with even more proliferating at the state level. The Federal bills have ranged from attempts to prevent duplication in animal research, to saving marine mammals from becoming victims of tuna fishermen, to preventing importation of ivory, to curtailing the parrot trade. Ethical concerns about the welfare of horses has resulted in passage of the *Federal Horse Protection Act*, banning “soring” of Tennessee Walking Horses, and Federal legislation banning horse slaughter has been proposed and introduced in the US Congress several times.

State laws passed in large numbers have increasingly prevented the use of live or dead shelter animals for biomedical research and training and have focused on myriad other areas of animal welfare. Eight states have abolished the steel-jawed leg-hold trap, as have some 90 countries.<sup>3</sup> When Colorado's politically appointed Wildlife Commission failed to act on a recommendation from the Division of Wildlife to abolish the spring bear hunt (because hunters were liable to shoot lactating mothers, leaving their orphaned cubs to die of starvation), the general public ended the hunt through a popular referendum. Seventy percent of Colorado's population voted for this as a *Constitutional Amendment*.<sup>4</sup> In Ontario, the environmental minister stopped a similar hunt by executive fiat in response to social ethical concern.<sup>5</sup> California abolished the hunting of mountain lions, and state fishery management agencies have been taking a hard look at catch-and-release programs on humane grounds.<sup>6</sup>

According to the director of the American Quarter Horse Association, the number of state bills related to horse welfare filled a telephone-book-sized volume in 1998.<sup>7</sup> Public sentiment for equine welfare in California carried a bill through the State Legislature, making the slaughter of horses or shipping of horses for slaughter a felony in that state. Municipalities have passed ordinances ranging from the abolition of rodeos, circuses, and zoos to the protection of prairie dogs, and, in the case of Cambridge, Massachusetts (a biomedical Mecca), the strictest laws in the world regulating research.

Even more dramatic, perhaps, is the worldwide proliferation of laws to protect laboratory animals. In the United States, in 1985, for example, two major pieces of legislation regulating and constraining the use and treatment of animals in research (which I helped draft and defend) were passed by the US Congress in 1985 despite vigorous opposition from the powerful biomedical research and medical lob-

bies. This opposition included well-financed, highly visible advertisements and media promotions indicating that human health and medical progress would be harmed by implementation of such legislation. For example, there was a less-than-subtle film titled “Will I Be All Right, Doctor?” The query came from a sick child. The response came from a pediatrician who affirmed, in essence, “You will be [a sick child] if ‘they’ don’t leave us alone to do as we wish with animals.” Social concern for laboratory animals was unmitigated by such threats, and research animal protection laws moved easily through Congress and were implemented at considerable cost to taxpayers. When I testified before Congress on behalf of this law in 1982, a literature search in the Library of Congress turned up no papers in the scientific literature on laboratory animal analgesia and only two on animal analgesia, one of which said “there ought to be papers.” Now there are more than 11,000. In 1986, Britain superseded its pioneering act of 1876 with new laws aimed at strengthening public confidence in the welfare of experimental animals.<sup>8</sup> Many other countries have moved or are moving in a similar direction, despite the fact that some 90% of laboratory animals are rats and mice.

Inevitably, agriculture has felt the force of social concern with animal treatment—indeed, it is arguable that contemporary concern in society with the treatment of farm animals in modern production systems blazed the trail leading to a new ethic for animals. As early as 1965, British society took notice of what the public saw as an alarming tendency to industrialize animal agriculture by chartering the Brambell Commission, a group of scientists under the leadership of Sir Rogers Brambell, who affirmed that any agricultural system failing to meet the needs and natures of animals was morally unacceptable.<sup>9</sup> In 1988, the Swedish Parliament passed, virtually unopposed, what *The New York Times* calls a “Bill of Rights” for farm animals, abolishing in Sweden, in a series of timed steps, the confinement systems currently dominating North American agriculture.<sup>10</sup> European Union legislation banning sow stalls in all newly built, rebuilt, or newly commissioned buildings since 2003 has been passed, beginning in 2013.<sup>11</sup>

Although the United States has been a latecomer to agricultural issues, things have moved rapidly, with referenda pressed by the Humane Society of the United States abolishing sow stalls, battery cages, and veal crates across the United States.

In 2008, the Pew Commission (better known as the National Commission on Industrial Farm Animal Production) called for the end of high confinement animal agriculture within 10 years, for reasons of animal welfare, environmental despoliation, human and animal health, and social justice.<sup>11</sup> Most dramatically, an agreement between the Humane Society of the United States and the Colorado Livestock Association passed jointly sponsored farm

animal welfare law in Colorado in 2008, abolishing sow stalls and veal crates. The agriculture community in the United States has been far behind societal concern, and it is apparent from articles appearing in *The New York Times* in 2012 that the equine community has lagged as well.

#### Science Versus Ethics

There is one monumental conceptual error that is omnipresent in the scientific, agricultural, and equine industries’ discussions of animal welfare, an error of such magnitude that it trivializes the industry’s responses to ever-increasing societal concerns about the treatment of agricultural animals. When one discusses farm animal welfare with industry groups or with the American Veterinary Medical Association, one finds the same response; animal welfare is a matter of “sound science.” For example, one representative of the Pork Producers, testifying before the Pew Commission, answered that whereas people in her industry were quite “nervous” about the Commission, their anxiety would be allayed were we to base all of our conclusions and recommendations on “sound science.” Hoping to rectify the error in that comment as well as educate the numerous industry representatives present, I responded to her as follows: “Madame, if we on the Commission were asking the question of how to raise swine in confinement, science could certainly answer that question for us. But that is not the question the Commission, or society, is asking. What we are asking is, ought we raise swine in confinement? And to this question, science is not relevant.” Similarly, discussions about whether the incidence of exercise-induced pulmonary hemorrhage is reduced by pharmaceuticals such as furosemide<sup>12</sup> generate the question of whether horses that bled from the lungs after exercise should be running.

Questions of animal welfare are at least partly “ought” questions, questions of ethical obligation. The concept of animal welfare is an ethical concept to which, once understood, science brings relevant data. When we ask about an animal’s welfare, or about a person’s welfare, we are asking about what we owe the animal and to what extent. A document called the Council for Agricultural Science and Technology (CAST) report, first published by US Agricultural scientists in the early 1980s, discussed animal welfare and affirmed that the necessary and sufficient conditions for attributing positive welfare to an animal were represented by the animals’ productivity. A productive animal enjoyed positive welfare; a non-productive animal enjoyed poor welfare.<sup>13</sup> Presumably, for horses, analogous measures under such a concept would be race times, numbers of blue ribbons, or high scores on a dressage test.

However, the notion that welfare is somehow tied to productivity is fraught with many difficulties. Productivity is an economic notion predicated of a

whole operation; welfare is predicated of individual animals. An operation such as caged laying hens may be quite profitable if the cages are severely overcrowded, yet the individual hens do not enjoy good welfare. An equine racing stable may be quite profitable, but individual animals may be severely injured in the course of racing or training. Equating productivity and welfare is, to some significant extent, legitimate under husbandry conditions, in which the producer does well if and only if the animals do well. However, if animals do not naturally fit in the niche or environment in which they are kept, or, as in the case of many performance horses, if they are indiscriminately given performance-enhancing drugs, pain relievers, and so forth so that they can run faster or jump higher, concerns about welfare become paramount.

#### Ethics and Welfare

Equine welfare is an ethical concept. If the underlying rationale for caring for horse is, "What we owe horses, and to what extent, is simply what it takes to get them to create profit for people," this implies that the horses are well-off if they have only food, water, and shelter. Increasingly, society is taking an issue with such a view.

In Great Britain, during the 1970s, the Farm Animal Welfare Council (FAWC) affirmed that "The welfare of an animal includes its physical and mental state and we consider that good animal welfare implies both fitness and a sense of well-being. Any animal kept by man must at least be protected from unnecessary suffering. We believe that an animal's welfare, whether on farm, in transit, at market, or at a place of slaughter, should be considered in terms of 'Five Freedoms'.<sup>14</sup>

- (1) Freedom from Hunger and Thirst—by ready access to fresh water and a diet to maintain full health and vigor.
- (2) Freedom from Discomfort—by providing an appropriate environment including shelter and a comfortable resting area.
- (3) Freedom from Pain, Injury, or Disease—by prevention or rapid diagnosis and treatment.
- (4) Freedom to Express Normal Behavior—by providing sufficient space, proper facilities, and company of the animal's own kind.
- (5) Freedom from Fear and Distress—by ensuring conditions and treatment that avoid mental suffering."

The "correct" notion of man's moral obligation to horses cannot be decided by gathering facts or doing experiments—indeed, which ethical framework one adopts will in fact determine the shape of science studying animal welfare. For example, if one holds the view that a horse is well-off when it is winning races, the role of welfare science in this case will be to study what feed, bedding, temperature, medication, and so forth are most efficient at getting horses

to run the fastest, or which techniques are the best at repairing injuries: much what veterinary science does today. On the other hand, if one takes the FAWC view of welfare, efficiency will be constrained by the need to acknowledge the animal's natural behavior and mental state and to ensure that there is minimal pain, fear, distress, and discomfort. Thus, in a real sense, sound science does not determine concepts of welfare; rather, concepts of welfare determine what counts as sound science!

The failure to recognize the inescapable ethical component in the concept of animal welfare leads inexorably to those holding different ethical views talking past each other. Thus, for example, in the 20th century, producers of pregnant mare's urine (PMU) largely ignored questions of animal pain, fear, distress, confinement, truncated mobility, bad air quality, social isolation, and impoverished environment. Animal advocates, on the other hand, give such factors primacy and were totally unimpressed with how efficient or productive the system may have been and flooded the Internet and newspapers with articles accusing the PMU industry of causing great suffering in horses. The PMU industry ultimately responded to such concerns by breeding foals who were marketable and by self-policing.<sup>15</sup>

#### The Changing Social Ethic Toward Animals

If the notion of equine welfare is inseparable from ethical components and peoples' ethical stances on obligations to horses differ markedly across a highly diverse spectrum, an important question for the equine industry is, "Whose ethic is to predominate and define, in law or regulation, what counts as equine welfare?" The answer, of course, is society, because society makes the laws.

It is of interest to consider the things that have occurred in society during the last half-century that led to social disaffection with the venerable ethic of anti-cruelty and to strengthening of the anti-cruelty laws, which now make cruelty a felony in over 40 states. In a study commissioned by United States Department of Agriculture to answer this question, I distinguished a variety of social and conceptual reasons<sup>16</sup>:

- (1) Changing demographics and consequent changes in the paradigm for animals. Whereas at the turn of the century, more than half the population was engaged in producing food for the rest, today only some 1.5% of the US public is engaged in production agriculture.<sup>17</sup> One hundred years ago, if one were to ask a person in the street, urban or rural, to state the words that come into their mind when one says "animal," the answer would doubtless have been "horse," "cow," "food," "work," and so forth. Today, however, for the majority of the population, the answer is "dog," "cat," "pet." Repeated

studies show that almost 100% of the pet-owning population views their animals as “members of the family”<sup>17</sup>; many horse owners would agree. Virtually no one in society views horses merely as an income source.

- (2) We have lived through a long period of ethical soul-searching. For almost 50 years, society has turned its “ethical searchlight” on humans traditionally ignored or even oppressed by the consensus ethic. The same ethical imperative has focused attention on our treatment of the non-human world: the environment and animals. Many leaders of the activist animal movement in fact have roots in earlier movements. As a result, the society’s views on the use of animals for entertainment have changed drastically. Previously acceptable activities such as dog- and cock-fighting have been outlawed; others, such as bull-fighting, rodeo, show jumping, and horse racing, are under scrutiny.
- (3) The media has discovered that “animals sell papers.” One cannot channel-surf across normal television service without being bombarded with animal stories, real and fictional. (A *New York Times* reporter recently told me that more time on cable TV in New York City is devoted to animals than to any other subject.) *The New York Times* reports on the racing and show horse industries in 2012 are a poignant example.
- (4) Strong and visible arguments have been advanced in favor of raising the status of animals by philosophers, scientists, and celebrities.<sup>18–23</sup>
- (5) Changes in the nature of animal use demanded new moral categories beyond the traditional concept of “cruelty.”

Even though all of the reasons listed above are relevant, they are nowhere as important as the precipitous and dramatic changes in animal use that occurred after World War II. These changes were (1) huge conceptual changes in the nature of agriculture and (2) the rise of significant amounts of animal research and testing.

For virtually all of human history, animal agriculture was based foursquare in animal husbandry. Husbandry, derived c. 1300, “management of a household,” meant taking great pains to put one’s animals into the best possible environment one could find to meet their physical and psychological natures and then augmenting their ability to survive and thrive by providing them with food during famine, protection from predation, water during drought, medical attention, help in birthing, and so on. Thus, traditional animal use was roughly a fair contract between humans and animals, with both sides being better off in virtue of the relationship. So powerful is the notion of husbandry that when the Psalmist seeks a metaphor for God’s ideal relationship to

humans, he seizes on the shepherd in the 23<sup>rd</sup> *Psalm*. In husbandry, a producer did well if and only if the animals did well, so productivity was tied to welfare. No social ethic was thus needed to ensure proper animal treatment; only the anti-cruelty laws designed to deal with sadists and psychopaths was needed to augment husbandry. Self-interest virtually ensured good treatment.

After World War II, this beautiful contract was broken by humans. Symbolically, at universities, Departments of Animal Husbandry became Departments of Animal Science, defined not as care, but as “the application of industrial methods to the production of animals” to increase efficiency and productivity. If a 19th-century agriculturalist had tried to put 100,000 egg-laying hens in cages in a building, they all would have died of disease in a month; today such systems dominate. The new approach to animal agriculture was not the result of cruelty, bad character, or even insensitivity. It developed rather out of perfectly decent, *prima facie* plausible motives that were a product of dramatic significant historical and social upheavals that occurred after World War II.

After World War II, agricultural scientists and government officials became extremely concerned about supplying the public with cheap and plentiful food for a variety of reasons. As a result of the Dust Bowl and the Great Depression, many people in the United States had soured on farming, and the American consumer was, for the first time in history, fearful of an insufficient food supply. Urban and suburban encroachment on agricultural land was resulting in a diminution of land for food production. In addition, many farmers had been sent to both foreign and domestic urban centers during the war, thereby creating a reluctance to return to rural areas that lacked excitement; recall the song of the early 20th century, “How’re You Gonna Keep ‘Em Down on the Farm (After They’ve Seen Patee)?”<sup>24</sup> When the above considerations of loss of land and diminution of agricultural labor was coupled with the rapid development of a variety of technological modalities relevant to agriculture during and after World War II and with the burgeoning belief in technologically based economics of scale, it was probably inevitable that animal agriculture would become subject to industrialization. This was a major departure from traditional agriculture and a fundamental change in agricultural core values—industrial values of efficiency and productivity replaced and eclipsed the traditional values of “way of life” and husbandry. In addition, in the mid-20th century there arose large-scale use of animals in research and testing for toxicity. This too was an unprecedented large-scale use of animals, lacking the fairness of husbandry agriculture.

These new developments represent a radically different playing field of animal use from the one that characterized most of human history; in the modern world of agriculture and animal research,

the traditional anti-cruelty ethic became increasingly less applicable: the suffering that animals experience at human hands today is not generally of the sort condemned by the anticruelty ethic and laws. Nevertheless, people realize that biomedical and other scientific research, toxicological safety testing, uses of animals in teaching, pharmaceutical product extraction from animals, racing horses to earn enough money to justify their cost of care, medicating horses so that they can win ribbons or belt buckles, and so on all produce far more suffering than does overt cruelty. In horses, this suffering comes from such things facilitating the spread of equine disease in crowded stables, trauma from performance activities that overstress the equine musculoskeletal system, and the like; producing pain, fear, learned helplessness, aggression, and other states for research; poisoning animals to study toxicity; and performing surgery on animals to develop new operative procedures. Indeed, the discomfort and suffering that animals used in research experience by virtue of being housed under conditions that are convenient for us but inimical to their biological natures—for example, keeping rodents, which are nocturnal, burrowing creatures, in polycarbonate crates under artificial, full-time light—arguably equal or exceed the suffering produced by invasive research protocols.

#### Unintentional Suffering

Farmers, researchers, and horse trainers are often not intentionally cruel. In fact, they are often motivated by plausible and decent intentions: to cure disease, advance knowledge, ensure product safety, provide cheap and plentiful food, attempt to allow riders to ride more safely (by tranquilizing performance horses), and so forth. Nonetheless, they may inflict great amounts of suffering on the animals they use. However, because the traditional ethic of anti-cruelty and the laws expressing it had no vocabulary for describing unintentional suffering, a new set of concepts beyond cruelty and kindness was needed.

Society eventually became aware that new kinds of suffering were engendered by modern animal use. Although overseers of animal use (including horses) could not be categorized as cruel, they were responsible for new types of animal suffering on at least four fronts:

- (1) Production diseases arising from the ways the animals are housed. For example, liver abscesses in cattle are a function of certain animals' responses to the high-concentrate, low-roughage diet that characterizes feedlot production; equine gastric ulcer syndrome (EGUS) and colic have been associated with feeding high levels of grain concentrates in the feed<sup>25,26</sup> (these, of course, are not the only cause of liver abscesses, EGUS, or colic). Even the stress of stabling/confinement is

considered to play a factor in such diseases. Although a certain percentage of the animals get sick and sometimes die, the overall economic efficiency of feedlots, or the ability to get calories into horses that expend large amounts of energy, is maximized by the provision of such diets. The ideas of a method of care creating diseases that were "acceptable" would be anathema to a husbandry agriculturalist.

- (2) The huge scale of industrialized agricultural operations and the small profit margin per animal militate against the sort of individual attention that typified much of traditional agriculture. In traditional dairies 50 years ago, one could make a living with a herd of 50 cows. Today, one needs literally thousands. In the United States, dairies may have 10,000 cows.
- (3) Another new source of suffering in industrialized agriculture results from physical and psychological deprivation for animals in confinement: lack of space, lack of companionship for social animals (such as horses), inability to move freely, boredom, austerity of environments, and so on. Because the animals evolved for adaptation to extensive environments but are now placed in truncated environments, such deprivation is inevitable. This was not a problem in traditional, pastoral agriculture or in horses kept in pastures.
- (4) In confinement systems, workers may not be "animal smart"; the "intelligence," such as it is, is in the mechanized system. Instead of husbandmen, workers in swine factories are minimum-wage, often animal-ignorant labor. Therefore there is often no empathy with, or concern for, the animals. These sources of suffering, like the ones in research, are again not captured by the vocabulary of cruelty, nor are they proscribed or even acknowledged by the laws based on the anti-cruelty ethic. Furthermore, they typically do not arise under traditional agriculture and its ethic of husbandry.

As a result of its awareness of new kinds of suffering, society was faced with the need for new moral categories and laws that reflect those categories. Society became concerned with limiting animal suffering in science, in agriculture, and in entertainment events (including many equestrian activities). Western society has extended its moral categories for humans to people who previously were morally ignored or invisible, for example, women, minorities, the handicapped, children, and citizens of the Third World. New and viable ethics do not emerge *ex nihilo*, thus, a plausible and obvious move is for society to continue in its tendency and attempt to extend the moral machinery it has developed for

dealing with people, appropriately modified to animals. This is precisely what has occurred. Society has taken elements of the moral categories it uses for assessing the treatment of people and is in the process of modifying these concepts to make them appropriate (or, in the eyes of some, inappropriate) for dealing with new issues in the treatment of animals, especially their use in science, entertainment, and confinement agriculture.

#### Extending Ethics to Animals

What aspect of our ethic for people is being so extended? One—quite directly applicable to animal use—is the fundamental problem of weighing the interests of the individual against those of the general welfare. Different societies have provided different answers to this problem. For example, totalitarian societies opt to devote little concern to the individual, favoring instead the state or whatever their version of the general welfare may be. At the other extreme, anarchical groups such as communes give primacy to the individual and very little concern to the group; hence they tend to enjoy only transient existence. In Western society, however, there are usually attempts to strike a balance. Although most of society's decisions are made to the benefit of the general welfare, fences are built around individuals to protect their fundamental interests from being sacrificed to the majority. Thus, we protect individuals from being silenced even if the majority disapproves of what they say; we protect individuals from having their property seized without recompense even if such seizure benefits the general welfare; we protect individuals from torture even if they have planted a bomb in an elementary school and refuse to divulge its location. We protect those interests of the individual that we consider essential to being human, to human nature, from being submerged, even by the common good. Those moral/legal fences that so protect the individual human are called *rights* and are based on plausible assumptions regarding what is essential to being human.

It is this notion to which society in general is looking to generate the new moral notions necessary to talk about the treatment of animals in today's world, in which cruelty is not the major problem but where such laudable, general human welfare goals as efficiency, productivity, knowledge, medical progress, and product safety are responsible for the vast majority of animal suffering. People in society are seeking to "build fences" around animals to protect the animals and their interests and natures from being totally submerged for the sake of the general welfare, and are trying to accomplish this goal by going to the Legislature. In husbandry, this occurred automatically; in industrialized agriculture, in which it is no longer automatic, people wish to see it legislated.

It is necessary to stress certain things that this ethic, in its mainstream version, is not and does not

attempt to be. As a mainstream movement, it does not try to give human rights to animals. Because animals do not have the same natures and interests flowing from these natures as humans do, human rights do not fit animals. Animals do not have basic natures that demand speech, religion, or property; thus, according them, these rights would be absurd. On the other hand, animals have natures of their own and interests that flow from these natures, and the thwarting of these interests matters to animals as much as the thwarting of speech matters to humans. The agenda is not, for mainstream society, giving animals the same rights as those of people. It is rather preserving the common-sense insight that, "Fish got to swim, birds got to fly,"<sup>27</sup> and suffer if they don't. This new ethic is conservative, not radical, harking back to the animal use that necessitated and thus entailed respect for the animals' natures. It is based on the insight that what we do to animals matters to them, just as what we do to humans matters to them, and that consequently we should respect that mattering in our treatment of use of animals as we do in our treatment and use of humans.

Importantly, because respect for animal nature is no longer automatic as it was in traditional husbandry agriculture, society is demanding that it be encoded in law. In 2004, no fewer than 2,100 bills pertaining to animal welfare were proposed in US state legislatures. More than 90 law schools now teach animal law. With regard to animal agriculture, the pastoral images of animals grazing on pasture and moving freely are iconic. As the *23rd Psalm* indicates, people who consume animals wish to see the animals live decent lives, not lives of pain, distress, and frustration.

It is in part to try to avoid society's gaze that industrial agriculture, as well as certain equestrian industries, attempt to conceal the reality of its practices from a naïve public; witness Perdue's advertisements about raising "happy chickens," or the California "happy cow" ads. As ordinary people discover the truth about the conditions under which animals are raised or trained, they may be shocked. When I served on the Pew Commission and other commissioners had their first view of sow stalls, many were in tears and all were outraged; an ABC News video on the abuse meted out to Tennessee Walking horses sparked a national outcry.<sup>28</sup>

### 3. Conclusions

Just as our use of people is constrained by respect for the basic elements of human nature, people wish to see a similar notion applied to animals. Animals, too, have natures, what I call *telos*, following Aristotle—the "pigness of the pig," the "cowness of a cow." Pigs are "designed" to move about on soft loam, not to be in gestation crates. If this no longer occurs naturally, as it did in husbandry, people wish to see it legislated. This is the mainstream sense of "animal rights."

As property, strictly speaking, animals cannot have legal rights. But a functional equivalent to rights can be achieved by limiting human property rights. When I and others drafted the US Federal laws for laboratory animals, we did not deny that research animals were the property of researchers. We merely placed limits on their use of their property. I may own my car, but that does not mean I can drive it on the sidewalk or at any speed I choose. Similarly, our law states that if one hurts an animal in research, one must control pain and distress. Thus, research animals can be said to have the right to have their pain controlled. In the case of farm animals, people wish to see their basic needs and nature, *teloi*, respected in the systems that they are raised. Because this no longer occurs naturally as it did in husbandry, it must be imposed by legislation or regulation.

A Gallup poll conducted in 2003 shows that 75% of the public wants legislated guarantees of farm animal welfare.<sup>29</sup> This is what I call “animal rights as a mainstream phenomenon.” Legal codification of rules of animal care respecting animal *telos* is thus the form animal welfare takes when husbandry has been abandoned. Thus, in today’s world, the ethical component of animal welfare prescribes that the way we raise and use animals must embody respect and provision for their psychological needs and natures. It is therefore essential that those systems that cause animal suffering by violating animals’ natures be phased out and replaced with systems that respect their natures.

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<sup>a</sup>McCarthy C, Bethesda, MD (personal communication), 1988.

<sup>b</sup>NCBA, Denver CO (personal communication), 1991.