

Animal rights for farm animals sociology essay



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The paucity of legal scholarship and teaching in the area of animals and the law is puzzling, particularly given the general interest in, and intense debate about, the treatment of animals by humans over the last 30 years. The lack of interest in Australia is ironic, as it was the work of the Australian philosopher Peter Singer, in the highly influential book *Animal Liberation*, which can be said to have reinvigorated much of the modern debate about the status of animals.[1]By contrast with the Australian uninterest, countries such as Sweden, the United Kingdom, Finland, Switzerland and the Netherlands have moved to ban the cruel practice of keeping pregnant sows in sow stalls, Australia's most recent Model Pig Code provided for a minor increase in stall size and a generous 10 year phase in period for a 6 week limit on the use of sow stalls. Moreover, the deplorable practice of keeping hens in battery cages continues to be legal in all Australian jurisdictions while the EU has banned the use of all battery cages by January 2012. Further to this, the United States legal academy has been actively exploring legal issues relating to animals for a number of years. The Lewis and Clark Law School, in Portland, Oregon, has established the National Center for Animal Law and publishes an annual journal, *Animal Law*. [2]Approximately 40 law schools in the United States offer courses on animals and the law. [3]The legal profession in the United States has been no less active. A large number of State Bar Associations have established animal law sections or committees. Activist attorneys established the independent Animal Legal Defense Fund ('ALDF') in 1981. The ALDF not only provides free legal advice and assistance to prosecutors in cruelty cases, but also maintains a national database of cruelty cases, and provides support for lawsuits that test the boundaries of animal law.[4]Certainly, Australia's poor animal welfare

standards in comparison are a fundamental flaw of Australian animal protection laws. Nevertheless, even if the State and Territory Governments decide to implement ambitious welfare standards, as the legislation stands, these standards would go substantially unenforced. As such, this essay attempts to explore the current legal system governing our animals and in the process it will bring to light the deficiencies that currently exist. The focus of which will be on the treatment of factory farmed animals and how Australia continues to lag behind the rest of the world in developing a legal system that effectively shuts out animal cruelty.

The notion of animal law is one that is highly complex yet ironically extremely underdeveloped. This in turn has led to mass confusion about the treatment of animals by various bodies. According to voiceless, “ over the last 30 years, there has been a dramatic increase in our understanding of animal intelligence and behaviour and a broad acceptance that animals are sentient beings that have a right to live free of suffering. This has led to the recognition that the existing legal system has failed to provide animals with access to justice. To address this failure, two ‘ streams’ of law have been developed that aim to use legal mechanisms to improve the lives of animals.”[5]

1. Animal welfare laws may be defined as those laws that seek to promote the interests of animals, within a legal framework that characterises them as property. In essence, animal welfare law sanctions exploitation of animals but seeks to define ‘ acceptable’ limits to that exploitation by prohibiting ‘ unnecessary pain and suffering’.[6]

Some examples of activities considered ‘ necessary’ under Australia’s current animal welfare laws include:[7]

Confining millions of pigs, chickens and other farm animals in concrete and steel sheds (modern factory farms) with no access to the outdoors, little to no access to bedding material and little to no meaningful contact with their young;

Denying anaesthetic during painful procedures such as tail docking, castration and teeth clipping; and

Using a range of methods from baits and traps to guns and bows and arrows (in some states) to kill millions of wild animals defined as ‘ feral’ or ‘ game’ every year.

It is under this area of law that Australia is clearly lacking in its commitment to the protection of animal welfare. Ultimately, such ‘ necessary’ activities are permitted on the basis of efficiency and economics. This is further reinforced by Francione who argues that most animal welfare legislation is based on an understanding of animals as commodities (evidenced by the significant exemptions and qualifications typical of such laws, including the use of animals for food and for scientific research).[8] However, the imposition of cruelty for economic reasons alone is unjustified and essentially this needs to be reformed. For Singer, a utilitarian, the qualified protection provided by animal welfare legislation reflects a failure to give equal consideration to the interests of animals. In turn, this failure reflects ‘ speciesism’ – an irrational, discriminatory and morally unjustifiable preference for the interests of humans over animals.[9]

Public consideration of the issue of cruelty to animals tends to focus on the treatment of companion animals and animals used in research. Wolfson and Sullivan argue that this focus also underpins law-making and legal scholarship.[10] Yet, they point out, it is farmed animals that account for almost all animals killed by humans (in the order of 98 in every 100 killed). [11] This is once again a clear failure in the development of an effective body of law. The protection of animal welfare and rights is clearly a mirage of hope. This is primarily based on the notion that anti-cruelty legislation has been called upon because of the impact that humans are having on farmed animals, yet our legal bodies continue to ignore such blatant actions and focus on an area of law that appeases society without actually effectively addressing the issue at hand. Ultimately, as will be discussed later, this creates a false sense of security amongst humans that our governments are effectively targeting animal welfare rights. In the United States these animals are 'invisible' to the law. At federal level, farmed animals are exempted from anti-cruelty legislation.[12] States are also increasingly incorporating 'customary farming' exemptions. If industry participants can establish that particular treatment of a type of animal is commonplace and accepted industry practice, no criminal liability can arise based on that treatment, regardless of how cruel the treatment might actually be. The end result is a profit-driven industry, with a proven record of sustained infliction of cruelty on animals, which is largely self-regulated on issues of animal welfare.[13] Further to this, legislation in Australia exempts farming from cruelty offences, and although most jurisdictions have adopted codes of conduct for the treatment of farmed animals, these are not always compulsory, and are not subject to wide public scrutiny. Thus, the issue of <https://assignbuster.com/animal-rights-for-farm-animals-sociology-essay/>

profit making industries again goes to the core of animal welfare rights. The failure to understand animal welfare rights over economic progression will inevitably ensure that this remains a perpetual problem. Until society puts animal welfare ahead of profits then Australia will remain in a contained cyclical downfall with respect to the protection of animals. It is at this point where the implementation of animal rights law may help to aid the development of animal protection in the future.

2. Animal rights law may be defined as an area of law which seeks to question animals' well-entrenched status as property, with a view to securing fundamental rights for (at least some) animals.[14]The quest for ' animal rights' is not a pursuit for the same rights that humans should have.

Essentially, animal rights lawyers argue that animals should not be treated by the law as mere ' things'. This area of the law is based on the assumption that unless animals have rights, they will continue to be treated by society as resources to satisfy human wants and needs.[15]

Thus it is the development of this area of law that is essential to the proper development of animal welfare laws. The development of these two areas ultimately complements one another with the hope of eradicating the issues that arise under the first type of legal system. That is, the protection of animals from ' unnecessary pain and suffering' only. Singer may regard animal welfare legislation as a positive development, but would argue that to be effective such legislation needs to consider the interests of animals and humans equally. It is here where animal rights law begins to reflect such an ideological stance, and as already discussed, this is a major step in the

development of an effective body of law that deals with animals and humans.

Whilst the need for legal advocates is an urgent one, animal law, as already discussed is a relatively new body of law that is still in its infant stages of development. In the United States, animal law has been developing at an increasing rate over the last thirty years. However in Australia, there are still only a handful of advocates (committees, universities and organisations) actively debating these issues. A 2006 survey conducted in connection with the Federal Government's Australian Animal Welfare Strategy found that participants had a "shallow understanding of animal welfare issues" and that "there appeared to be assumptions by the general public about animal welfare and the existence and enforcement of legislation to protect animals from mistreatment." [16] Thus, this clear lack of transparency and education with respect to the law inevitably inhibits the ability of animal law to grow as a serious body of law.

In recent years, increased scrutiny and criticism of intensive "factory" farms have changed the way that animal industries market their products. No more hiding beneath a veil of secrecy hoping that issues such as sow stalls, battery cages and meat chicken "growing and processing" won't be discussed and debated. The social justice movement of animal protection is rapidly picking up momentum and animal industries are now, more than ever, being called upon to justify or change their practices. However despite this change in perception, it is clear that Australia is still falling behind in the protection of intensively farmed animals. This can primarily be linked back to the argument that animals can never gain adequate protection under the

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law without a fundamental reappraisal of their legal status as property. For example, according to the American lawyer Gary Francione, because their ' interests are evaluated against this status as property, the outcome is almost certain: people win and animals lose.' [17] He takes the view that, although an animal's treatment by its owner ' may ostensibly be limited by anticruelty laws,' property rights are ' paramount in determining the ambit of protection accorded to animals by law.' [18] If we say that an animal is property,' he declares, ' we mean that the animal is to be treated under the law primarily as a means to human ends, and not as an end in herself.

[19] Thus, to expand legal protection and remedy available to factory farmed animals, a uniform and settled approach on standing must be established upon the principle that animals are not merely a means to human ends but have by virtue of themselves, basic moral rights. [20] Ultimately, the treatment of animals as property inhibits the ability of the law to protect their rights as it would be extremely unlikely that standing can be established. As Cassuto argues, animals lack legal protections because they are commodified property whose worth emanates from their market value.

[21] In other words, systematic abuse arises is sanctioned in the discourse of property because such animals are not considered as individual, sentient beings but a mere commodity. [22] Granting standing to a plaintiff to sue to enforce an animal welfare statute therefore can serve to interfere in another individual's property right. The conflict of interest that arises is therefore an inherent problem within this body of law. The continuation of animals being associated as mere commodities will essentially inhibit the development of animal rights and ultimately will ensure Australia remains behind the rest of the world.

The notion that factory farmed animals are mere commodities with no measurable rights is made apparent especially in our NSW legislation. The legislative framework governing the lives of animals on factory farms is indicative of the dichotomy drawn between farm animals on the one hand and companion animals or endangered species on the other. As already pointed out by Wolfson, public consideration of the issue of cruelty to animals tends to focus on the treatment of companion animals and animals used in research. This is made no more apparent than in our legislation. Firstly, NSW implemented the Companion Animals Act 1998 (NSW).[23]The Companion Animals Act covers the responsibilities and rights of the owners of companion animals, such as cats and dogs. The aim of the legislation is to protect the rights of animals and their owners in balance with the rights and needs of others in the community. Thus, where NSW attempts to convey to the public that it is serious about animal rights, it appears that this is only with respect to companion animals. It is an unfortunate occurrence as it has created a sense of security amongst the public that our state is serious about animal protection, yet the truth of the matter is that we are neglecting the primary group of animals that are in need the most. In NSW, the key piece of legislation is the Prevention of Cruelty to Animals Act 1979 (“POCTAA”). [24]One would assume that this may provide some protection to farmed animals. However, this is clearly not the case as Peter Sankoff suggests “An examination of POCTAA as a stand-alone document further supports the suggestion that the animals best protected by NSW animal welfare law are animals the community has the most immediate and intimate relationship with.”[25]Provisions in the Act establish stringent definitions of cruelty contained in sections 4(2) and 5 in which the following is an act of cruelty

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whereby an animal is unreasonably, unnecessarily or unjustifiably beaten, kicked, killed, wounded, pinioned, mutilated, maimed, abused, tormented, tortured, terrified or infuriated, over-loaded, over-worked, over-driven, over-ridden or over-used, exposed to excessive heat or excessive cold, or inflicted with pain. In section 4 of the POCTA Act, animals used for the production of food and industry are defined as “ stock animals” comprising cattle, horses, sheep, goats, deer, pigs, and poultry. By virtue of this definition they are exempt from numerous acts that would come under the definition of cruelty if these acts were committed against an animal not defined as a “ stock animal.”[26]Such exemptions are facilitated by the establishment of a legal defense to an alleged cruel practice through section 24 of the POCTA Act whereby a person is not guilty of the offence if the court is satisfied that the act or omission in respect of which the proceedings are being taken was done to a “ stock animal” in the course of various industry practices.

[27]Such practices sustaining the defense include ear tagging or branding and all acts if an animal is less than two to six months of age depending on the species of animals. Stock animals are also exempted from section 9 of the POCTA Act which stipulates that confined animals are to be exercised. Under 34A the POCTA Act, Industry codes of Practice can be adopted as guidelines, relating to the welfare of farm animals meaning that it is the Industries themselves regulating animal welfare in factory farms. This essentially creates a clear conflict of interest because rather than establish independent bodies or legislative frameworks, removed from subjective bias such as monetary concerns it appears that the government is content with self regulation that is clearly ineffective. Further to this, an examination of the other regulatory instruments that work alongside POCTAA further

support the suggestion that being a high visibility animal is legislatively beneficial. Exhibited animals, the highest visibility animals, are granted the full range of protections available under POCTAA, and then they have their own piece of additional legislation in the form of the Exhibited Animals Protection Act 1986 (NSW).[28]The protections available to animals in circuses, zoos, and those used in theatre and film, are strong and comprehensive. The reason EAPA was created was ' due to the public outcry over the poor conditions being provided for animals exhibited in some circuses and fauna parks'.[29]This demonstrates how important visibility is to good legal protections, and essentially this highlights the chronic issue plaguing farmed animals as they are completely removed from the spotlight. Thus it is clear this is an extremely underdeveloped area of law, as Wolfson identifies, it is farmed animals that account for almost all animals killed by humans (in the order of 98 in every 100 killed).[30]Thus, how can Australia possibly consider itself at the forefront of animal welfare rights, when the core group of animals remains unprotected by any form of solid legislation? Essentially, Australia is still lagging behind significantly and this will be further highlighted by a comparative analysis below of the developments taking place in the United States and Europe.

The underdevelopment of our legal system with respect to animals is not confined to NSW only. If one were to take an analytical view of our Victorian legislation for instance, the public would indeed see that this is a nationwide issue. Section 6(1) of the Prevention of Cruelty to Animals Act 1986 Victoria, and its state and territory equivalents, exclude " production" animals (the vast majority of animals in Australia) from the legislation's protection. If

production industries follow a code of practice for their particular animal, they are exempted from prosecution for cruelty, despite the fact the codes are barely enforced, or allow very cruel practices. However, as discussed above, such codes of practice are clearly a form of appeasement rather than a serious attempt at protecting our animals. As a result, millions of factory-farmed animals daily endure conditions that would be illegal if they involved a companion animal such as a cat or dog. As Katrina Sharman, corporate counsel for animal advocacy group Voiceless says: “ Most never see the light of day, feel the earth beneath their feet, walk freely, stretch their wings or limbs, forage for food or engage in normal socialisation.”[31]Even the limited legislative protection that Australia offers animals is inadequately enforced. Under section 24 of the act, charges may be laid by a member of the police force, a public servant in the Department of Primary Industries, municipal council officer or RSPCA officer.[32]But in reality, all bodies are under-resourced, meaning most breaches of the law are not detected or investigated, let alone prosecuted, even if there is genuine will to do so. [33]And even if someone is convicted, penalties are woeful. Under section 10 of the act, for example, the maximum penalty for aggravated cruelty is 12 months’ jail. In this regard, greater deterrence through the form of a more imposing legislative framework is crucial to ensure that industries and individuals refrain from continuing such acts. Ultimately, education has been an insufficient tool to protect our animals and from an industry perspective, unless penalties become harsher, they are going to continue to practice in a way that is focused on efficiency alone and not in a way that would be in the animals’ interest.

According to a publication issued by the Australian Chicken Meat Federation Inc: “ Concern for bird welfare is backed by Government and Industry Standards which ensure birds are kept comfortable and treated humanely”.

[34]Similarly, Australian Pork Limited’s website tells us that: “ Australian consumers can have every confidence in the animal welfare standards applied by Australian pork producers [because] our farmers all abide by the standards as set out in the Model Code.”[35]Despite such positive sentiments, the issue at hand here is that most farm animals fall largely outside the protective reach of animal welfare legislation. They are classified in law as property or commodities as discussed above. The Codes mirror this approach, which has drastic ramifications for the way farm animals are treated. For example, the Codes permit permanent indoor confinement of female pigs, layer hens and meat chickens in circumstances which severely limit their ability to carry out their normal behaviours. They also provide for certain “ Management Practices” or “ Elective Husbandry Procedures” to be performed on farm animals. The Pig Code[36]sanctions the docking of piglets’ tails, while the Poultry Code[37]provides for layer hens to be subjected to “ appropriate beak trimming”. These procedures are both permitted to be carried out without pain relief, notwithstanding the fact that scientific research points to the fact that they are likely to cause acute and chronic pain.[38]Most animals in factory farms live a life of confinement. They spend their time crammed into cages, sheds or feedlots and they never see the sun. Take, for example, the breeding pigs (sows), numbering about 300, 000.[39]These intelligent, emotionally complex beings spend the bulk of their reproductive lives in stalls so small they cannot turn around.[40]The sole purpose of their existence, as determined by us, is to produce the five

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million pigs slaughtered every year to fill the mouths of our pork, ham and bacon lovers.[41]This industry is so fixated on profits and meeting the demands of society that from an economic perspective no other form of treatment is feasible. Thus, it is clear that the industry has taken advantage of the laxity of the legislative framework and incorporated this into its own practice codes and industry standards. Through this, it is clear that Australia desperately needs to change to ensure that it ceases to lag behind the rest of the world and become a leader at the forefront of animal welfare.

As argued, Australia is clearly lagging behind in the development of animal law, and the primary area is that of factory farmed animals. Despite Australian Pork Limited Claiming that “ Australian pig farmers are leading the way in making positive changes in the way pigs are raised”, such claims are largely a falsity. As can be seen from the discussion above, in Australia, there are State and Territory animal welfare laws that are intended to protect animals but in reality, the fundamental interests of most farm animals, including pigs, are not protected in law. As already discussed, National Model Codes of Practice apply in addition to some animal welfare laws; however, these Codes also fail to provide true protection. To make matters worse, they are often used to justify many cruel factory farming practices. The current Model Code of Practice for the Welfare of Animals- Pigs (revised) (2006) (the Revised Code) is no exception. Continuing on from the above discussion, some of the cruel practices it permits are:

Pregnant sows may be confined for the duration of their 16 week pregnancy in individual sow stalls, measuring no more than 0.6 x 2.2m. These stalls,

which have been associated with physical disorders, chronic stress and depression, are so small that female pigs cannot even turn around.[42]

From about 2017:

The maximum time for holding pregnant pigs in sow stalls will reduce to 6 weeks. This is two weeks more than the minimum standard being introduced by the European Union and New Zealand. Sow stalls are already banned in the United Kingdom, Sweden, Switzerland, The Netherlands and Finland. They are also banned in Florida and are being phased out in Arizona, California, Colorado, Maine, Michigan and Oregon in the United States. Two of the largest pork producers in the US and Canada also recently announced their plans to phase out sow stalls.[43]

Heavily pregnant and nursing sows will be confined for up to 6 weeks of each reproductive cycle in farrowing crates, before their young are prematurely weaned. These crates, which measure 0.5 x 2.2m, are even smaller than sow stalls.[44]

Pig producers are not obligated to provide access to the outdoors where pigs can engage in natural behaviours such as grazing, wallowing in mud, walking around and nosing or manipulating their environment.[45]

Painful mutilations of young piglets, including tail docking, teeth clipping and castration without pain relief, continue to be permitted.[46]

Natural materials such as straw for sleeping and nesting, while encouraged, are not mandatory, rendering many pigs subject to a miserable life on concrete floors.[47]

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Thus, whilst it is correct to say that the Pig Code has recently been reviewed, the upshot of that review, other than largely reinstating the existing system, was to defer phasing out sow stalls for a decade. If sow stalls are phased out in 2017 as mentioned above, then Australia will still be 14 years behind the EU which hasn't allowed new stalls to be built since 2003. Australia will also be markedly behind eight US States including, most recently, Michigan, which is scheduled to phase out sow stalls over the next decade. No Australian jurisdiction has even meaningfully debated a ban on sow stalls. Their "spin" on the Poultry Code appears to have overlooked the section conveniently titled "hatchery management" which allows approximately ten million "culled or surplus hatchlings" (predominately male chicks) to be disposed of by "carbon dioxide gassing or quick maceration" - as if they are trash, which technically they are in industry terms, since they are of no economic utility.[48]AECL's press release also failed to mention that conventional battery cages are scheduled to be phased out across the European Union by 2012, whereas several attempts to introduce a ban in Australia have met considerable resistance.[49]

Further to the above, a number of European countries have taken a leadership role in the area of chicken meat