The Law of Animals in Agriculture

This class focuses on the practices, policies, and regulations that directly impact the well-being of CAFO-farmed animals.

This is a departure from environmental law and food law courses that address animal suffering as a side effect, categorized as one of many externalities that compromise environmental quality, food safety, and public health. Viewing farmed animal welfare through that lens undermines meaningful reform, as, increasingly, strategies for mitigating societal costs sidestep welfare concerns. In turn, these advances in industrial agriculture only perpetuate the regressive position that institutionalized suffering is necessary—if regrettable—for industry sustainability.

Confronting farmed animal welfare as a discrete issue, The Law of Animals in Agriculture, examines recent developments and current disputes over the “accepted agricultural practices” related to animal confinement, transport, handling, feeding, and slaughter. We will compare a diverse set of legal, market-based, and grassroots strategies used to promote incrementally higher welfare standards, and analyze the political and doctrinal issues frequently encountered along the way, including:

- the limits of federal preemption over state laws that aim to raise welfare standards as a function of the states’ police powers;
- the nullification of state welfare standards under the “dormant” commerce clause;
- the balancing of First Amendment free speech protections with state and federal bans on gathering and disseminating information about animal production; and
- the potential unintended consequences of relying on self-reporting and voluntary self- or third-party certification programs

There remain many unanswered questions in this evolving area of the law. It is my hope you will find the material in this course as compelling and confounding as I do.
Class Materials

There is no textbook for this course. The reading and reference materials, and links to podcasts and videos, will be posted to the class TWEN site. Although I am mindful of conserving natural resources, I strongly encourage you to print hard copies of the cases and statute sections, as you'll need them to be available for quick reference in class and on the exam. As this is a condensed 3-credit course, you may want to read ahead before class begins (assuming you have the time).

Each day of the course has its own Course Materials folder on the TWEN site. There are two folders for Friday, June 3 (morning and afternoon sessions). The REFERENCE MATERIALS folder for each class includes important statutes, regulations, and other documents that are referenced in your reading.

I will also post suggested reading materials for those of you interested in digging deeper into a particular subject (FOR MORE INFORMATION folders in each TWEN Course Material section). I will continue to add material as I come across it. If you are interested in still more resources, I am happy to help you with that. If you want to contribute a source, please feel free to send it to me. A partial list of these sources is at the end of this syllabus.

Grading

This course is suitable for all levels of legal expertise. Students currently enrolled in J.D., LL.M., or Masters of Law programs will be evaluated as they are in typical law school courses, whereas students with no formal legal training will be graded accordingly.

The final grade will be based on the take-home exam comprised of short essay questions. The exam will be open-book. If you keep up with the reading and attend class, the exam should take you no more than 5 hours to complete.

The exam questions will be available at the end of our last class (Thursday, June 9). Your answers will be due no later than 5:00 p.m. (ET) Monday, June 13.

The following syllabus is subject to minor updates. All materials are available in the course TWEN site.
Tuesday, May 31: OVERVIEW

I. **Categories of Animal Law:** How U.S. law regards animals raised for food and fiber, as compared to animals owned or used for other purposes

II. **How do we define “animal welfare”?**
    Previously, an animal’s “welfare” was measured in terms of physical health and productivity. Today, animal behavioral scientists (ethologists) use physiological data and behavioral preference testing to measure an animal’s physical and emotional wellbeing and to identify normal and abnormal behavior.

III. **Overview of Industrial Animal Agriculture**
    A. Market Concentration and Horizontal Integration
    B. Characteristics of the CAFO model: economic efficiencies (land, labor, time, consistency); vertical integration strategies; and geographic concentration
    C. Production cycles and “accepted agricultural practices” in:
       - egg production
       - poultry meat production
       - dairy production
       - livestock meat production (cattle; calves; pigs)

**ASSIGNMENT**

Watch narrated lectures
1. Categories of Animal Law

Read
Wednesday, June 1: MAXIMIZATION OF PRODUCTIVITY & UNIFORMITY

I. Animal Welfare & Established Practices for Increasing Productivity

   A. Reproduction Technologies
   B. Genetic Modification
   C. Pharmaceuticals – uses; regulatory approval process
      1. Antimicrobials
      2. Synthetic Hormones
      3. Beta-Agonists
   D. Feed composition

II. Research on Agricultural Animals

   A. USDA Meat Animal Research Center
   B. Federally-funded research at land grant schools
   C. Animal Welfare Act and agricultural animals; proposed amendments

Reference Materials:

FDA Food, Drugs and Cosmetics Act, 21 U.S.C. § 360b (approval process)


NRDC v. FDA, 884 F. Supp. 2d 127 (S.D.N.Y., March 22, 2012)


Animal Welfare in Agricultural Research Endeavors Act (AWARE), H.R. 746, 114th Cong.

ASSIGNMENT

Read

Watch narrated presentations
1. Pharmaceutical Categories and Uses
2. *NRDC v. FDA* and *HSUS v. Hamburg* (alleging violation of NEPA in continuing approval of Ractopamine), Complaint filed 11/06/14
3. FDA Proposed Guidance for Industry # 213, #233

Read


FDA’s Strategy on Antimicrobial Resistance – Questions and Answers
Thursday, June 2: ANIMAL DISEASE & DOMESTIC TRANSPORT

I. Animal Diseases
   A. Incidences and common types of Zoonotic & Non-Zoonotic diseases
   B. Transmission vectors in housing and transport

II. Domestic Transport
   A. Why long-distance ground transport of livestock animals is common practice
   B. Animal health and welfare concerns attendant to long-distance travel
   C. Comparing U.S. animal transport regulations to E.U. regulations

Reference Materials
   Animal Health Protection Act, 7 U.S.C. §§ 8301–8322
   Twenty-Eight Hour Law, 49 U.S.C. § 80502
   APHIS regulations, 9 C.F.R. §§ 89.1–89.5
   FSIS Notice 06-10, Humane Handling at All Entrances and the Twenty-Eight Hour Law, (Jan. 15, 2010), Part IV(A)-(B)
   S. 946, S 850, HR 1282 (114th Cong.) – transportation of horses
   A Comparison of Regulations for the Transport of Farm Animals in Canada, the United States, and the European Union

ASSIGNMENT

Read
Friday, June 3 (2 classes)

Morning: INDUSTRY LABELING & SOURCING CLAIMS

I. Labeling Claims: Federal Regulation & Third-Party Certification Programs
   A. Federal meat and dairy labeling regulatory schemes
   B. Proposed animal welfare amendments to the USDA National Organics Program
   C. Third-party “humane” certification programs

II. Self-Imposed Standards: Sourcing from Producers Employing Higher Standards
   A. Survey of public relations statements from restaurants, food producers, and retailers claiming to adopt higher welfare standards
   B. Considerations for animal advocates:
      1. Interpreting the express promise from aspirational goals
      2. Availability: are there enough producers to meet the demand?
      3. Does the policy statement address accountability and verification?
      4. Who will pay for the production changes? How much?
      5. Identifying potential litigation strategies (i.e., consumer protection laws)

Reference Materials:

ASSIGNMENT

Read/Review
   Vesilind, Emerging Threats to Food Labeling Reform (2012) (focus on the sections dealing with federal preemption).

   Egg Labeling Claims
   Meat & Dairy Labeling Claims


Assess the terms of this announcement and accompanying material. What is the quality of Walmart’s “commitment” (Walmart’s term)? Consider the scope, timing, enforceability – whatever variables you consider relevant. We will discuss this program in class.

Afternoon: INDUSTRY REPORTING OBLIGATIONS & BARRIERS TO TRANSPARENCY

III. Public Access to Information about Animal Agricultural Production

A. What federal and state regulatory authorities know about facilities and operations

1. CAFO reporting requirements to the Environmental Protection Agency
2. USDA Food Safety Inspection Service (FSIS) and livestock and poultry processing plants: recordkeeping and reporting requirements
3. Industry opposition to operational transparency and accessibility (trade secrets; biosecurity threats; reputational concerns)

B. State Food / Agriculture Disparagement Laws (aka “Veggie Libel” laws)

   Agricultural disparagement laws were first enacted around 25 years ago, to discourage public speech that could be harmful to a state's agricultural sector. Currently, 12 states still have these laws, but they are rarely invoked. A notable exception was the Texas law used by the Texas Beef Group to sue none other than Oprah Winfrey, in 1998.

C. Undercover Investigations in Welfare Reform; Industry-Backed Statutory Barriers

1. State “Ag Gag” Laws: legislative strategies for protecting industry operations from unauthorized access, information-gathering, and reporting

   First Amendment and Equal Protection arguments

   \textit{ALDF v. Otter} (Idaho)

   \textit{PETA v. Cooper} (North Carolina)

   The drafters of NC H.B. 405 clearly took careful notice of the legal arguments against ag-gag laws in Idaho and Utah. The bill was vetoed by Governor Pat McCrory by the Legislature overrode the veto and the law took effect on January 1, 2016.

2. Federal Animal Enterprise Terrorism Act (AETA)
Reference Materials
12 state disparagement laws, compiled
Utah Criminal Code § 76-6-112, Agricultural Operation Interference (2012)
Idaho § 18-7042. Interference with agricultural production (2014)
Animal Enterprise Terrorism Act (AETA), 18 U.S.C. § 43

ASSIGNMENT

Read


Watch
Democracy Now, Undercover Activist Details Secret Filming of Animal Abuse & Why "Ag-Gag" Laws May Force Him to Stop, April 19, 2013 (~ 25 minutes)

Read

Skim for basic understanding of the challenges to NC’s ag-gag law:
PETA v. Cooper, 1st Amended Complaint filed Feb. 26, 2016, Case No.: 16-v-25 (M.D.N.C. 2016)

Note the variety of plaintiffs and how they rebranded the NC law as an “anti-sunshine law”:
Animal Welfare: People for the Ethical Treatment of Animals; Animal Legal Defense Fund; Farm Sanctuary
Food Safety/Consumer Protection: Center for Food Safety; Food & Water Watch; Government Accountability Project
Environmental: Food & Water Watch

As of 5/4/2016, Defendants have filed a motion to dismiss and Plaintiffs have until May 31 to respond (Δs’ MTD is in “For more information” folder)
Monday, June 6: CALIFORNIA “PROP 2” & BATTERY CAGE EGG PRODUCTION

This week we will attempt to answer the central, critical question: *What governmental body or bodies should regulate the management and treatment of animals in agriculture?*

I. State Farmed Animal Welfare Legislation

   A. Ballot Initiatives and Referendums
   B. Survey of state laws & regulations that ban or restrict common practices
      - Battery cages (egg-laying hens)
      - Gestation crates (breeding sows)
      - Veal crates (calves)
      - Foie gras production (poultry birds)

II. California Farmed Animal Protection Act & Sale Ban on battery cage-produced eggs

   A. Federal initiatives to phase out battery cage egg production
   B. *State of Missouri v. Harris*
      - Federal preemption under the Egg Products Inspection Act (EPIA)
      - Dormant Commerce Clause standards
      - Standing requirements for plaintiffs

Reference Materials

States with Legislative Referendum for Statutes and Constitutional Amendments (table)

As minority of states have enacted regulations regarding the confinement of animals in agriculture. These tables highlight states that have enacted bans or restrictions on specific animal management practices:

   HSUS Chart – Alabama – Missouri (2014)

California Proposition 2 (2008) – the Prevention of Farm Animal Cruelty Act (see p. 3)
Cal. AB 1437 (Calif. Health & Safety Code, §§ 25995 – 25997), the “egg sale ban”

EPIA preemption section, 15 U.S.C. § 1052

H.R. 1731, 113th Cong. (S. 820), the Egg Products Inspection Act Amendments of 2014 (the “Egg Bill”)
ASSIGNMENT

Watch
ABC News 20/20 Sparboe Investigation: Inside a Factory Egg Farm (Nov. 2011)

Read
Excerpt from J. Lovvorn & N. Perry, California Proposition 2 – A Watershed Moment for Animal Law (this was published prior to the Missouri v. Harris litigation)

HSUS & United Egg Producers – Summary of agreement (“Egg Bill”)

Missouri v. Harris, 58 F. Supp. 3d 1059 (E.D. Cal. 2014) (appealed)

Tuesday, June 7: LIVESTOCK AND POULTRY SLAUGHTER AND PROCESSING

I. Livestock Slaughter & Processing

A. Overview of a typical slaughter and processing plant
B. USDA FSIS regulations and authority under FMIA
C. Slaughter regulations and practices
   1. Common practices in industrial production
   2. Alternative methods of slaughter
   3. Humane Methods of Slaughter Act (HMSA)
      - Species covered; requirements
      - USDA FSIS responsibilities; processing plant inspections
      - Inhibitors to accurate reporting of HMSA violations
D. Horse Slaughter
   1. State laws banning horse slaughter; legal challenges
   2. Federal efforts to ban horse slaughter

II. Poultry Slaughter & Processing

A. Overview of the typical slaughter and processing plant
B. Comparing Methods of Slaughter
   1. Common practices in industrial production
   2. Alternative methods of slaughter
C. USDA FSIS regulations under the Poultry Products Inspection Act (PPIA)
   1. As compared to the FMIA
   2. Recent rulemaking: increasing line speed; shifting more inspection and testing responsibility to processor
D. Efforts to establish humane slaughter standards for poultry birds; under the HMSA & the PPIA
Reference Materials
Humane Methods of Slaughter Act (HMSA), 7 U.S.C. §§ 1901–1907
9 C.F.R. §§ 313.1 – 313.50, Humane Slaughter of Livestock regulations
9 C.F.R. §§ 500.1–500.8, Rules of Practice (enforcement mechanisms) under FMIA & PPIA
2002 Congressional Resolution re: HMSA Enforcement
Levine v. Vilsack, 587 F.3d 986 (9th Cir. 2009)
Horse slaughter cases
Empacadora de Carnes de Fresnillo v. Curry, 476 F.3d 326 (5th Cir. 2007)
Cavel v. Madigan, 500 F.3d 544 (7th Cir. 2007) (denied cert. by Supreme Court)

ASSIGNMENT

Read

Watch
Promotional videos from the American Meat Institute (now the North American Meat Institute),* one of the two largest trade organizations representing livestock and poultry processors.

*Cattle slaughter and beef processing* (10 minutes)
The captive bolt method is by far the most common method used for purposes of complying with the HMSA's requirement that livestock animals be "rendered insensible to pain . . . before being shackled, hoisted, thrown, cast, or cut . . ." 7 U.S.C. 1902(a).

*Hog slaughter and pork processing* (18 minutes)
It shows two stunning methods: (1) electrical shock stunning (which usually lasts only for ~ 30 seconds); and (2) CO2 "stunning." Both comply with the HMSA standards, 7 U.S.C. 1902(a). According to some sources, CO2 stunning is used in a minority of U.S. slaughterhouses; other sources claim this method is more prevalent. The captive bolt method demonstrated in the cattle video is still practiced, but considered unsuitable by many animal scientists.
Watch
Narrated lecture: *Horse Slaughter and the Federal Meat Inspection Act*

Scan
argument sections for overview of petitioner’s claims that the PPIA requires the USDA to regulate poultry slaughter: Animal Welfare Institute, *Petition for Rulemaking under the Poultry Products Inspection Act*

to compare federal legal standards to the requirements under the most stringent 3rd-party certification program, Animal Welfare Approved:

AWA Guidelines for Red Meat Slaughter Facilities
AWA Guidelines for Poultry Meat Slaughter Facilities

Wednesday, June 8: CALIFORNIA HUMANE NON-AMBULATORY LIVESTOCK STANDARDS

I. HMSA & Livestock Handling; Non-Ambulatory Livestock

A. Why and how livestock animals become lame
B. Regulations involving non-ambulatory livestock
   1. FSIS HMSA regulations regarding handling & treatment
   2. FSIS FMIA food safety regulations and procedures
   3. Enforcement and reporting failures - Vermont Bushway
   4. Federal proposals to require humane handling of non-ambulatory livestock

II. California Standards for Non-Ambulatory Livestock

A. The Hallmark Meatpacking Plant undercover investigation
B. Cal. Penal Code § 599f: food safety law? animal cruelty law? both?
C. The Supreme Court weighs in on state-based farmed animal welfare requirements
Reference Materials

Humane Methods of Slaughter Act, 7 U.S.C. §§ 1901–1907
9 C.F.R. § 313, Humane Slaughter of Livestock (USDA FSIS regulations)

9 C.F.R. §§ 500.1–500.8, Rules of Practice, Regulatory Requirements under the Federal Meat Inspection Act and the Poultry Products Inspection Act (USDA FSIS regulations)

FSIS Compliance Guide for a Systemic Approach to the Humane Handling of Livestock, Oct. 2013 (recommended for compliance with regulations at 9 C.F.R. § 313)

Cal. Penal Code § 599f

Becker, Nonambulatory Livestock & the Humane Methods of Slaughter Act, CRS, 03/09

ASSIGNMENT

Vermont Bushway & USDA FSIS Reporting Concerns

Read and watch
USDA Shutter Calf Slaughter Plant in New Jersey in Wake of HSUS Investigation, Jan. 27, 2014.
Veal Slaughter Plant Closed, Humane Legislative Fund, March 15, 2016.

Read
Testimony before the House Subcommittee on Domestic Policy, Continuing Problems in USDA’s Enforcement of Humane Methods of Slaughter Act, by Dean Wyatt, FSIS Supervisory Public Health Veterinarian, March 2010.

California Downed Livestock Law

Read and watch

Read

National Meat Ass’n v. Brown, 599 F.3d 1093 (9th Cir. 2010)

As you read these cases, keep the relevant statutory language handy:
- Cal. Penal Code § 599f
- 9 C.F.R. § 313, Humane Slaughter of Livestock (USDA FSIS regs)

Review actions requested (regulatory changes) requested
ALDF, Compassion Over Killing, Farm Forward, Farm Sanctuary, Mercy for Animals, & PETA, Petition [to the USDA] calling for regulations under the Humane Methods of Livestock Slaughter Act and Federal Meat Inspection Act that will decrease cruelty to farm animals at slaughter, Sept. 1, 2015.

Thursday, June 9  “NICHE” PRODUCTS & STATE WELFARE STANDARDS

I.  Foie Gras

A. Production, generally
B. California forced-feeding ban and sale ban; challenge under preemption and DCC
   1. Preemption challenge under the PPIA: Ingredient or Production Method?
   2. Commerce Clause challenge and analysis

II.  Shark Fins: Sale and Distribution Ban

A. Catch and use of, generally
B. Ongoing challenges to California sale and distribution ban
   1. Equal Protection challenge
   3. Commerce Clause challenge

III. What Now? Interpreting, reconciling, and applying the law as we know it:

- state law(s): banning the slaughter of horses for human consumption
- state law: banning the sale of eggs from battery cage production methods
- state law: banning the sale of foie gras [produced using forced feeding]
- state law: banning the use of non-ambulatory livestock in human food supply; requiring non-ambulatory animals be transported humanely and promptly euthanized
**Reference Materials**

PPIA preemption section, 21 U.S.C. § 467e

Cal. Fish & Game Code §§ 2021-2021.5

Sections from the Magnuson–Stevens Fishery Conservation and Management Act (MSA)
16 U.S.C. § 1801 – United States Sovereign Rights to Fish and Fishery Management Authority

**ASSIGNMENT**

**Read**
HSUS: The Welfare of Animals in the Foie Gras Industry

**Watch**
[Feeding Ducks for Foie Gras at Hudson Valley Foie Gras](#), 07/10/12

Note: Various other foie gras force feeding videos are available online, but I chose this video because it was filmed and uploaded by the largest foie gras producer in the United States, Hudson Valley Foie Gras (HVFG). As such, we may assume that this video represents the best possible conditions for geese raised in the production of foie gras.

**Read**
Assoc. des Eleveurs de Canards et d'Oies du Quebec v. Harris, 729 F.3d 937 (9th Cir. 2013) (cert. denied, 135 S.Ct. 398 (2014)); edited

Assoc. des Eleveurs de Canards et d'Oies du Quebec v. Harris, 79 F.Supp. 3d 1136 (C.D. Cal. 2015) (edited)

**Watch**
[Humane Society Intl. & HSUS, Shark Finning Cruelty](#) (~2:00)

Chinatown Neighborhood Assn et al. v. Harris, 794 F.3d 1136 (9th Cir. 2015) (petition for cert. filed)

FOR MORE INFORMATION

1: OVERVIEW


2: MAXIMIZATION OF PRODUCTIVITY & UNIFORMITY


3: ANIMAL DISEASE & DOMESTIC TRANSPORT

- Greger, Michael, *Transgenesis in Animal Agriculture and Zoonotic Disease Resistance*

European Union / Global:
- Zoonotic Diseases, Human Health and Farm Animal Welfare, Compassion in World Farming, WSPA
- EU Council Regulation No 1/2005, on the protection of animals during transport and related operations
• Handle with Care Coalition, Beyond Cruelty, Beyond Reason: Long Distance Transport and Welfare of Farm Animals, 2008.

4: INDUSTRY LABELING & SOURCING CLAIMS

• FDA, “Natural” on Food Labeling – Request for Comments

5: INDUSTRY REPORTING OBLIGATIONS & BARRIERS TO TRANSPARENCY

• Texas Beef Group v. Oprah Winfrey, 201 F.3d 680 (5th Cir. 2000)
• PETA v. Cooper, Defendants’ Memorandum in Support of its Motion to Dismiss
• United States v. Buddenberg documents
• Blum v. Holder documents

6: CALIFORNIA “PROP 2” & BATTERY CAGE EGG PRODUCTION

• Missouri v. Harris
  Plaintiffs’ Second Amended Complaint
  Ex: Calif. Dept. of Food & Agriculture Bill Report for A.B. 1437 (egg sale ban)
  Ex: Report on projected economic effects of Calif. egg production restrictions
  HSUS Motion to Intervene as Defendant
7: LIVESTOCK AND POULTRY SLAUGHTER AND PROCESSING

- Timothy Pachirat, Every Twelve Seconds (Yale)  
  An account of industrialized slaughter written from the perspective of the workers who carry it out. The book draws on extensive ethnographic fieldwork and interviews, conducted over a period of two and a half years in a slaughterhouse in Omaha, Nebraska. During this period, Pachirat spent over 5 months as an employee, working through various sections of the slaughterhouse – from the chutes, where live cattle are driven into the knocking box to be shot, to the cooler, where carcasses and body parts are chilled, before finally taking up a position as a quality control official. (excerpt of review)

8: CALIFORNIA HUMANE NON-AMBULATORY LIVESTOCK STANDARDS

- Letter to Secretary Vilsack from 12 United States Senators, May 12, 2014.
- HSUS Petition to USDA for Humane Handling Regulations, 2009.
- Examples of failed congressional bills to amend HMSA non-ambulatory livestock standards:  
  H.R. 661, 110th Cong. (1st Sess), Downed Animal Protection Act  
  H.R. 1726, 110th Cong. (1st Sess), Farm Animal Stewardship Purchasing Act  
  S. 2770, 110th Cong (2d Sess), Downed Animal Enforcement Act of 2008

9: “NICHE” PRODUCTS & STATE WELFARE STANDARDS

- Assoc. des Eleveurs de Canards v. Harris  
  Plaintiffs’ Complaint  
  HSUS Motion to Intervene as Intervenor Defendants