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**Why animal welfare ought to trump consumer freedom of
choice in some cases**

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I Introduction

A New understandings about animals

In New Zealand the Animal Welfare Amendment Act 2015 was recently passed. This essay briefly discusses this amendment and reflects with various examples throughout, that while any progress is always to be applauded, this was a missed opportunity. Specific focus is given to New Zealand as this is my country and context, and to Australia because of the mirroring of issues between these two countries. The US is discussed as many examples originate from there due to the active animal welfare movement in that country. As the consumer and animal welfare issues are the same in many countries a variety of examples from other countries are also used in this paper.¹

In looking at how consumers make choices regarding animal product purchases in Part II, a “welfare preference paradox” emerges.² This paper explains why this paradox means the consumer is actually supported through better protecting animal welfare, even though doing so demands legislative intervention into consumer freedoms. The reasons behind consumer animal welfare concerns and consumer motivation and understanding are critically discussed. This topic sits at the cross-section of consumer and animal welfare law, giving consideration to consumer behaviour, economic theory and social justice arguments. There is a tension between consumer freedom to purchase certain items or experiences on the one hand and animal welfare concerns on the other. This paper argues that in some cases consumer rights should be removed and access to certain products should become prohibited.

B Consumer rights versus animal welfare

At its core this essay critically juxtaposes the issue of consumer rights to have the products and experiences they want from animals versus the welfare of animals. After considering the market’s regulation of animal welfare and moral pluralism arguments in Part III, the case is made that animal welfare should supersede consumer rights to have unfettered product choices. This paper answers the baseline question of why we should be regulating at all to protect animals at the expense of consumer choice. In order to

¹ Ian Robertson *Animals, Welfare and the Law* (Earthscan/Routledge: New York, 2015) at 14.

² Sean P Sullivan *Animal Law* (2013) 19 *Animal L* 391 at 391.

explain the public good that is gained from good animal welfare this essay draws from a range of philosophical and political viewpoints. It is suggested that this public good goes beyond moral and philosophical perspectives and has practical dimensions such as stopping the environmental impacts of intensive farming and the prevention of further zoonotic diseases. Details of the nature of animal cruelty in intensive farming are outlined in Part IV. In part V this paper aims to show that “inconsistency infects every level of animal welfare regulation” and that “the industry’s continuing dominance” is precisely why good animal welfare legislation needs to be enacted and actively enforced.³ Part VI focuses on New Zealand and looks at the new amendment and the divergence between rhetoric and action.

C Reforms

Parts VII – XI all refer to animal welfare reforms. Part VII argues for the outlawing of intensive farming or, as a minimum, the introduction of a cruelty tax. Part VIII posits that the banning of pet mills may alleviate the killing of thousands of healthy animals each year, while protecting consumers from inadvertently purchasing unhealthy animals. In Part IX I consider the issue of a dedicated government body for animal welfare. Part X is concerned with banning animals in entertainment. Part XI discusses the issue of much better and more accurate animal welfare product labelling. Finally in Part XII examples are provided from various nations where animal welfare has been prioritised over consumer and producer freedoms, demonstrating that the suggestions in this paper are not so radical or “cranky” as to defy real-world application.⁴

³ Elizabeth Ellis “Bearing the Burden: Shifting responsibility for the welfare of the beast” (2013) 11 Macquarie LJ at 41, 43.

⁴ Rebecca Peering “Corbyn turns on ‘cranky’ shadow minister’s call for meat-eaters to be treated like smokers” (25 September 2015) Express <www.express.co.uk>.

II Consumer Behaviour and Understandings

A What we already know about consumers of meat products

Despite recent advances in animal welfare⁵ humans continue to commodify and exploit animals in many different ways.⁶ We use animals for “pets, food, clothing, for entertainment and research”.⁷ Increasingly, consumers want to know that animal welfare is considered in the production of goods.⁸ Consumers are demanding increased information about how animals are produced and processed.⁹ Research suggests that people are ethically “superficial”¹⁰ with a “shallow understanding of animal welfare issues”.¹¹ Consumers get the popular food trends of “organic” and “free range” mixed up, often understanding them to be the same.¹² While animal welfare ethical concerns do feature, consumers are primarily driven by food safety and quality concerns.¹³ Self-interest features highly as “78 per cent of the American public believes that animals raised under high standards of care will result in safer and better tasting meat”.¹⁴ People use “standards of animal welfare as an indicator of food safety”.¹⁵ It remains unclear how much consumers are concerned about animal quality of life compared to “the impact of the animal’s quality of life on the food product”.¹⁶ It has been suggested that consumers

⁵ Sean P Sullivan above n 2 at 392; see generally Carson, Jonathan “New Zealand legally recognizes animals as ‘sentient’ beings (9 May 2015) Stuff, <www.stuff.co.nz>.

⁶ Joanne Stepaniak, *The Vegan Sourcebook* (2nd ed, NTC/Contemporary Publishing Group, Los Angeles, 2000) citing Michael Klapper, at 51.

⁷ Shaun Monson “Earthlings” (24 September 2005) IMDB, USA, <www.youtube.com>; Robertson, Ian *Animal, Welfare and the Law* (Earthscan/Routledge, New York, 2015) at 14.

⁸ Sullivan above n 2 at 391; Gemma Harper and Spencer Henson *Consumer Concerns about Animal Welfare and the Impact on Food Choice* (Department of Agricultural and Food Economics, The University of Reading) EU FAIR CT98-3678 December 2001 at 15; Gemma C Harper and Aikaterini Makatouni, “Consumer perception of organic food production and farm animal welfare” (2002) *British Food Journal* 104 at 287 (no other page numbers); Monika JA Schroder and Morven G McEachern “Consumer value conflicts surrounding ethical food purchase decisions: a focus on animal welfare” (2004) *Int J Consum Stud* 28(2) at 287.

⁹ Harper and Makatouni, above n 8.

¹⁰ Schroder and McEachern above n 8 at 174.

¹¹ Aaron C Timoshanko “Limitations of the market-based approach to the regulation of farm animal welfare” (2015) *UNSW Law Journal* 38(2) at 527.

¹² Harper and Makatouni above n 8 at 287.

¹³ Wim AJ Verbeke and Jacques Vianene “Ethical challenges for livestock production: meeting consumer concerns about meat safety and animal welfare” (2000) *12 J Ag Environ Ethic* at 149.

¹⁴ Jayson L Lusk and F Bailey Norwood “Speciesism, altruism and the economics of animal welfare” (2012) *European Review of Agricultural Economics*, 39(2) at 190.

¹⁵ Harper and Makatouni, above n 8.

¹⁶ Harper and Makatouni, above n 8.

“place a low value on animal welfare as a result of altruism”, which further supports the self-interest theory.¹⁷ A common purchase strategy “was to suppress thoughts about production systems altogether”.¹⁸ There is also much evidence that many consumers are not suppressing thoughts about animal food production systems because they know little about contemporary production methods.¹⁹

B Welfare preference paradox

Schroder and McEachern write, “consumers do not necessarily act in accordance with their ethical beliefs.”²⁰ Sullivan identifies a “welfare preference paradox”²¹ which Schroder and McEachern explain as being where people:²²

Hold two views on animal welfare. On the one hand, they may think as citizens influencing societal standards, and on the other, as consumers at the point of purchase. As citizens, they support the notion of animals being entitled to a good life; as meat consumers they avoid the cognitive connection with the live animal.

This is unsurprising in that it has been shown that “individuals are less self-interested as political participants”²³ and “the choices people make as political participants are different from those they make as consumers”.²⁴ This is further supported by research showing that:²⁵

At point of purchase, cost is one of the most important factors, as are ... food safety and quality. Animal welfare is not viewed as having direct impact on the consumer and is, therefore, not a priority.

¹⁷ Lusk and Norwood above n 14 at 209.

¹⁸ Schroder and McEachern above n 8 at 172.

¹⁹ Jeffrey M Spooner, Catherine A Schuppli, David Fraser “Attitudes of Canadian citizens toward farm animal welfare: a qualitative study” (2014) 163 *Livestock Science* 150 at 158; Chris Gibson “Souvenirs, materialities and animal encounters: following Texas cowboy boots” *Tourist Studies* 14(3) at 286.

²⁰ Schroder and McEachern above n 8 at 173.

²¹ Sullivan above n 2 at 391.

²² Schroder and McEachern above n 8 at 168.

²³ Timoshanko above n 11 at 531.

²⁴ Timoshanko above n 11 citing Sunstein at 531.

²⁵ Harper and Henson above n 8 at 11.

This suggests that product demand is not a reliable indicator of consumer values on animal welfare for there will be those who would buy ethically produced products, but cannot afford to do so.²⁶ In both the EU and Australia around 80 per cent of consumers support the phasing out of caged egg production.²⁷ However those that identify as buying free range eggs is around 50-60%. In New Zealand “a 2011 Horizon poll found that 79% of New Zealanders supported the banning of battery cages, and 80% wanted all egg products labelled to show production method”.²⁸ However, it has been shown that “market, social and political considerations” disrupt animal welfare concerns from being reflected in purchasing decisions.²⁹ There are several barriers to consumers buying welfare products. These include: the belief that they cannot make a real impact, that animal welfare is a political issue, and a “lack of trust in sources of information” from the government and the food industry.³⁰ There is significant evidence that a majority of the public would like “legislative restrictions on agriculture”, rather than fiscally voting for welfare products.³¹ Consequently, it is argued that the law must manifest the public’s desire for animal welfare over their purchasing choices at the checkout. It appears many consumers would like their purchasing behaviour changed for them through legislation.³² In considering such research outcomes it can be argued that in looking after animal welfare by outlawing caged food production it also supports the general desire for good animal welfare that people have, but which they do not commit to financially.³³ In terms of increased expenses Professor McInnery argues:³⁴

If we consider the proportion that any one food product occupies in the typical household budget, one can only conclude that most of the animal welfare

²⁶ Timoshanko above n 11 at 522, 523, 527; Schroder and McEachern above n 4 at 174.

²⁷ Timoshanko above n 11 at 523.

²⁸ Peter Sankoff “The protection paradigm: making the world a better place for animals?” in Peter Sankoff, Steven White and Celeste Black (eds) *Animal Law in Australasia* (2nd ed, The Federation Press, NSW, 2013) 1 at 3.

²⁹ Timoshanko above n 11 at 517.

³⁰ Harper and Makatouni above n 8.

³¹ Timoshanko above n 11 at 526.

³² Timoshanko above n 11 at 530.

³³ Timoshanko above n 11 at 523.

³⁴ John McInnery *In what sense does animal welfare have an economic value?* (6th Boehringer Ingelheim Expert Forum on Farm Animal Well-Being) at 31.

improvements advocated by moderate opinion would cost consumers merely pennies per week extra in contributing a substantial additional economic value to the collective preferences of society.

If this is accurate it further supports the need to outlaw intensive farming techniques and support transition to humanely produced food animals.

C Whose rights: consumer's or producer's rights?

It is not clear in the current context that factory production is primarily concerned with consumer rights but with producer rights.³⁵ Frequently, the price differential between free-range products and those that are factory farmed is not that great so the 'surplus' is captured largely by producers. Further, if we couch this argument in terms of consumer rights versus animal welfare we reduce consumer rights to price, without any consideration given to ethical concerns, food quality and health concerns. An implication is that consumer ignorance of these issues licenses their choices ethically. In other words, the dirty work is done for them and without their full knowledge. At the consumer rights versus animal welfare coalface, is price. Numerous studies show that consumers believe that factory farmed production is not the same quality as free-range production, so price must be the primary consumer rights issue.³⁶

III Moral pluralism, a market-based approach to animal welfare and public good

A Economic rationalism and market regulation of animal welfare

Does it really matter how we treat animals that are to be slaughtered and eaten, worn or watched? Should the law really trump the right of people to use animals how they want and to provide cheaply produced animal products? In an economic perspective of animal welfare McInerney says “animals are no more than resources employed in economic processes which generate benefits for people”.³⁷ Animal pain and suffering is regarded as an “externality” under this economic rationalist approach. Internalities in

³⁵ McInerney above n 34 at 27-28.

³⁶ Harper and Makatouni, above n 8.

³⁷ McInerney above n 34 at 30.

economics are explicit costs incurred in the production of goods and services. Externalities are effects that occur outside of the pricing mechanism. Externalities may be good or bad, such as an apiarist's bees pollinating an orchardist's apples or the pain and suffering of intensively farmed animals. Such a market-based animal welfare approach may enable the philosophical position that animal welfare is a matter of personal preference rather than an issue of social justice. The problem with this approach is it fails to give proper consideration to "the sentience of non-human animals and the responsibility governments owe to protect the vulnerable and defenceless in society".³⁸ It is precisely because animal welfare is an issue of social justice³⁹ that it needs to be treated as independently, inherently important, rather than as an "indirect corollary of satisfying consumer preferences".⁴⁰ Animal welfare needs to be legally superior to consumer and producer freedom to treat animals as property they can do anything with. Without proposing legislation outlawing all forms of animal exploitation, it appears open to question whether current laws, including principally those advancing animal welfare, are inconsistent, based on the end-use of any particular animal. If designating an animal's purpose that of food allows for lower standards of welfare than, for example, pets, on what basis can such inconsistent standards stand?

Arguably, framing animal welfare in terms of moral pluralism reduces it to a matter of individual ethics. This approach ignores the fact that it is an issue the state ought to be involved in.⁴¹ The argument is not so much pro-state intervention and against free market economics, as it is one of the social importance of animal welfare and regard for the sentience of animals being something that needs legal protection. The arguments in favour of market regulation of animal welfare are that it "is driven directly by consumer preferences" providing "a menu style approach, allowing concerned consumers to purchase products to suit their preference for improved agricultural animal welfare" while keeping cheap, intensively-produced options for others.⁴² The market-based

³⁸ Timoshanko above n 11 at 542.

³⁹ Melanie Joy "Carnism: why eating animals is a social justice issue" Onegreenplanet <www.onegreenplanet.org>.

⁴⁰ Sullivan above n 2 at 420;

⁴¹ Ellis above n 3 at 40.

⁴² Sullivan above n 2 at 420.

approach to regulating a values-based issue such as animal welfare is “the dominant strain of regulatory thought”⁴³ in the United Kingdom, the United States and “the same may be true in Australia”.⁴⁴ Such an approach supports a pluralistic viewpoint that sees animal welfare as matter of personal preference.⁴⁵ Many sources have shown that animal welfare is actually a matter of public good and that good welfare is also the public preference.⁴⁶ Other than consumers feeling a “warm glow” what is the public good that good animal welfare creates?⁴⁷

B Public Good

Positive animal welfare comes from notions of equity, humanity and decency. In order to conceptualise what is being gained it is worth recounting some of the most apposite words said on the topic. Mahatma Ghandi said, “The greatness of a nation and its moral progress can be judged by the way in which its animals are treated”.⁴⁸ George Bernard Shaw suggested in his poem *Living Graves* “cruelty begets its offspring – WAR”, he was suggesting that humans will always be at war while they murder and exploit animals.⁴⁹ Abraham Lincoln linked human and animal rights together as being the “way of the whole human”.⁵⁰ Etiologist and biologist Richard Dawkins said:⁵¹

In 100 or 200 years’ time we might look back on the way we treated animals today, as something like the way we today look back on the way our forefathers treated slaves.

⁴³ Timoshanko, above n 11 at 516.

⁴⁴ Timoshanko, above n 11 at 516.

⁴⁵ Ellis above n 3 at 40.

⁴⁶ Sullivan above n 2 at 392; Schroder and McEachern above n 8 at 168; Nathan Guy “Animal Welfare Amendment Bill passes final reading” (5 May 2015) <www.beehive.govt.nz>; McInery above n 34 at 31; Timoshanko above n 11 at 540; Emma Roe “Is farm animal welfare a commodity?” (7 June 2013) (6th Boehringer Ingelheim Expert Forum on Farm Animal Well-Being) at 13.

⁴⁷ Lusk and Norwood above n 14 at 209.

⁴⁸ Joyce Tischler “US lags far behind Europe in protections for farmed animals” (15 August 2011) Animal Legal Defense Fund <<http://aldf.org>>.

⁴⁹ George Bernard Shaw “Living Graves” (1988 - 2015) All creatures <www.all-creatures.org>.

⁵⁰ Abraham Lincoln cited on Goodreads “quotes about animal rights” (2015) <www.goodreads.com>.

⁵¹ Richard Dawkins “I would like everybody to be a vegetarian” (29 September 2013) Youtube <www.youtube.com>.

Biologist Mark Berkoff argues against the separation of humans and animals and writes, “It is part of the in-group/out-group mentality that leads to human oppression of the weak by the strong as in ethnic, religious, political, and social conflicts.”⁵² Leonardo da Vinci felt that “the time will come when men such as I will look upon the murder of animals as they now look upon the murder of men.”⁵³ Theodor Adorno said, “Auschwitz begins wherever someone looks at a slaughterhouse and thinks: they’re only animals.”⁵⁴ Peter Singer calls for the expanding of the circle of ethics.⁵⁵

Just as we have progressed beyond the blatantly racist ethic of the era of slavery and colonialism, so we must now progress beyond the speciesist ethic of the era of factory farming. ... We must take the final step in expanding the circle of ethics.

In more recent times the European Court of Justice has said, “the protection of animal welfare is a legitimate public interest objective”.⁵⁶ In New Zealand MP Trevor Mallard has said that “animal welfare is important for its own sake, it is important for the economy and it is important for how we think about ourselves”.⁵⁷ In a very recent English Guardian article industrial farming was described as being “one of the worst crimes in history”.⁵⁸ Tracey Naraysani Glover argues that it is essential to argue for animal welfare and rights “because we as a society all basically agree on human rights” but this is not the same for animal welfare. If these ideas are coalesced what emerges is that animal welfare has quite some part in how we treat each other as humans. If we cannot follow the moral imperative to treat species over which we have dominance with kindness and respect then it is unlikely that we will treat each other with kindness and respect.

⁵² Mark Berkoff *Animals Matter: A biologist explains why we should treat animals with compassion and respect* (Shambala 2007) at back cover.

⁵³ Leonardo Da Vinci cited on Goodreads above n 49.

⁵⁴ Theodor W Adorno cited on Goodreads above n 49.

⁵⁵ Peter Singer from *Animal Liberation* (1975) cited on Goodreads above n 49.

⁵⁶ PETA “Top European Court upholds ban on seal imports” (4 September 2015) <www.peta.org>.

⁵⁷ Trevor Mallard (27 August 2013) 693 Hansard 13053.

⁵⁸ Yuval Noah Harari “Industrial farming is one of the worst crimes in history” (25 September 2015) *The Guardian* <www.theguardian.com>.

C *Physical Good*

In addition to the philosophical and moral benefits of good animal welfare the costs of intensive production must be considered. The environmental impact of intensive farming along with the increase in human illness from animals means that it may be that the costs of cheap meat are rapidly outweighing any benefits.⁵⁹ Dr Michael Greger says in reference to intensive farming:⁶⁰

Previously unknown diseases are surfacing at a pace unheard of in the recorded annals of medicine: more than 30 newly identified human pathogens in 30 years, most of them newly discovered zoonotic viruses.

There is growing evidence of the costs of intensive farming. Not only is it hugely environmentally costly to produce animal foods in the way we do, it is also creating new diseases such as MRSA.⁶¹ When the environmental costs are considered along with the zoonotic illnesses we are creating it becomes questionable whether it is as simple as a matter of consumer choice. Also, another important question arises, whether current consumer choices can be said to be fully-informed, as is an assumption of market-efficiency and, therefore, the existing market-basis to animal welfare regulation. The 2008 US PEW Committee Report said: “The current industrial farm animal production (IFAP) system often poses unacceptable risks to public health, the environment and the welfare of the animals”.⁶² Ought we, as consumers, be able to have cheap animal product options at the cost of our environment or public health? Any insistence on this type of destructive production must be regarded as short-sighted and unconcerned with collateral damage.

D *A paradigm shift about what constitutes minimum standards is needed*

Animal welfare laws need to guide and educate consumers by providing clear messages opposing animal cruelty. McInerney appositely summarises the issue:⁶³

⁵⁹ Noah Harari above n 58; Tracey Narayani Glover; Everything Connects “Intensive Farming” (no date) <www.everythingconnects.org>.

⁶⁰ Dr Michael Greger cited on Abigail Geer “5 modern diseases on the rise because of factory farming” (9 January 2014) One Green Planet <www.onegreenplanet.org>.

⁶¹ Geer above n 60; Dr Mercola “CDC reveals disturbing truth about factory farming and superbugs” (2 October 2013) Mercola.com <www.Mercola.com>.

⁶² The PEW Charitable Trusts “PEW Commission says industrial scale farm animal production poses unacceptable risks to public health, environment” (29 April 2008) <www.pewtrusts.org>.

⁶³ McInerney above n 34 at 30.

The danger of leaving animal welfare conditions to be resolved solely in the market, therefore, is that some (many?) individuals, whether as livestock farmers or food consumers, may be content with livestock products produced under abysmally low welfare standards.

It is therefore vital that the minimum standards of animal welfare are appropriately high and well enforced.

IV Cruelty – what cruelty?

A Examples of animal cruelty in intensive farming

It is widely accepted that even where the law does not bestow more than property status on animals “the imposition of gratuitous suffering on an animal is wrong”.⁶⁴ However, despite legislation against active cruelty for individual animals there is systemic, industrialised cruelty in intensive farming techniques that goes largely unchecked. It is estimated that 55 billion farmed animals are killed globally annually.⁶⁵ The cruelty of intensive farming takes many forms, commencing with environmental cruelty. Animals are crowded, often over-crowded into sheds containing thousands of their species. “We confine them in cages that drive them literally insane”.⁶⁶ They do not have natural light or ventilation. They are often living in faeces, urine and blood.⁶⁷ In the United States pig farms’ welfare activists say that nothing can prepare you for:⁶⁸

The sensory assault of 10,000 pigs in close quarters: the stench of their shit, piled three feet high in the slanted trenches below; the blood on sows’ snouts cut by cages so tight they can’t turn around or lie sideways; the racking cries of broken-legged pigs, hauled into alleys by dead-eyed workers and left there to die of exposure.

⁶⁴ Steven White “Exploring different philosophical approaches to animal protection in law” in Sankoff, White and Black above n 28 at 31.

⁶⁵ Narayani Glover above n 59.

⁶⁶ Narayani Glover above n 59.

⁶⁷ Solotaroff, Paul “Animal cruelty is the price we pay for cheap meat” (10 December 2013) Rolling Stone <www.rollingstone.com>.

⁶⁸ Solartoff, above n 67.

Such cruelty is not unique to US agribusiness; wherever there is intensive farming and the commodification of animals, then the Descartes theory of animal machines, animals as machines, becomes reality.⁶⁹

Regularised cruel practices include grinding live male chicks as the industry has no call for non-egg laying birds.⁷⁰ Chicken de-beaking is another common practice where chicks' beaks are sliced or burned off in order to prevent cannibalism or feather-pulling. As birds' beaks are sensitive with nerves this is very painful for them. Such behaviours as cannibalism only occur when animals are in unnatural stressful situations, such as intensive farming environments.⁷¹ Other examples that undercover animal welfare investigators have filmed include cutting and ripping pigs' tails off with blunt tools and ripping pigs' testicles out, all without anaesthetic. Throwing, punching, kicking and hitting animals are commonplace.⁷² Instances of cruelty such as these are rife in agribusiness. They are too numerous to catalogue, but seemingly almost anything can be justified in the name of commerce. As Ruth Harrison wrote:⁷³

If one person is unkind to an animal it is considered to be cruelty, but where a lot of people are unkind to animals, especially in the name of commerce the cruelty is condoned and, once large sums of money are at stake, will be defended to the last by otherwise intelligent people.

People use animals in many forms of commerce and it is unrealistic to suggest this cease. However some of our more obscene exploitative uses must stop in the face of increasing recognition of the sentience of animals.

⁶⁹ John Cottingham "A brute to the brutes?: Descartes' treatment of animals" (1978) <<http://people.whitman.edu>> at 551-553.

⁷⁰ Mercy for Animals Canada "Watch: Baby chicks ground up alive at maple leaf hatchery" (30 April 2014) <www.youtube.com>; Narayani Glover above n 58.

⁷¹ Stop Factory Farms "Debeaking" (no date) <<http://www.stopfactoryfarms.org>>.

⁷² Mercy for Animals "Concealed cruelty Pork industry animal abuse exposed" (no date) <www.pigabuse.mercyforanimals.org>.

⁷³ Ruth Harrison *Animal Machines* (Vincent Stuart Publishers Ltd, Oxfordshire, 1964) at back cover.

V *Inconsistency in animal welfare legislation*

A *United States*

In the United States “federal statutory regulation of agricultural animal welfare is minimal” and “the few practical protections afforded by federal laws are reduced by inadequate enforcement procedures”.⁷⁴ On a state level things are not a lot better. One example that is indicative of how state laws fail to protect animals is the case of the farmer found not guilty by a judge in Ohio for hanging his pigs execution-style from his forklift. The judge ruled that there was “no standards forbidding the strangulation and hanging of farm animals”.⁷⁵ This surely has to be taking consumer/owner rights to use their “property” however they like, too far. It raises the question of why animals are property under the law, just like a table or a cup, or some other inanimate object. While this is a much larger discussion it is worth considering that Tony Boganoski suggests a legal notion of “living property”, which would be more appropriate than the current blunt characterisation of simply “property”.⁷⁶ Within the context of inadequate and inconsistent animal welfare legislation in the US, and this example of lawful behaviour, it is apposite to highlight the proven link between animal cruelty, domestic violence and psychopathy.⁷⁷ It is now well established that domestic violence and animal cruelty go hand-in-hand and there has long been a link between animal cruelty and serial killers.⁷⁸ If such behaviour is lawful then it further supports the position that our parameters of the acceptable use of animals are in need of significant reform.

⁷⁴ Sullivan, above n 2 at 396.

⁷⁵ Solotaroff above n 67.

⁷⁶ Bogdanoski, Tony “A companion animal’s worth: the only ‘family member’ still regarded as legal property” in Sankoff, White and Black above n 28 at 85.

⁷⁷ Women’s Refuge and SPCA “Pets used as pawns in domestic violence (28 March 2012) <www.womensrefuge.org.nz>; Domestic Violence Roundtable “Animal abuse and domestic violence” (2008) <<http://www.domesticviolenceroundtable.org>>; American Humane Factsheet “Understanding the link between animal abuse and family violence (2003) <www.childmatters.org.nz>.

⁷⁸ PETA “Animal abuse and human abuse: partners in crime” (no date) <www.peta.org>; Sara C. Haden and Angela Scarpa, “Childhood Animal Cruelty: A Review of Research, Assessment, and Therapeutic Issues,” *The Forensic Examiner* 14 (2005): 23-33; Ruth Larson, “Animal Cruelty May Be a Warning. Often Precedes Harm to Humans,” *The Washington Times*, 23 Jun. 1998; Paws for Justice “Cruel to animals one day: serial killer the next” (2013) <<http://pawjustice.co.nz>>.

B Australia and New Zealand

The Ministry of Primary Industries (MPI) shares enforcement of animal welfare standards with the SPCA under the Animal Welfare Acts in New Zealand.⁷⁹ Both organisations are empowered under these statutes, but as in Australia, we have a government department responsible for animal welfare whose core responsibility lies elsewhere.⁸⁰ Moreover, those core responsibilities are in conflict with animal welfare, primarily seeking to “maximise exports of primary sector products”.⁸¹ This goal conflict is reflected in sparse resources committed by MPI to animal welfare.⁸²

Due to the paltry resources from MPI for animal welfare issues, in both Australia and New Zealand there is the seemingly preposterous situation where animal welfare enforcement is in effect often left to a charity, the Society for the Prevention of Cruelty to Animals (SPCA).⁸³ As a charity they can neither afford the enforcement, nor do they have adequate powers to effectively monitor and enforce.⁸⁴ Neither New Zealand nor Australia has much to be proud about when it comes to animal welfare. We continue to consider the rights of producers and consumers well above any genuine animal welfare actions.⁸⁵

VI The New Zealand context

A Animal Welfare Amendment Act 2015

With the passing of the Animal Welfare Amendment Act 2015 New Zealand is legislatively showing public concern for animal welfare.⁸⁶ The recognition of sentience in animals is a paramount aspect of the new amendment⁸⁷ as prior to this most New Zealand

⁷⁹ Animal Welfare Act 1999 and Animal Welfare Amendment Act 2015.

⁸⁰ See generally Ellis, above n 3 at 41.

⁸¹ Catriona McLennan “Animals need dedicated watchdog” (10 September 2014) *The New Zealand Herald* <www.herald.co.nz>; Sue Kedgley “Why is it difficult to make progress in animal welfare law reform” in Sankoff, White and Black above n at 338.

⁸² (27 August 2013) 693 Animal Welfare Amendment Bill – First Reading Hansard 13053; McLennan above n 81; Ellis, above n 3 at 41

⁸³ Bogdanoski above n 76 at 99.

⁸⁴ Bogdanoski above n 76 at 99.

⁸⁵ Sankoff, White and Black above n 28 at back cover.

⁸⁶ Nathan Guy (27 August 2013) 693 Hansard 13053.

⁸⁷ The Animal Welfare Amendment Act 2015.

law treated “animals as ‘things’ and ‘objects’ rather than as living creatures”.⁸⁸ Such recognition must surely be accompanied by rights and protections? However, this Act has been accused of not going far enough⁸⁹ and not even bringing us up to date with other nations.⁹⁰ At the first reading of the Bill, John Banks, then leader of the ACT Party, lamented the lost opportunity “to take our legal protections for animals a lot further and to be a world leader in the area of animal welfare.”⁹¹ This Act could have banned caged farming, animals in entertainment and pet mills. There were other animal welfare issues not covered in this paper, such as animal fur and zoos that were also not covered by this legislation.

B Pig Crate Farming: the distance between rhetoric and reality

Rhetoric and reality are often far apart in animal welfare issues. For example, New Zealand is banning sow crates for pig farming as of December 2015, but farrowing crates are still used by 67% of pig farmers and these will remain, at this stage. Arguably, a farrowing crate is essentially the same thing as sow crate. What we are banning does not free farmed pigs from crates, it merely frees pregnant pigs from gestation crates.⁹² Agriculture Minister David Carter said upon the release of the Animal Welfare (Pigs) Code of Welfare 2010 that:⁹³

The National Animal Welfare Advisory Committee believes that the use of farrowing crates should also be phased out, it recognises this can only happen when alternative management systems and technologies are in place.

This is a significant reform in animal welfare and yet on a practical level it is limited.⁹⁴ The final removal of sow crates this December may well obscure the fact that farrowing crates remain. It should also be noted that these changes will increase the price of New

⁸⁸ Carson above n 5.

⁸⁹ Lawnews “The law weighs in on animal welfare matters” (25 October 2013); Catrionna McLennan “Review of animal welfare law too timid” (20 May 2013) Herald <www.nzherald.co.nz>.

⁹⁰ John Banks (27 August 2013) 693 Hansard 13053.

⁹¹ John Banks above n 90.

⁹² MacLennan above n 81.

⁹³ Niko Kloeten “Sow stall to be banned” (1 December, 2010) NBR <www.nbr.co.nz>.

⁹⁴ Whenua Owen “Exposing New Zealand’s pig farming industry” TV3 Campbell Live <www.3news.co.nz>.

Zealand pork.⁹⁵ As we import “700,000kg of pork every week from overseas countries where sow crates are still being used and will be used for years ahead” consumers may seek the cheaper options and confusion is understandable.”⁹⁶ In addition to meat origin questions, there is evidence that consumers have been confused by New Zealand labelling. “Pigcare Accredited” labels that are being used on New Zealand pork are from farms employing factory farming methods and yet consumers would presumably expect such a label to indicate ethically produced pork.⁹⁷

C *Media is what matters*

The thing that finally achieved what Green MP Sue Kedley referred to as “the most significant change in animal welfare in decades” enacted, was public opinion.⁹⁸ It was after comedian Mike King went from being the “face of New Zealand Pork” to joining Save Animals From Exploitation (SAFE) in a campaign against sow stalls, that everything changed. TVNZ’s *Sunday* programme showed disturbing coverage of pigs living in farrowing crates further garnering public attention and outrage.⁹⁹ Pigs were shown in crates surrounded by dead piglets and some live piglets were consuming milk from a faeces covered sow. Sows had open wound crate sores and so little room that metal bars were sticking into their rumps.¹⁰⁰ New Zealand Pork issued a statement; “Consumers prefer gestation stalls are not used – we have listened and we are making a change and removing them.”¹⁰¹ The law seems often to follow the public’s lead when it comes to animal welfare. It was essentially because the “public clamour has proved irresistible” that parliament was motivated to pass legislation.¹⁰² This is largely how the public finds out often only becoming “aware of animal mistreatment through the work of

⁹⁵ Duncan Garner, “Sow crate ban will increase NZ pork price – Carter” (1 December 2010) 3 News <www.3news.co.nz>.

⁹⁶ Garner above n 95.

⁹⁷ Celeste Gorrell Anstiss “Foodies ‘fooled’ by label” (19 December 2010) The New Zealand Herald <www.nzherald.co.nz>.

⁹⁸ Garner citing Green MP Sue Kedgley above n 95.

⁹⁹ McLennan, above n 81.

¹⁰⁰ Owen above n 94.

¹⁰¹ Kloten above n 93.

¹⁰² NZ Herald “Editorial: New pig code shows power of shoppers” (3 December, 2010) NZ Herald <www.nzherald.co.nz>.

whistleblowers, animal protection agencies and the media”.¹⁰³ Politicians are meek in the area of animal welfare, often only seeking to legislatively prevent consumer freedom through a ban when the public outcry is so significant that it would be more politically dangerous to ignore than follow it.¹⁰⁴ Alternatively, it could be argued this is an overly cynical take on what is actually democracy in action. Once the legislature see that there is significant public concern about animal welfare through media coverage, they appropriately act, even though it limits consumer choice.

D Ineffective enforcement undermines legislation

We have tightened our animal welfare legislation in New Zealand but we still do not appropriately resource enforcement. The SPCA has 8 million operating costs per annum, is 99 per cent funded by donations and relies on volunteers for much of its labour.¹⁰⁵ MPI spends one per cent of its budget on animal welfare issues.¹⁰⁶ When the Animal Welfare Amendment Bill was being read in the House it was observed that the regulatory impact statement said that all “changes to the Act would be implemented by the Ministry on a fiscally neutral basis”.¹⁰⁷ This shows the divorce between rhetoric and reality. Animal welfare is good to be seen on the right side of politically, but without resourcing the new legislation it is arguable that it will not make much difference. If there is public outcry then there is action, however if we want good animal welfare then we need to legislate against cruel practices and lead society through law.¹⁰⁸

VII Outlaw intensively farmed products or introduce a cruelty tax

Timoshanko raises the idea of a “tax to increase the cost of products produced under intensive production systems”.¹⁰⁹ As a minimum a “cruelty tax” would drive consumers to seek ethically, sustainably-produced animal products or alternatives to animal products. This would introduce consistency between consumers articulated

¹⁰³ Ellis above n 3 at 46.

¹⁰⁴ See Ellis above n 3 where political concern is with misrepresentation to consumers over free-range status of eggs, not with animal welfare.

¹⁰⁵ SPCA New Zealand “About RSPCA NZ” (2015) <www.rnzspca.org.nz>.

¹⁰⁶ Damien Oconnor (27 August 2013) 693 Hansard 13053.

¹⁰⁷ Oconnor above n 106.

¹⁰⁸ White above n 64 at 31.

¹⁰⁹ Timoshanko above n 11 at 541.

preferences and their consumption decisions. In New Zealand, lawyer Catriona McLennan has called for intensive farming to be phased out by 2017.¹¹⁰ Additionally the Animal Agenda Aotearoa Campaign she coordinates lobbies for the outlawing of animals in circuses, marine parks and rodeos.¹¹¹ Such suggestions may be seen as extremist, standing in tension with consumer rights and prohibiting production methods we have come to accept. However, the law needs to acknowledge through legislative actions such as these that consumers ought not to have rights that ignore the welfare of animals.¹¹²

At its bedrock, the notion of consumer choice presupposes rational, fully-informed individuals acting towards their own utility maximisation. If we cannot argue for internalising an externality that does not immediately affect us, then there is also no argument for carbon credits and other environmental legislation that attempts to address problems that will occur, for the most part, beyond our lifetimes.¹¹³ Consumers exist largely ignorant of the exact horrors that befall factory farmed animals and, to the extent that there is a deficit in their knowledge (allied by wilfulness-in-ignorance)¹¹⁴ the imposition of a cruelty tax would properly internalise those externalities, reflecting the full cost of factory production.¹¹⁵ Arguably the consumer choice issue is already biased by a lack of information but the consumer rights' concern seems to be not so much about choice generally but about price choice.¹¹⁶ In this context it may be argued that animal welfare or the lack of welfare is a negative externality and that pricing this through the suggested tax on breaches of animal welfare may be indicated.¹¹⁷ If taxing factory-farmed animals is reasonable (and its reasonableness might be measured by the intuitive response that non-cruelty is preferable to cruelty) then price becomes moot (theoretically), reducing the choice to cruel or humane farming. It is difficult to sustain a case in which

¹¹⁰ McLennan above n 81.

¹¹¹ Catriona McLennan "Feeble animal laws should be an election issue" (30 July 2014) Catriona McLennan <www.catrionamclennan.co.nz>.

¹¹² Ellis above n 3 at 39, 40.

¹¹³ See generally Climate Change Response (Emissions Trading) Amendment Act 2008.

¹¹⁴ Schroder and McEachern above n 8 at 168.

¹¹⁵ Timoshanko above n 11 at 541.

¹¹⁶ Spooner, Schuppli and Fraser above n 19 at 158; Gibson above n 19 at 286.

¹¹⁷ Timoshanko above n 11 at 541.

cruelty might be preferred other than on price, especially when consumers associate good welfare with good quality products.¹¹⁸

VIII Outlaw Pet Mills

The banning of pet mills would help to alleviate the excessive number of healthy animals being euthanised in animal shelters each year and would prevent consumers being deceived as to the health and origins of their animal. Pet mills are commercially run animal production farms that focus on profit above any animal welfare concerns. They generally focus on dogs (“puppy mills”) and cats (“kitten mills”). Animals are often kept in caged conditions, not exercised or socialised and treated in every regard as a commodity.¹¹⁹ Consequently, animals often exhibit behavioural problems such as aggression, shyness or lack of socialisation.¹²⁰ It is very difficult for a consumer to detect such behavioural issues at the point of purchase online or from a pet store. Puppy mill owners are often secretive and will not allow their operation to be seen. This is reportedly the case in the New Zealand districts of Horowhenua and Manawatu where puppy mills are said to be “rife”.¹²¹ Such secretiveness only adds to the reasons people are largely unaware of pet mills and have little idea of the origins of their animal. There is significant money involved with animals being listed on online auction site, Trademe, for around \$1000.¹²² Pet mill owners breed animals for profit. In doing so pet mills exacerbate the over-supply of pet animals. In many cases consumers purchase dogs and cats that are psychologically disturbed and that are likely to exhibit behavioural problems. This situation is exploiting both consumers and animals. Currently “welfare organisations have few options to intervene because of a lack of regulations controlling puppy farming”.¹²³ This issue needs more than intervention from animal welfare agencies, pet mills ought to be outlawed.¹²⁴

¹¹⁸ Lusk and Norwood above n 14 at 209.

¹¹⁹ Paws for Justice above n 78.

¹²⁰ Susan Teodoro “Puppy mills ‘rife’ in Horowhenua and Manawatu” (9 May 2015) [stuff.co.nz](http://www.stuff.co.nz) <www.stuff.co.nz>.

¹²¹ Teodoro above n 116.

¹²² Teodoro above n 116.

¹²³ Teodoro above n 116.

¹²⁴ Paws for Justice above n 78.

It is easy in the debate over animal welfare versus consumer and producer freedoms to get focussed on intensive farming as one of the most obvious areas of contention. However, this fails to recognise that “hundreds of thousands of relinquished ‘healthy’ cats and dogs in Australasia” are legally killed every year.¹²⁵ We call this process euthanasia rather than killing because we do not wish to confront what we do to healthy animals for convenience. Some argue that:¹²⁶

SPCAs should be more transparent to the public in their animal euthanasia practices, especially as they solicit donations from the public on the basis of protecting (not killing) animals.

This can be seen as a kind of deception through omission of information to consumers. Consumers may make the choice to donate to an organisation such as the SPCA, but this issue may influence that decision. In making the SPCA responsible for animal welfare, an animal ‘shelter’ and place of convenient animal euthanasia, an obvious conflict arises between welfare and killing.

Closing down pet mills would help to address the over-supply of pet animals and it would cease the animal welfare issues associated with many pet mills. The reduction in pet animals on the market would presumably see an increase in demand for pets from animal shelters.¹²⁷ Arguably, it is equally as radical to let things continue with the current needless destruction of so many healthy animals so that certain individuals can capitalise on pet production, as it would be to make these law changes.

IX Establish dedicated government body for animal welfare

The New Zealand Green Party “and numerous organisations have called for an independent ministry or commission, which is free from ... conflicts of interest, to administer and monitor the Act”.¹²⁸ Another commentator has suggested an Animal

¹²⁵ Bogdanoski above n 76 at 98-99.

¹²⁶ Bogdanoski citing Anne Greenaway above n 76 at 99.

¹²⁷ Paws for Justice above n 78.

¹²⁸ Sue Kedgley above n 81 at 338.

Welfare Commissioner.¹²⁹ It appears that both New Zealand and Australia could benefit from independent implementation and oversight of their respective animal welfare Acts. It is a clear conflict of interest to have the MPI responsible for both the promotion of “animal exports abroad and protecting all domestic animals from cruelty”.¹³⁰ This applies equally to Australia and New Zealand as both countries mirror the same conflicts of interest and abdications of responsibility for animal welfare.

X Outlaw animals in entertainment

A Why we should outlaw animals in entertainment

The issue of animals in entertainment such as circuses, marine parks and rodeos affects far fewer animals than agricultural animals, but it is important to stop this. Public displays like this send messages about how we as humans can treat animals. The assertion that such forms of entertainment are educational fails, unless the point being taught at such entertainment venues is the domination and exploitation of animals. The absurd antics animals perform in such situations have little if anything to do with their natural behaviours. Also, in light of the growth of options to view animals in their natural habitats, whether that be live or via film (increasingly 3D film makes things increasingly lifelike), it is questionable whether these outdated modes of entertainment ought to be permitted. Although outlawing animals in entertainment would close marine parks and rodeos it is not necessarily so for circuses. Circuses have moved to displaying human skills and talents such as juggling, dance, theatre and acrobatics. With public education about the treatment animals receive in entertainment and explaining why these things are being banned, it would be possible to gather public support.

B Rodeos

Generally rodeos only use cows and horses.¹³¹ In the Australian states of South Australia and Victoria this is legally mandated.¹³² Even though “it is impossible to have a

¹²⁹ McLennan above n 81..

¹³⁰ Sue Kedgley above n 81 at 338; McLennan above n 81.

¹³¹ Jackson Walkson Brown “Animals and entertainment” in Sankoff, White and Black above n 28 at 130.

¹³² See Animal Welfare Regulations 2012 (SA) reg 15 and Prevention of Cruelty to Animals Regulations 2008 (Vic) reg 65.

rodeo that does not pose a threat of injury or death to animals” there are no mandatory reporting requirements.¹³³ This obscures the true toll of injuries and deaths to animals. This is something that this self-regulated industry is unlikely to have any interest in revealing. The most controversial of the specific standard rodeo events is calf roping:¹³⁴

[This] involves a calf being given a head start before being roped by the competitor on horseback. The competitor then dismounts, captures the calf and throws (‘flanks’) the animal onto its side. Three of the calf’s legs are then tied up before the rider remounts the horse and rides forward to prove that the tie will hold to the judge’s satisfaction.

Calves can experience fear, pain and injury as they are jerked off their feet while running away at speed. The SAFE website reports, “Calf roping is already banned in a number of states in the United States, Australia, Brazil and Canada, and it is banned nationally in the United Kingdom, Germany, and The Netherlands.”¹³⁵

Auckland city has already banned rodeos in 2008 from taking place there.¹³⁶ It may not be so difficult to outlaw rodeo in New Zealand as it would in Australia, as rodeos are not so much a part of the cultural paradigm of New Zealand. In 2012 a group of animal rights activists stated that rodeo has “nothing to do with New Zealand”.¹³⁷ Not everyone is in agreement with this position as there are “35 affiliated rodeo venues, hosting ‘one of New Zealand’s most exciting and thrilling sports’”.¹³⁸ It would be a topic of public debate as while over 10,000 people signed a petition against Hamilton holding one of the world’s largest indoor rodeo events, the *International Rodeo* in 2012,¹³⁹ it was a sellout success.¹⁴⁰

¹³³ Walkson Brown above n 131 at 133.

¹³⁴ Walkson Brown above n 131 at 131.

¹³⁵ SAFE “Calf rope cruelty” (no date) SAFE < <http://safe.org.nz>>.

¹³⁶ Nikki Preston “Rodeo’s return to Claudelands dismays SAFE” (11 July 2012) Hamilton News <www.nzherald.co.nz>.

¹³⁷ Walkson Brown above n 131 at 131.

¹³⁸ New Zealand Rodeo Cowboys Association cited in Walkson Brown above n 123 at 131.

¹³⁹ Walkson Brown above n 131 at 131.

¹⁴⁰ Angela Cumming and Jonathan Carson “Rodeo declared resounding success despite protest” (21/11/12) Stuff <www.stuff.co.nz>.

It is time we set higher animal welfare standards than the callous exploitation for our gratuitous amusement. The law needs to ban rodeos rather than leaving them largely unregulated. If rodeo is not to be banned then the least we can do is regulate them and follow these other places by outlawing calf roping.¹⁴¹

C Marine Parks

In New Zealand we do not have marine parks in the manner of Seaworld, Gold Coast, Australia. However, this is another instance where our recent animal welfare amendment did not put a prohibition on doing so into law, in order to prevent any such future animal use. This seems poorly conceived, as surely it would have been easiest to prohibit something not actively being used, preventing future use while affecting the fewest possible. Equally it could be argued there is no problem to solve, but legislating would have sent a message that this is not acceptable in New Zealand.

In Australia the issues are the same as with Seaworld in the US. These sea mammals are “accustomed to travelling significant distances in the wild” daily and “these large and intelligent wild animals develop neurotic and dangerous tendencies when forced to spend their lives in confines far smaller than is natural for their species”.¹⁴² In 2010 Tilikum the orca whale killed his trainer in Florida Seaworld.¹⁴³ The 2013 documentary designed not as animal activism but rather to explain why Tilikum might have killed in this way, was called *Blackfish*.¹⁴⁴ This documentary created a massive public backlash against Seaworld with their stock dropping 50% over the past two years and their revenue dropping on prior year by over 25 million in 2013.¹⁴⁵ Seaworld have continued to face reduced audiences due to legislators keeping the issue in the media as

¹⁴¹ SAFE above 135.

¹⁴² Walkson Brown above n 131 at 144-145.

¹⁴³ James Fielding “Seaworld whale that ‘killed’ three still being used to breed, Seaworld worker claims” (17 November 2013) Express < <http://www.express.co.uk>>.

¹⁴⁴ PETA “‘Blackfish’ the documentary that exposes Seaworld” (2015) Seaworld of Hurt <www.seaworldofhurt.com>.

¹⁴⁵ Bloomberg “Seaworld drops as killer whale controversy hurts sales” (14 August 2014) Bloomberg Business < <http://www.bloomberg.com>>.

they question if the use of orcas in this manner ought to be outlawed.¹⁴⁶ Once again legislators trail behind media campaigns that first generate public outcry. Legislators in Australia and the US need to seize the public mood and outlaw marine parks while there is high public awareness about the harms caused to the animals.

XI Will better labelling about animal welfare issues make any difference?

As food producers seek to maximise exploitation from mass animal production the marketing deceptions of consumers are rife.¹⁴⁷ Images, names and taglines depicting idealised farm life scenes are used on products to suggest desirable production methods, when in reality this may not be so.¹⁴⁸ This suggestive packaging is designed to overcome the reality. No one wants to “visualise the screams, death, and dismemberment of the animals whose flesh is in the cellophane-wrapped packages of their supermarket’s cooler”.¹⁴⁹ Such marketing deception and misdirection makes it difficult for consumers to distinguish the ethical origin of products.¹⁵⁰ *Eating Animals* author Jonathan Safran Foer argues:¹⁵¹

It shouldn't be the consumer's responsibility to figure out what's cruel and what's kind, what's environmentally destructive and what's sustainable. Cruel and destructive food products should be illegal. We don't need the option of buying children's toys made with lead paint, or aerosols with chlorofluorocarbons, or medicines with unlabeled side effects. And we don't need the option of buying factory-farmed animals.

¹⁴⁶ Michael Martinez “California Bill would ban Orca shows at Seaworld” (8 March 2014) CNN <<http://edition.cnn.com>>.

¹⁴⁷ Bonnie Liebman “Name that deception” Nutrition Action Healthletter (Dec 1993) Student Resources in Context; Solotaroff above n 66; Timoshanko above n 11 at 522, 525.

¹⁴⁸ Harper and Makatouni above n 8; John McInerney above n 34 at 29; Timoshanko above n 11 at 522; Solotaroff above n 67.

¹⁴⁹ Stepaniak above n 6 at 27.

¹⁵⁰ Timoshanko above n 11 at 524.

¹⁵¹ Jonathan Safran Foer *Eating Animals* cited on Goodreads “quotes about animal rights” (2015) <www.goodreads.com>.

Not only are consumers being asked, if they care, to establish what is cruel and kind in terms of production, they are also then having to wade through clever and deceptive marketing.

Accurate and clear labelling is needed in order to help consumers make genuinely informed choices.¹⁵² Legislation around accurate labelling of animal welfare issues needs to be introduced so that consumers have a clearer animal welfare picture.¹⁵³ All companies who use animal testing, ought to have to declare it on their packaging. In the case of food production terms such as “humanely produced” and “cage free” explicit definitions are required.¹⁵⁴ In the case of egg production the packaging ought to indicate, for example, if birds are debeaked and the density of bird population. There is room for vast improvement in consumer labelling laws relating to animal welfare issues.¹⁵⁵ If we are going to tolerate cruel production techniques then they at least need to be fully revealed on the packaging. Given the graphic images we put on cigarettes, we could require images of intensive farming on animal products produced under such methods. Arguably a multi-pronged approach would create the most impact and so a tax could also level the competitive edge intensive farming techniques provide. Ideally the tax and labelling would be supported by a public awareness and education campaign.

These arguments about the need for accurate labelling are undermined by research showing that product labelling does not help already busy and harried consumers.¹⁵⁶ Just like ingredients lists and other such information is often very small, so too might be animal welfare information. It is very likely in the case of intensively produced animal products that producers would make any required animal welfare labelling as small as possible, as producers would be loath to draw such attention. Even while acknowledging

¹⁵² Schroder and McEachern above n 8 at 168; Sullivan above n 2 at 416.

¹⁵³ Timoshanko above n 11 at 527.

¹⁵⁴ Timoshanko above n 11 at 527.

¹⁵⁵ Rebecca Greco “Animal Law Committee enters egg labeling debate” (2012) November 2012 Bulletin <www.lawsocietysa.asn.au>.

¹⁵⁶ Celeste Gorrell Anstiss “Foodies ‘fooled’ by label” (19 December 2010) The New Zealand Herald <www.nzherald.co.nz>; Rebecca Greco “Animal law committee enters egg labeling debate” (2012) November 2012 Bulletin <www.lawsocietysa.asn.au>.

that there ought to be legislation requiring animal welfare issues to be labelled the legislative focus needs to move beyond mere product information and labelling.¹⁵⁷

XII Around the world: examples of animal welfare trumping consumer and producer freedoms

If it seems too fanciful to imagine such bans it is worth noting that ten nations around the world have outlawed animals in circuses.¹⁵⁸ When Mexico banned animals in circuses recently 592 circus acts used animals prior to the ban.¹⁵⁹ This shows that there will be some who do not benefit from animal welfare reforms. Perhaps the price of animal cruelty has finally been seen as the obscenity it is and reform is needed despite individualised losses and inconvenience. Australian Capital Territories has banned factory farming. Switzerland banned battery cages in 1981, the Swedish banned them in 1988, with the Dutch following suit in 1994 “and a West German appellate court declared battery cages to be cruel as early as 1979”.¹⁶⁰ Three Mexican states and Catalonia in Spain have banned bullfighting. Costa Rica has banned zoos. Rodeos have been banned in the UK and Australian Capital Territories.¹⁶¹ India has banned the importation and sale of foie gras.¹⁶² The EU has banned seal fur products from being imported or sold. What these examples illustrate is that nations are enacting animal welfare legislation that overrides the considerations of consumers and producers, sometimes extensively. The movement away from exploiting animals appears to be gaining momentum.

¹⁵⁷ Sullivan above n 2 at 420.

¹⁵⁸ Animal defenders international “Stop circus suffering” (no date) <www.stopcircussuffering.com>.

¹⁵⁹ People for the ethical treatment of animals “17 facts that prove animals are winning” (2015) PETA <www.peta.org>.

¹⁶⁰ Joyce Tischler above n 48.

¹⁶¹ Animals Australia “Are rodeos cruel?” (no date) <www.animalsaustralia.org>.

¹⁶² Shantanu David “India bans foreign import of foie gras: are Indian chefs happy? (9 July 2014) <<http://indianexpress.com>>.

XIII Conclusion

Consumer rights to free choice in regards to animal products ought to be regulated to protect animals. In doing so the general public desire for good animal welfare is manifest and people are guided and educated by the legislation as to acceptable standards and uses of animals. There is some indication that the increased costs to the consumer of welfare products would be marginal if it was the only legal way to produce animal products. Good animal welfare has more to do with public good than is currently acknowledged. The dimensions of this public good are wider than philosophical and moral ones, for they also go to reducing environmental pollution and preventing further zoonotic diseases. Better labelling of animal welfare factors on products is far from the whole solution. In both New Zealand and Australia we need to take a much more serious approach to animal welfare and move beyond embedded conflicts of interest and tokenistic enforcement measures. It is disappointing that in New Zealand we passed legislation that ignores legislating to protect animals in regards to the issues raised in this essay. It is time that animals were protected from cruelty and inappropriate uses such as circuses, marine parks, and rodeos. Pet mills perpetuate the issue of pet over-supply and directly contribute to the killing of thousands of animals each year. Most significantly, intensive farming also needs to be phased out. At this intersection of consumer law and rights versus the welfare of animals, it is past time that animal welfare trumped consumer and producer freedom.

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