

Strategic Analysis of Animal Welfare Legislation

A Guide for the Perplexed

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Summary

The current atmosphere within the animal rights movement inhibits productive discussion of contentious questions such as the advisability of animal welfare legislation. Significant structural and discursive adjustments within the movement will be necessary in order for activists to collaborate within multifaceted coordinated strategies for substantial change. In the interim, proposed measures ought to be analyzed individually rather than categorically condoned or condemned. Strategic analyses of proposed animal welfare, rights, or liberation tactics always must center on the interests of animals as expressed by animals themselves or as may be inferred from close study of their physiology and behavior. Analysis of proposed animal welfare legislation ought also to take account of contemporary conditions, such as the economic conditions driving the exploitive industry in question, as well as long-term strategic aims. Insofar as possible, such analyses ought to assess certain or highly probable outcomes, eschewing speculation based on theories or analogies. Material analysis of the case example of battery cages reveals that the abolition of this factory farming practice would substantially reduce animal suffering, would reduce the number of animal exploited for the purpose of egg production, and could not possibly increase egg consumption. In the long term, this tactic could be one component of a coordinated strategy aimed at reducing the profitability of egg production to the point of economic inviability. Such strategies may be the fastest way of undermining for-profit exploitation of animals, especially in the current economic context of rising feed costs.

Introduction

The question of animal protection legislation has become ever more vexing for animal liberationists in the context of two crosscurrents in contemporary animal advocacy, one of which characterizes such legislation as counterproductive and the other of which seems to support that characterization. The acrimonious character of the debate, with little in the way of productive dialogue between proponents and opponents

1. The Eastern Shore Sanctuary and Education Center offers a haven to roosters, hens, and ducks while also working toward the liberation of all animals from human ownership and exploitation. Working in a locale where multinational poultry production and export corporations exploit people and poison the environment in the course of killing more than a million birds each day, we understand that the abolition of animal agriculture will require a foundational restructuring of global farming and food trade practices as well as fundamental revisions in the ways that people think about themselves in relation to animals. This is one of a series of papers and research reports aimed at building the capacity of the animal liberation movement to bring about such substantial changes.

of such legislation and much evidence of groupthink on both sides, pressures some activists into quickly picking a side and leaves others feeling frustrated and adrift. Rather than putting forth yet another critique or defense of animal welfare legislation in general, this paper offers a method of strategic analysis that may be used to assess specific proposed measures, using the question of battery cages as a case example.

Background

In recent years, a hardline “abolitionist” position in which efforts to improve the well-being of currently existing animals are condemned as “welfarist” impediments to the future liberation of animals has gained momentum within animal advocacy. The absolutist style of discourse favored by the most vocal proponents of this position has had the effect, over time, of obscuring the important distinction between true “welfarists” — such as members of the “North Carolina Responsible Animal Owners Alliance,” who believe that animals are rightly property but who argue that animals ought to be treated humanely — and true animal liberationists who support measures to improve the welfare of animals either as interim measures or as steps in a strategic plan for the liberation of animals. Thus such prominent women in animal liberation as Ingrid Newkirk of People for the Ethical Treatment of Animals (who has argued that any recognition of any animal rights by legislators is a step toward the recognition of full rights) and Karen Davis of United Poultry Concerns (who has argued that the interests of individual existing animals ought not be ignored by humans who purport to speak for animals as a group) has been mischaracterized as welfarists, often in quite insulting terms. Such derisive mischaracterization has created a bullying atmosphere in which persons who are less certain of their position in the movement may hesitate to depart from doctrinaire opinions for fear of being similarly smeared. Female activists, in particular, may shy away from expressing concern for the welfare of actual animals for fear of being labeled soft-minded or sentimental. This state of affairs makes it difficult for activists to collectively talk through the nuanced details that always must be discussed when people try to put principles into action in the real world.

At the same time, some proponents of animal welfare legislation also have engaged in discursive practices that make productive debate difficult. Here, the distinction that has been blurred is the all-important difference between condemning specific inhumane practices and promoting “humane” exploitation of animals. While most animal rights organizations that sponsor or promote animal welfare initiatives are very careful never to cross that line, a few high-profile slip-ups have given an aura of legitimacy to the mistaken equation between the abolition of specific factory farming practices and the promotion of “happy meat.” Gratuitous public insults of imprisoned animal liberation activists by proponents of more moderate tactics amplify the illusion that working for ultimate animal liberation and caring for animals in the here-and-now are necessarily two different projects. The opacity and lack of accountability of the upper echelons of

national organizations promoting welfare initiatives has, like the discursive stridency of some abolitionists, made productive dialogue difficult. Disenchanted and angry at powerful organizations that neither explain their actions nor accept responsibility for their impact on the movement, grassroots activists who ought to be helping to think through and implement the coordinated strategies we will need if we are ever to make more than a dent in the production and consumption of animals retreat into alienated silence or join the ranks of the “abolitionists” actively working to undermine efforts to reduce ongoing animal suffering.

This sorry state of affairs might rightly be called a crisis. Animal advocates represent a rather small minority within the population of the world we hope to change. We cannot afford to be divided against ourselves. Nor can the animals afford for us to indulge in the luxuries of self-satisfaction, unthinking preference for particular tactics, or insular groupthink.

We need, rather urgently, to restructure our organizations and our discourse so that both encourage rather than inhibit collaborative critical thinking and two-way communication.² As our discussions become more productive, all who subscribe to the aim of animal liberation ought to be able to identify the roots of our tactical disagreements, assess the validity of our assumptions, reach agreement about those facts that can be known, achieve consensus on some points, and agree to disagree on those questions for which definitive answers are not available and about which it is therefore possible for reasonable people sharing the same goals to hold different viewpoints. We might even come to see value in the pursuit of multiple strategies, on a trial-and-error basis, in those instances where the path to change is not clear.

In the meantime, each of us must decide whether to support the within-the-system legal reforms that are regularly proposed as elements of gradualist strategies for animal liberation and/or interim relief of animal suffering. Those who would work or argue against such measures have an especial obligation to be rigorous in their analysis.

Axioms³

Divergent unspoken assumptions often underlie differing perspectives. Thus, before outlining the proposed method of strategic analysis, it may be useful to survey some of the principles that guide the thinking behind the method.

2. The means by which this might be accomplished are beyond the scope of this paper but will be the focus of a future report. In the interim, please see the “tips for organizations” my book, *Aftershock*, for suggestions concerning organizational structure.

3. The assumptions and consequent principles in this section have been excerpted from a longer work-in-progress in which they are more thoroughly explicated and argued. As a feminist, I believe that moral reasoning ought to be undertaken with both heart and mind. However, I recognize that the dominant discourse within the animal liberation movement at present favors unemotional rationality. Because I am more interested in making a difference than expressing myself, I have confined the arguments in this paper to those that can be expressed within the dominant discourse. Please see the longer work when it is published for an explicitly feminist analysis of our obligations in relation to battery hens.

1. *Animals⁴ exist*

Actual animals live in the material world and experience real pleasure or pain depending upon what happens to them. The actions or inactions of animal advocates⁵ help to determine what happens to actual animals. Thus, what we do (or don't do) *matters* to animals. We must assume that what *actually happens* matters more to animals than our theories, motives, or purposes. Thus, actions undertaken for the sake of animals ought to be guided by careful assessment of what is likely to actually happen rather than by inclination, theory, or habit.

2. *Nothing happens in a vacuum*

Nothing actually happens except in a particular context. Thus proposed actions for animals ought to be analyzed individually and in their relevant material contexts rather than condoned or condemned in the abstract. Thus, rather than condoning or condemning "direct action" or "welfare reforms" we ought to ask what the outcomes of a particular type of direct action or welfare reform would be likely to be at a particular place and time. Contextual analysis of proposed tactics may, in addition to providing a more valid method of assessment, reveal consequences and possibilities that otherwise might be missed.

3. *Animals are the subjects of animal liberation*

Every day, in a multitude of ways, animals resist not only captivity and subjugation by humans but also the intrusions of humans into their habitats. Thus, animals ought to be recognized as the subjects, rather than the objects, of animal liberation. In order to avoid reproducing the dynamics of animal oppression, in which animals are seen as the objects of human agency, animal advocates must learn to see themselves as the allies of animals who are seeking their own liberation and to accord to animals the same deference accorded to people seeking their liberation. Just as heterosexual people rightly cede to gay and lesbian people the right to determine the course of the gay liberation movement, animal advocates ought to recognize animals as the most legitimate leaders of the animal liberation movement.

4. *Liberation includes self-determination and freedom*

Liberation means not only freedom from captivity, forced labor, and the like but also freedom to determine one's own fate insofar as possible within the natural constraints imposed by the material world and social life. Among people, self-determination means making one's own choices about personal matters such as health care and having an

4. People are animals. As I have argued elsewhere, full recognition of this fact mandates changes in the way we think about the project of "animal liberation." However, in order to avoid excess verbiage, I am using "animal" here to refer to nonhuman animals unless otherwise specified.

5. For purposes of brevity, I use the term "animal advocates" to include all animal rights/liberation activists, whether or not their favored tactics include advocacy *per se*.

equal voice in collective decisions about social matters such as governance. True allies of subjugated or otherwise oppressed people respect their right to self-determination, working for what they say they want rather than imposing other goals on them. Thus, if a community of refugees from racial persecution say that what they need most is a maternity clinic, it is not for their allies to insist that the limited resources available to them be used to build an elementary school instead. Similarly, allies of animals ought to respect their right to self-determination about such matters as whether to endure extreme suffering that might be relieved.

5. Animals may want more than liberation

We tend to think of liberation in terms of the things most people want for themselves, such as legal recognition of rights. Nonhuman animals as a class (or subsets of nonhuman animals) may want more or different things than human animals. For example, while the concept of “environmental justice” is relatively new and not widespread among people, many animals are more troubled by water pollution and depletion by people than they are by their lack of rights within our legal system. If they are troubled by our legal system at all, it is by the very existence of a network of laws backed up by guns that reduces all of the natural world to “resources” to be exploited by groups of people. Thus free fish who do enjoy self-determined movement through unbounded but poisonously polluted waters have legitimate demands that go beyond liberation as it is commonly understood. Similarly, free birds facing starvation due to climate change have different, although equally urgent, demands than their caged counterparts facing starvation due to forced molting.

6. Animals have voices

However much animal advocates may enjoy calling themselves “the voice of the voiceless,” the fact remains that animals can and often do express their wishes quite clearly. Animals cry out in distress, snarl in self-defense, and flee from captivity. Animals also coo in contentment, relax in circumstances that feel safe, and move toward things they want. Whether expressed vocally or behaviorally, the wishes of animals are often quite easily discerned through casual observation. More subtle indications often may be accurately read by those with expert knowledge of the animal in question.

7. Animal advocates ought to listen to animals

If we truly believe that animals deserve self-determination then we must listen to them when they say what they want. This does not mean that we must accede to all expressed wishes regardless of circumstance — the feral cat who wants to run onto a highway, not understanding the concept of tractor-trailer, may be rightfully restrained from doing so — but does mean that we cannot in good faith make decisions that impact the lives of animals without due consideration of the opinions of those animals.

8. Actions taken on behalf of animals ought to be taken for the sake of animals

Just as trial lawyers must do what is best for their clients, even if this goes against their own inclinations, the decisions of animal advocates must be guided by what is best for animals rather than by their own desire for cognitive consistency, emotional ease, or feelings of moral purity. This is not to say that animal advocates should never use rhetoric that appeals to the self-interest of people. Such rhetoric may be a very effective method of obtaining substantial gains for animals. However, our own thinking about what to do (or not do) for animals ought to be guided by their interests rather than our own. Since animals deserve self-determination and animals have voices, the interests of animals ought to be discerned, insofar as possible, by consulting them.

9. Animals are different from one another

Thanks to our common ancestry, all animals share certain characteristics and needs. Even animals who seem very different often share important physiological characteristics, such as the basic brain structures shared by reptiles, birds, and mammals. Still, due to the many branches on the evolutionary tree, cold-blooded reptiles have very different needs than hot-blooded birds. They also might have different priorities in the struggle for freedom from human hegemony.

10. Different animals may want different rights

People differ from one another in the rights they claim for themselves and the emphases they place on various rights. For example, the right to housing is asserted in the United Nations Declaration of Universal Human Rights but is neither codified in the U.S. Constitution nor recognized as an entitlement by most U.S. citizens. U.S. citizens tend to highly value political rights such as freedom of expression but have shown a willingness to forgo such rights at times of perceived crisis. People also vary in the individualist *versus* collectivist nature of their conception of rights. For example, Native Americans strongly asserted a collective right to land while strongly resisting the imposition of the individual land ownership rights that are so highly valued by many people of European descent. Given so much variance across time and space within a single species, it stands to reason that there may be even more variance across different species. Furthermore, just as humans do not always agree with each other, animals within the same species may have differing perspectives depending on their circumstances.

11. The interests of different animals may be contradictory

The legitimate interests of different animals may contradict each other. Natural conflicts, such as the struggle between predator and prey or competitions among insects who make different uses of the same plant, are beyond the purview of this paper and

tend to balance themselves out in ecosystems that have not been deranged by human intrusions. However, human exploitation of animals sets the stage for anomalous conflicts of interests, as when the right of minks to be freed from captivity conflicts with the interests of animals who would not naturally confront predation by minks. Since such contradictions raise especially complex ethical questions for animal advocates and since what we do (or don't do) matters to actual animals, it's important to distinguish between certain contradictions and those which are merely possible and to be very careful in assessing the probability of possible contradictions.

12. Animals value their own lives and the lives of some known others

Unless they have been traumatized into submission, animals flee or fight against efforts to end their lives, thereby demonstrating that their lives matter to them. Animals also demonstrate by their behavior that the lives of known relatives and companions matter to them. In various ways, many animals indicate by their actions that the lives of family members, flock or herd members, and even companions of other species matter to them. Animals sometimes do sacrifice their own welfare, and even their lives, for other animals who matter to them.

13. Animals do not sacrifice their lives or welfare for unknown others

We cannot know if the lives of unknown other animals matter to animals and thus cannot assume a willingness to sacrifice their lives or welfare for strangers of other species.⁶ Similarly, we cannot know if the lives of possible future animals matter to animals. While some animals care for their young, thus demonstrating a behavioral concern for the existence of future generations, others do not. While some animals care for the young of other conspecifics and even sometimes for the young of other species, most do not. Forced to guess, "does the life of an unrelated animal who might or might not exist in the future matter to any given currently existing animal?" we would have to say that the likelihood seems low. Thus we cannot assume that currently existing animals are willing to sacrifice their lives or welfare for the sake of future animals.

14. Animals are not objects

To sacrifice the life or welfare of one animal for the sake of another animal in the absence of evidence that the sacrificed animal consents to the arrangement would be to treat the sacrificed animal as an object in relation to the other animal. To treat one animal as an object, as a mere means to an end, in relation to another animal is no less morally repugnant than to treat a animal as an object or means to an end in relation to a human.

6. We can speculate that animals known to show adopt members of other species would care about other animals if they knew about them but such speculations do not justify the assumption that lab rats in New Jersey would be willing to delay their liberation in order to improve the welfare of chickens or that chickens in California would be willing to be tortured in order to hasten the liberation of rats.

15. Harm happens

Driving to a demonstration creates greenhouse gasses that endanger animals other than those we hope to help. Taking action against one kind of animal abuse always takes time that might have been devoted to fighting another kind of animal abuse. Time spent on current crises is time not spent on long-term aims and *vice versa*. It's simply not possible to do everything that ought to be done. Nor is it possible to do almost anything without inadvertently causing some harm to someone. Hence the importance of both careful assessment of tactics and cooperative association among animal advocates, including those who focus exclusively on liberation and those who include efforts to improve animal welfare in their work.

16. Animal welfare is a component of animal liberation

Animals want freedom and well-being. Since animals ought to be the bosses of animal liberation and since actually existing animals have clearly expressed the wish for relief of their own suffering, we cannot justly ignore current animal welfare even if we believe that ultimate liberation is the more important goal. Due to pain's evolutionary role as a signal of emergency, acute pain tends to block out all other considerations. Animals in acute pain undoubtedly want the relief of that suffering more than anything else. If the acute pain of actually existing animals can be relieved, then we must do so — or, at least, not interfere with others who are doing so — unless we are certain that the means of doing so will cause harm to other actually existing animals. If harm might be caused to actually existing animals, then probabilities must be assessed and ethical decisions made. We may not refuse to relieve suffering of actually existing animals — and certainly may not interfere with others who are doing so — for the sake of possible future animals for whom the existing animals have not consented to be sacrificed. Whether or not a particular effort to improve animal welfare will improve welfare without causing harm and whether or not that effort might also be a component in a long-term strategy for animal liberation can only be determined by analysis of that particular effort.

Method of Analysis

In using the ten-step method of analysis that follows, focus on direct, measurable, and reasonably certain outcomes. If you must speculate about matters about which relevant facts are not in evidence, do so responsibly, avoiding rash conclusions based only on theory.

1. Think about the animal.

Consider the known physical and psychological characteristics of the animals, especially as these are relevant to the kind of cruelty or abuse that the proposed reform seeks to eliminate or moderate. Imagine an individual of this species. What would she or he tell you if you could communicate? If you

don't have enough personal knowledge to do this, consult people who do have expert knowledge rooted in direct experiences with this kind of animal but have not sought to exploit them (e.g., sanctuary workers who have cared for such animals, not farmers who claim to "know" the animals they exploit).

2. Assess the suffering the measure is supposed to relieve.

Assess the impact of the practices that the measure seeks to ban or regulate on this particular kind of animal, thinking about not only the physical pain that would be experienced by any animal subjected to such treatment but also the specific impact that this kind of constraint, deprivation, or assault on this kind of animal (e.g., ducks are even more bothered than other birds by lack of access to water).

3. What do the animals themselves have to say about this suffering?

Even if it seems self-evident that the animals hate this suffering and want it to end, spend a moment reminding yourself how the animals express their distress and seek to end it. If you're not sure, consult first-person reports of people who have witnessed animals experiencing this suffering, such as activists who have gone onto factory farms or into vivisection labs to document conditions and/or rescue animals.

4. Assess the extent to which the measure would relieve the suffering.

Does the measure abolish or merely moderate the hurtful practice in question? If it abolishes the hurtful practice, will some other hurtful practice take its place? Either way, what will be the net effect of the change on the welfare of the animals directly affected? Will there be a net improvement in welfare or reduction in suffering and, if so, will that be substantial or superficial? If you lack the expertise or experience to assess whether the animals in question would experience a substantial relief of suffering, consult the opinions of animal advocates who have direct experience with and/or expert knowledge about the specific animals in question.

5. Assess the impact of the measure on other animals.

Will the measure help or hurt animals of other species or animals of the same species in other regions? Here, it may be impossible to avoid speculation and thus it will be particularly important to be conservative in drawing conclusions.

6. Assess the economic impact of the proposed measure.

Will the proposed measure make it more or less expensive to exploit animals? If the measure will regulate an exploitive industry, what will the economic impact of the measure be on that industry? What are the possible outcomes of that impact on that industry and its consumers?

7. Assess the strategic impact of the proposed measure.

Whether or not the proponents of a measure have proposed it as an element in a long-term strategic plan for the abolition of an exploitive industry or the ultimate liberation of animals, assess the impact of the proposed measure on such strategies. Where might this measure be helpful? Is there any way it might be hurtful and, if so, would it be possible to mitigate that harm? While considering all possibilities, be careful to give weight only to certain or highly probable outcomes.

8. Assess the validity of known arguments for the measure.

Consider the arguments that have been made by supporters of the measure. Assess the credibility of those making the arguments, especially as regards their expert knowledge of and ability to accurately represent the experiences and interests of the animals in question. If the arguments are strategic arguments, consider the experience of those making the arguments in forging and implementing strategies that lead to change. Most importantly, think critically about the arguments themselves. Are they logical? Are their assumptions factual or speculative? Are the arguments direct or analogous? Favor

direct, logical arguments rooted in fact.

9. Assess the validity of known arguments against the measure.

Consider the arguments that have been made by opponents of the measure. Assess the credibility of those making the arguments, especially as regards their expert knowledge of and ability to accurately represent the experiences and interests of the animals in question. If the arguments are strategic arguments, consider the experience of those making the arguments in forging and implementing strategies that lead to change. Most importantly, think critically about the arguments themselves. Are they logical? Are their assumptions factual or speculative? Are the arguments direct or analogous? Favor direct, logical arguments rooted in fact.

10. Sum up your conclusions.

Summarize your conclusions. On balance, do they suggest that the measure is in the interests of the animals in question? If there are some factors that support the measure but others that do not favor it, assess the relative strength of your certainty about each. If the interests of animals must be balanced against each other, (a) favor the interests of actually existing animals over those of possible future animals, and (b) do not favor conclusions that require animals who have not consented to do so to sacrifice their interests for those of other animals, remembering that self-determination is a key element of animal liberation.

Case Example: The Abolition of Battery Cages

For purposes of widespread applicability, this section takes as a case example the abolition of battery cages in general, assuming the time as the present but not specifying a geographic region. In analyzing a real proposed measure, it would be necessary to take into account the details of the proposed measure as well as any relevant circumstantial facts (e.g., local economy and geography).

1. Think about the animal.

Chickens are birds. Birds are mobile and highly social animals. Once the basic needs of respiration and nutrition are met, what they want most is to move around and socialize with one another.

Like all animals, chickens feel and dislike pain. Like most animals, chickens seek to avoid or relieve pain and are especially distressed when helpless in the face of pain.

The wild ancestors of chickens are prey to several aerial and land predators. As such, chickens feel anxious when in circumstances that do not allow for flight from potential predators.

2. Assess the suffering the measure is supposed to relieve.

The suffering caused by battery cages⁷ is widely and rightly believed to be among the most intense and sustained suffering inflicted by people on animals. Caged hens cannot walk around, lie down comfortably, or fully spread their wings. Their feet often become crippled from constantly clenching cage wire and their leg muscles often atrophy due to lack of exercise. Constant chafing against cage wires and cage mates causes feather loss

7. The facts about battery cages are so well known to animal advocates that I will only outline them here. See my February 2006 article, "I Know Why the Caged Bird Screams," in *Satya* magazine (at www.satyamag.com/feb06/jones.html) for a more complete account of the suffering endured by hens caged in egg factories.

and painful abrasions. The worst scrapes are typically on their necks, which the birds must stretch across cage wire to reach food and water. Because reaching food and water is so difficult and the birds are collectively fed only enough to keep them alive and laying eggs, malnutrition and dehydration are not uncommon.

Hens crowded into cages have both more and less social contact than is healthy for them. They cannot escape the cage mates who constantly encroach their personal space. At the same time, they cannot select and spend time with companions of choice. For social animals, this is a harm no less grievous than physical injury. Hens driven mad by the crowding and confinement may peck aggressively at their cage mates or self-injuringly at parts of their own bodies. In order to prevent economic losses associated with such pecking, egg factories “debeak” hens by burning off the tips of the beaks of chicks. This is a painful procedure that, for many hens, results in lifelong nerve pain.

3. What do the animals themselves have to say about this suffering?

Hens in battery cages clearly express the extent of their suffering and their wish to be relieved of it. Activists who have gone into egg factories to document conditions and/or rescue hens consistently report a constant cacophony of screams of distress. (Such screams are easily distinguished from the clucks, calls, and songs of contented chickens.) Some hens spend all day every day trying to escape. Others slump in motionless dejection. Both frenetic activity and immobility are signs of distress in birds who normally would alternate between relaxed movement and alert relaxation during daylight hours.

4. Assess the extent to which the measure would relieve the suffering.

Clearly, the contrast between life in a battery cage and the relative freedom of feral or sanctuary life⁸ is significant. However, since measures that ban battery cages do not ban egg production, the more apt comparison is between battery cages and cage-free egg factories.

“Free range” or “cage free” egg production facilities vary considerably concerning floor space per bird, access to outdoor foraging or dust-bathing areas, and “enrichments” such as perches. While some “Mom-and-Pop” operations that sell the eggs from a small number of hens at Farmers Markets and the like do have facilities that approximate the image that most people have of “free range” egg production, most commercially available “cage free” or “free range” eggs come from warehouse-like buildings into which hens are crowded with little or no access to the outdoors.

The question then becomes: Do birds in such facilities suffer significantly less than birds in battery cages? My answer to that question is “yes,” based on both logical analysis and personal experience with birds coming directly from both kinds of facilities.

8. At the Eastern Shore Sanctuary, most of the birds sleep in barns that are closed against predators at night but open into spacious fenced foraging yards during all daylight hours. Some birds prefer to sleep in the trees and forage more widely. Over time, those birds have “rewilded” themselves, forming feral flocks into whose lives we do not intervene except in the case of illness or injury. The neighbors tell us that they do not think of these birds as anybody’s property but, rather, as neighborhood residents similar to the blue heron who inhabits the creek and the wild turkeys who live in the woods.

Even when confined in the least enriched and most crowded cage-free egg production facility, hens have greater range of motion and the ability to form self-selected social groups than hens in battery cages, who cannot walk at all, cannot stretch their wings, and can socialize only with their cage-mates. Since birds are mobile and social animals, these are important improvements. Furthermore, uncaged hens do not suffer the crippled feet caused by constant gripping of cage wires, the feather loss and abrasions caused by scraping their necks through the wires to reach food and water, or the muscular degeneration caused by lack of motion. While frustrated by captivity and deprivation, uncaged birds do not suffer the extreme psychological duress of being immobilized in a small space that precludes movement to relieve acute pain.

These inferences are supported by our experiences at the Eastern Shore Sanctuary, where “spent” hens⁹ from both types of facilities have found refuge. In our experience, the degree of injury evident in hens who have spent full terms in battery cages is much more severe than that of hens who have spent an equivalent amount of time in cage-free facilities, in terms of overall physical health, number and extent of specific injuries, and level of psychological trauma as expressed by behavior. (This is not to say that hens coming from uncaged facilities have no injuries or trauma, just that the condition of hens coming out of battery cages is, in our experience, substantially worse.) Spent hens from battery cages arrive nearly bereft of feathers and with visible abrasions on their wings and necks. Some are initially unable to walk due to crippled feet and all remain most susceptible than most birds to foot injuries. Some are physically able to walk but seem not to be able to conceive the possibility. It may be days before such birds venture to try to walk. The level of panic and terror expressed by these birds is difficult to describe. Their behavior is considerably more frantic and disordered than that of other newly arrived birds (including those from cage-free egg facilities) and remains so for some time.

Thus, even if confined in the least enriched of cage-free egg facilities, hens would experience a considerable improvement in both physical and psychological well-being through the abolition of battery cages. Further, the sheer impossibility of confining the same number of hens in cage-free facilities means that, if widely implemented, the abolition of batter cages would result in a reduction of the number of hens confined for purposes of egg production.

Battery cages were invented specifically for the purpose of confining a large number of hens in a relatively small space. Hens are crowded into cages which are then stacked on top of one another. This use of vertical space allows egg producers to confine hundred of thousands of hens onto relatively small plots of land. Battery cages have become the norm in the egg industry because they are the only economically feasible way to confine such a large number of birds per square foot of available space.

9. “Spent” hens are birds who, after many months of egg production, have ceased to lay eggs at an economically profitable rate and are thus slaughtered or discarded,. Hens in egg factories are typically considered “spent” after about 18 months.

Agricultural land is a finite resource which has been decreasing in recent years due to urban sprawl and human population growth. If the amount of land available for egg production does not increase and battery cages are banned, then the number of hens confined for purposes of egg production necessarily will be decreased.

Thus, this measure would significantly reduce the extent of the suffering endured by each hen covered by the ban and, if widely implemented, reduce the number of hens confined for purposes of egg production. This adds up to a significant net reduction in suffering.

5. Assess the impact of the measure on other animals.

There appears to be no basis to believe that such measures would affect animals other than chickens. It might be argued that any measure that guarantees any animal any right builds toward the wholesale recognition of animal rights or that, conversely, any measure that implicitly cedes the legality of animal agriculture may delay such recognition but such arguments are strictly speculative.

In the context of globalized animal agriculture, the question of the impact of the measure on chickens elsewhere is legitimate. It's always possible that practices banned in one locale will simply be shifted to another. If battery cage operations are shifted from the target region to other regions, the same number of hens would suffer the same abuse in a different place. However, the extra costs involved in transporting eggs might, in the context of escalating fuel costs, raise prices and thereby lessen demand, eventually lessening production. Similarly, the considerable costs of relocation¹⁰ might be passed along to consumers, with similar effect on demand. Thus, even if the measure prompted relocation, it might lead to reduction in the number of hens confined for purposes of egg production. Nonetheless, the abolition of battery cages in a specific region ought, in order to avoid simply shifting the location of abuse, be part of a long-term strategy to implement such bans everywhere.

6. Assess the economic impact of the proposed measure.

Battery cages were invented specifically because they are the most cost-effective means of producing large quantities of eggs for commercial distribution. Egg factories are for-profit businesses. When costs rise, profit rates decline unless prices are raised. Increases in prices tend to depress consumer demand.¹¹ Decreased demand leads to reductions in net profit even when the rate of profit is maintained. Battery cages were devised in order to reduce costs by achieving economies of scale and by minimizing the resources devoted to each bird. The elimination of battery cages would raise costs significantly. We cannot know whether egg producers currently using battery cages would elect to retool or relocate but, in either case, both transitional and long-term costs would be higher and tend to depress profits. This measure might also tend to depress

10. Like all industrial animal agriculture, cage-based egg production is a capital-intensive enterprise with high start-up costs.

11. This is particularly true for items not perceived as necessities; therefore it would be wise to time vegan education campaigns about the health costs of egg consumption and the healthy deliciousness of egg alternatives to coincide with the transition.

profits of current cage-free producers, who would no longer be able to charge a “humane” premium as their practices would now be the norm. The overall economic impact on the industry would be to impose high one-off transitional charges followed by permanently increased operating costs. At the present time, with feed prices at an all-time high and fuel costs high and rising, this impact could be significantly detrimental.

7. Assess the strategic impact of the proposed measure

This measure could play a role in an *economic* strategy aimed at reducing the rate of return on investment for egg producers, ultimately driving them out of business, but only if combined with other tactics intended to simultaneously raise costs while reducing demand. Other tactics to raise costs include environmental regulations and direct action. Other tactics to reduce demand include public education campaigns concerning the health risks of egg consumption and the health benefits of veganism as well as ethical arguments against the exploitation of animals.

The potential impact of this measure on *political* strategies to gain acknowledgment of animal rights by human governments is less easy to assess but unlikely to be appreciable in either direction. On one hand, the measure implicitly acknowledges the reality that, at present, many hens are lawfully held as property and thus might be argued to implicitly condone that state of affairs.¹² On the other hand, in asserting some rights on behalf of beings held as property, the measure might be argued to have a destabilizing effect by introducing a contradiction into the system. Similarly, the acknowledgment of some rights might be used as a wedge from which to gain expanded rights. Thus, this measure might be speculatively argued to either help or hinder efforts to obtain legal rights for animals. Either way, the impact is likely to be minimal, given the scope of that task and the relative negligibility of this measure within the worldwide web of laws that ensnare animals as property.

The potential impact of this measure on political strategies to liberate animals from human governance altogether is also difficult to assess but unlikely to be appreciable. Passage and enforcement of this measure depends on government action and is thus inconsistent with a strictly anarchistic strategy of noncooperation with a legal system that many believe to be an inherently violent tool of propertied interests.¹³ However, as the choice of some activists to manipulate or work within the existing power structure in no way interferes with the ability of other activists to work outside or actively undermine that structure and since the passage of this measure would in no way appreciably strengthen the government or its legal system, the passage of this moderate measure would not be substantially hurtful to the efforts of those who aim to liberate animals by dismantling the political system built on the edifice of property rights.

12. That would be a weak argument – arguing that imprisoned animal liberationists deserve vegan meals in no way constitutes agreement with their imprisonment – but is so frequently heard that it must at least be considered here.

13. For more on the concept of property (and the laws protecting it) as inherently violent, see my October 2005 article, “What’s Wrong with Rights?” in *Satya* magazine (at <http://www.satyamag.com/oct05/jones.html>); my 2006 “Turtle Talk” (at <http://www.bravebirds.org/ar2006.html>); and my chapter “Stomping with the Elephants” in the 2006 anthology *Igniting a Revolution*.

Thus, from a strategic viewpoint, this measure's political impact is uncertain but probably negligible. However, it might be a substantial component of a coordinated economic strategy to make animal exploitation materially less profitable.

8. Assess the validity of known arguments for the measure

The argument that this measure will substantially improve the welfare of captive hens held for purposes of egg production seems valid on its face, is supported by evidence, and has been put forward by experts known to put the interests of chickens above other considerations. The argument that this measure will lead to fewer hens being held for purposes of egg production seems valid in light of the finite and rapidly decreasing availability of agricultural land, since the measure mandates significantly more land per bird. The argument that this measure will open the door to greater rights for chickens is based on a theory of social change that can neither be proved nor disproved. The argument that this measure might contribute to an economic strategy intended to make animal agriculture less profitable seems valid, since it would raise operating costs.

9. Assess the validity of known critiques of the measure

The argument that support for measure equals promotion of "humane farming" is fallacious on its face. Opposition to one thing does not automatically equate to support for another. So long as proponents of the measure refrain from singing the praises of "cruelty free" eggs, their opposition to battery cages does not equal support for other methods of egg production any more than opposition to gun violence equals support for knife violence.

The argument that this measure would increase egg consumption by consumers made more comfortable by the idea of happy hens is not supported by the physical evidence. Even if some subset of egg consumers who might have given up eggs due to discomfort with battery cages continue to eat eggs, and even if some people who quit caged eggs start eating eggs again, the necessary outcome of the measure [as outlined above] will be to reduce egg production. If there are less eggs, people can't eat more eggs. Further, even if this argument were supported by facts, it would not represent a valid reason to refrain from abolishing battery cages. Subjecting hens to torture in order to make eggs unpalatable to a subset of consumers would be treating those caged hens as objects and thus not ethically acceptable.

The argument that welfare measures such as the abolition of battery cages will in some way delay the achievement of rights or liberation of animals is based on a theory of social change that cannot be proved or disproved by recourse to available facts. Again, even if this argument were supported by facts, it would not represent a valid reason to refuse to ban battery cages. Some activists working for their own liberation or the liberation of others willingly engage in actions that they know may lead to imprisonment or torture. However, we would never demand that one group of people be forced to undergo imprisonment and torture in order to facilitate the liberation of another group

of people. Since hens have not signaled any willingness to sacrifice their own well-being for the sake of future animals, we have no right to require them to remain imprisoned for the possible future benefit of possible future animals who are strangers to them.

10. Sum up your conclusions

Caged hens want out! Hens entrapped in battery cages endure a level of suffering that is almost unimaginable to people who have not endured similar torture. Hens clearly express their distress and their wish to get out of the cages. Hens certainly would prefer to be free. If they must be held — and it is not yet within our power to free them — then they would prefer to be able to move, stretch their wings, and socialize freely.

The proposed measure, then, would give to hens something that they want. Barring clear evidence that giving hens what they would cause harm to other animals, there is no reason to withhold from them that relief.

The unprovable theory-based arguments for and against the measure cancel each other out. The physical evidence is all in favor of giving the birds what they want. If we believe that they do, indeed, deserve self-determination, then that is what we should do.

The physical evidence also suggests that this measure might factor significantly into a multifaceted strategy intended to make egg production unprofitable and therefore inviable. In order to effect such a strategy, which would also require driving down demand for eggs by other means, proponents of this measure must be especially careful not to seem to promote eggs produced by other means.

Recommendations

- Instead of supporting or condemning “welfare reforms” in the abstract, animal advocates ought to analyze each proposed reform individually.
- In analyzing proposed reforms, animal advocates ought to attend closely to likely material outcomes, drawing conclusions from these rather than from theories.
- In this as in all things, animal advocates must attend closely to the expressed wishes of animals, giving these more weight than the theories of people.
- Welfare reforms that offer substantial relief of suffering while also raising the costs of animal exploitation should be favored, so long as no harms can be demonstrated.
- In working for welfare reforms, animal advocates must be careful not to appear to support “humane” animal-based products.
- In discussing their disagreements, animal advocates must practice creative conflict resolution, avoiding divisive argument in favor of cooperative efforts to discover common ground, find facts that might resolve differences, achieve consensus where possible, and accept that allies may disagree over unprovable theories.
- In forging their strategies, animal advocates must respect tactical diversity, recognizing that major social, political, and economic changes tend to occur only after a period of unrest during which different actors seek the same goal by various means.

- Economic strategies to make exploitive industries less profitable by simultaneously reducing demand, raising costs, and reducing investment allow activists of different persuasions to cooperate. Animal advocates should cooperate in such strategies, refraining from attacking those enacting other aspects of the strategy.

Conclusion

Animal exploitive industries are amoral multinational entities wielding immense economic power and enjoying the favor of governments. Their chief weakness is that, as capital-intensive industries, they require investors who, in turn, demand high rates of profit. They might be driven out of business by means of a multifaceted strategy wherein efforts to reduce demand via vegan education and other means are coupled with efforts to increase costs by various methods, including direct action and expensive regulations. In light of our ethical obligation to both listen to actually existing animals and work for the liberation of future animals, efforts to improve animal welfare ought to be undertaken within such strategies.

Measures that outlaw intensive confinement and/or require foraging space necessarily reduce the number of animals who may be held in bondage on any given piece of land. Agricultural land is a finite resource that has been contracting in recent years due to human population growth, urban sprawl, and desertification. Further decreases are likely due to climate change and continued population growth. In short, agricultural land is becoming increasingly scarce and expensive. Thus, of all welfare reforms, those that require more land per animal may be the most useful strategically while also serving their primary function of providing immediate relief of acute suffering.

Consideration of such facts ought to inspire animal advocates to support, or at least refrain from condemning, animal welfare provisions that both bring substantial relief of suffering and raise costs of production. This will require each proposed welfare provision to be analyzed separately. Such analyses might help to free the movement from the paralysis induced by arguments over “welfare” in the abstract.

Animals exist. Actual animals suffer the consequences when their human advocates argue rather than taking action. Animals have the right of self-determination. Their wishes, rather than our theories, ought to guide out actions on their behalf. Animals want to be free *and* to be relieved of suffering.

Animal welfare and animal liberation need not be separate projects. In the case of factory farming, welfare reforms can provide immediate relief of suffering while at the same time contributing toward economic strategies intended to drive these exploitive industries out of business.

At present, rising feed costs associated with the biofuel boom have made factory farms more economically vulnerable than ever before. Now is the time to set aside theory-based differences in order to take action for actual animals in the real world.