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# ANIMAL WELFARE AND THE LAW

## History, definition, and challenges

Carlos Contreras López and Macarena Montes Franceschini

Animal welfare's evolution indicates humanity's changing attitudes toward the treatment of animals. From its roots in Jeremy Bentham's philosophy emphasizing the avoidance of suffering as a moral imperative to its inclusion in modern legislation and policy, animal welfare's journey is marked by legal and scientific milestones, as well as ethical discussions about our treatment of animals. The advancement from rudimentary notions of humane treatment to comprehensive standards encompassing physical health, emotional well-being, and behavioral freedoms reflects a growing recognition of animals as sentient beings with specific interests that require legal recognition and adequate enforcement, alongside overcoming industrial animal agriculture's relentless lobbying against these advances and the transition to a plant-based diet.

Keywords: animal welfare science, Five Freedoms, abolitionism, welfarism, plant-based diet.

### ■ HISTORICAL BACKGROUND

The historical progression of animal welfare reflects a shift from rudimentary humane treatment notions to comprehensive frameworks encompassing physical health, emotional states, and behavioral freedoms.

The roots of modern animal welfare can be traced back to the Utilitarian philosophy of the 18th century, notably advanced by Jeremy Bentham.<sup>1</sup> Bentham's assertion that the ability to suffer, rather than the capacity for reason or language, should determine moral consideration laid the foundation for contemporary animal welfare ethics. He famously questioned, «Can they suffer?» (Bentham, 2003) when advocating for the moral consideration of

animals, emphasizing the capacity for pain as a critical factor in ethical deliberation.<sup>2</sup>

Significant changes occurred in the production levels of farm animals during the mid-20th century, particularly in industrialized countries. Meat production steadily increased, with poultry production multiplying fivefold between 1961 and 2001. This period also witnessed growing public awareness and concern for animal welfare, spurred by works such as Ruth Harrison's *Animal machines*, published in 1964. Harrison's book exposed the harsh realities

of intensive farming practices, highlighting the negative impacts on animal welfare and raising public consciousness about the conditions in which farm animals were kept in the UK (Harrison, 1964).

**«The European Union has been at the forefront of developing animal welfare legislation»**

<sup>1</sup> Although Bentham is relevant in the history of animal welfare, centuries before, Buddhists and Jains practiced nonviolence toward animals, and hindus and ancient Greeks, like the Pythagoreans, defended vegetarianism.

<sup>2</sup> The work of contemporary philosophers such as Peter Singer and Tom Regan has also been crucial in pushing policymakers to advance animal welfare regulations.

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In response to these concerns, in 1965, the British government established the Brambell Committee to investigate farm animal welfare. The committee's report emphasized the importance of allowing animals the freedom to perform natural behaviors. It recommended several welfare practices, including standing up, lying down, turning around, grooming themselves, and stretching their limbs. This report significantly influenced the development of animal welfare legislation in the UK and the broader European context, marking the formal beginning of animal welfare as a recognized discipline. Building on the Brambell report, the Farm Animal Welfare Council (FAWC) was established in 1979. It formulated the Five Freedoms, a set of welfare standards that have since guided legislation and industry practices worldwide. These freedoms address both physical and mental well-being, providing a checklist to assess and improve the living conditions of animals on farms. Around the same time, Patrick Bateson proposed using the Bateson cube to determine the animal research that should not be approved by weighing the degree of suffering against the quality of the research and the medical benefits (Bateson, 1986).

In Europe, animal welfare has been further advanced through legislation. The Treaty of Lisbon, effective since 2009, explicitly recognizes animals as sentient beings, mandating that European Union policies consider animal welfare. This treaty represents a decisive step in acknowledging animals' moral and legal status, moving away from the notion of animals as mere property. The reason for including minimum animal welfare regulations in the community's legislation was to regulate the common market and avoid distortions in competition between farmers and animal-based food producers from different EU countries. As standards varied across nations, the EU established minimum standards and requirements for breeding, transport, slaughter, and more.


Additionally, various conventions and directives by the Council of Europe and the European Union have established minimum standards for the treatment of animals on farms. These standards focus on aspects such as transport, housing, slaughter, and also on the treatment of animals used for experimentation. These regulations aim to harmonize welfare standards across member states, ensuring a baseline of protection while allowing for the development of higher welfare practices.

The international community has also contributed to the evolution of animal welfare. The World Organisation for Animal Health (WOAH) has



Unsplash - Suvrajit S

In 1979, the Farm Animal Welfare Council (FAWC) was established in the UK and formulated the Five Freedoms, a set of welfare standards that have since guided legislation and industry practice around the world. These freedoms cover both physical and mental welfare and provide a checklist for assessing and improving the living conditions of animals on farms.



promoted global animal welfare standards. The WOA's guidelines provide a general framework for assessing and improving animal welfare, focusing on health, comfort, nutrition, safety, and the ability to express natural behaviors. These efforts highlight the growing recognition of animals' interests and the necessity of safeguarding their well-being in diverse contexts.

## ■ DEFINITION OF ANIMAL WELFARE

Animal welfare lacks a universally recognized definition because it varies significantly across countries and regions and is influenced by cultural norms, socioeconomic status, and local surroundings (Manzoor, 2018). Despite this variability, a widely accepted framework is the Five Freedoms, which stipulates that animals should be free from hunger and thirst, discomfort, pain, injury or disease, fear, and distress and have the freedom to express normal behavior.

The WOA assesses animal welfare based on observable outcomes such as health, comfort, nutrition, safety, the ability to express innate behaviors, and the absence of pain, fear, and distress. This approach aligns closely with the Five Freedoms but emphasizes outcomes over prescribed conditions.

A more nuanced perspective focuses on alleviating negative experiences and promoting positive states, such as pleasure and comfort. This focus on positive states was motivated by the recognition that good animal welfare requires the animal to have a «life worth living» (Mellor et al., 2020). The concept of «a life worth living» acknowledges that animals, as sentient beings, have complex needs beyond basic survival, extending to their mental and emotional well-being. The updated Five Domains Model includes Nutrition, Physical Environment, Health, Behavioral Interactions, and Mental State, offering a more comprehensive evaluation framework. This model highlights the importance of human-animal interactions, recognizing that compassionate care can significantly impact animal well-being.

The scientific community has contributed significantly to defining and understanding animal welfare. Research has shown that animals display various complex emotions, and these findings have, to some extent, been included in legislation improving animal welfare. Moreover, studies on animal sentience have demonstrated that all vertebrates and some invertebrates are sentient, strengthening the argument for their inclusion in animal welfare assessments and regulations.

## ■ ABOLITIONISM VS WELFARISM

Legal scholar Gary Francione is famous for arguing that animal welfare (welfarism) is incompatible with animal rights (abolitionism) because supporting animal welfare perpetuates the exploitation of animals, making people feel good about consuming animal products (Francione, 1996; Francione & Charlton, 2015). The sharp divide between welfarism and abolitionism may be theoretically helpful in understanding the difference between arguing for bigger cages and arguing for no cages because animals are no longer considered commodities exploited by different industries.

However, this dichotomy has also divided the animal rights movement, probably benefiting the animal agriculture industry. It overlooks the fact that some animal welfare regulations may reduce animal suffering in the short term and that these regulations have banned certain violent practices, such as battery cages and gestation crates. Opposing animal welfare regulations may imply accepting the suffering of animals in the short term (Chiesa, 2016, p. 571).

Moreover, it presents a simplistic account of animal advocacy when non-profits' work is far more intricate and strategic (Kankyoku, 2023). They take on different campaigns with different short-term and long-term purposes to reduce animals' suffering and protect their rights. The dichotomy may also be outdated, considering that the rise of plant-and-cell-based alternatives to animal products allows advocates to advance animal rights through both abolition and welfare-focused legal advocacy (Gleckel et al., 2024).

The debate between welfarism and abolitionism has transformed *animal welfare* into a dirty word (Kankyoku, 2023), causing confusion on the importance of animal welfare science as a tool to ensure we are adequately meeting animals' needs and including those findings in the law to protect animals as sentient beings with specific interests.

Animal welfare science can even support the decision to abolish certain activities. For example, research is clear on zoos' and aquariums' inadequacy to ensure the needs of animals like chimps, elephants, and cetaceans. Research has shown that chimps have mental problems even in the best zoos, with larger, more natural-looking spaces and environmental enrichment (Birkett & Newton-Fisher, 2011). Research has also shown that captivity in zoos and aquariums causes brain damage to mammals with large brains, like elephants, and cetaceans (Jacobs et al., 2022). These findings have been used by advocates in Spain, notably the Great Ape Project, to push for a great ape bill banning their captivity in zoos and

private homes, which the Spanish government is preparing to present to Congress.

Even some zoos have acknowledged the impossibility of offering elephants adequate living conditions (McDiarmid Jr., 2015). Despite the undeniable amount of scientific evidence indicating that these animals' welfare is compromised in zoos and aquariums because of the enormous mental, physical, and emotional harm it causes, the law ignores these scientific advances. It sacrifices the protection of vulnerable sentient beings for the industry's interests in continuing their business (Casal & Montes Franceschini, 2023).

Furthermore, if the world becomes plant-based, animal welfare will still be needed to determine how to ensure adequate living conditions for the animals we care for in sanctuaries, the animals with whom we share our surroundings, and the animals living in nature. The welfare of these latter animals has become a relevant field for animal welfare scientists as they face the detrimental impacts of hunting, population control, habitat destruction, zoonotic diseases, and climate change. This scientific research should inform public policy to design protocols that help animals living in nature in cases of disease, drought, heatwaves, wildfires, hurricanes, and flooding. Scientists can also assist in determining when specific interventions can cause more damage than good to animals living in nature.

#### ■ ANIMAL WELFARE LEGISLATION IN EUROPE

The European Union has been at the forefront of developing animal welfare legislation. One of the EU's advances in animal welfare was the ban on battery cages for laying hens. Directive 1999/74/EC, which came into full effect in 2012, prohibits the use of conventional battery cages. These cages, which confined hens in extremely cramped conditions, were replaced by «enriched cages» that provide more space, perches, and nesting areas, allowing hens to express more natural behaviors. Although these enriched cages were an improvement to battery cages, hens' living conditions are still poor.

The use of gestation crates for sows is a common and cruel practice in the pork industry. Directive 2008/120/EC, which took full effect in 2013, prohibits the use of individual gestation crates for pregnant sows after the first four weeks of pregnancy. This legislation ensures that sows have more freedom of movement and the ability to socialize with other pigs, improving their welfare.



Unsplash - Annie Spratt

The Treaty of Lisbon, in force since 2009, explicitly recognises animals as sentient beings and requires EU policies to take their welfare into account. This treaty represents a decisive step in recognising the moral and legal status of animals, moving away from the idea of animals as mere property.

**«Animal welfare lacks a universally recognized definition because it varies significantly across countries and regions and is influenced by cultural norms, socioeconomic status, and local surroundings»**





Regarding the use of cages for animals raised for consumption, animal welfare standards are evolving with society's interest in offering better conditions for animals. Scientific advances in animal welfare are making it possible to prohibit the use of cages across the European Union. The «End the Cage Age» initiative is a notable effort in this direction, with the European Commission committing to phase out the use of cages for animals raised on farms by 2027. This initiative has garnered significant support, including over 1.4 million signatures from EU citizens. It aims to end the use of cages for hens, sows, calves, rabbits, ducks, geese, and other animals raised on farms. This evolution of the European Union's legislation reflects a growing acknowledgment that animal welfare is not just about freedom from suffering but also about providing a life worth living.

European Union legislation has also regulated animal transportation. Council Regulation (EC) No 1/2005 sets standards for the transport of live

animals within the EU. It includes provisions to ensure animals are fit for transport and have sufficient space, ventilation, and access to water and feed during journeys. The regulation also mandates rest periods and limits on journey times with the purpose of reducing the stress and suffering experienced by animals during transport.

Comparing animal transport regulations between the European Union and the United States reveals a difference in the importance given to animal welfare. In the EU, Council Regulation (EC) No 1/2005 stipulates a maximum journey time of eight hours for transporting cattle, pigs, sheep, and goats unless specific conditions allow for an extension. Additionally, animals must have a 24-hour rest period after a certain amount of travel time, with access to feed and water during these breaks. In contrast, in the United States, the Twenty-Eight Hour Law mandates that animals transported across state lines must be unloaded for at least five hours of rest, food, and water after 28 consecutive hours of travel. Thus, the European Union has more stringent regulations on maximum journey times and mandatory rest periods. Whether these regulations are implemented and enforced is a different story. The enforcement of animal welfare regulations is a problem globally, as we explain in the next section.

The EU has also implemented regulations to ensure humane slaughter practices. Council Regulation (EC) No 1099/2009 requires that animals be spared any avoidable pain, distress, or suffering during slaughter. This includes mandatory stunning before slaughter, except in cases of religious slaughter, where additional measures are required to minimize suffering.

Regarding animals used in other industries, several European countries have banned fur farming. The Netherlands, Austria, the United Kingdom, and most recently, Estonia have implemented bans on fur farming, reflecting a growing consensus that the practice is incompatible with animal welfare standards.

The EU has also taken steps to regulate the reduction and replacement of animals in scientific research and testing. Directive 2010/63/EU on the protection of animals used for scientific purposes emphasizes the principles of the Three Rs (Replacement, Reduction, and Refinement) and establishes standards for the care and use of laboratory animals. Additionally, the EU has banned the sale of cosmetics tested on animals, further promoting the development of alternative testing methods.



A major step forward for animal welfare was the ban on battery cages for laying hens.

**«In 1965, the British government established the Brambell Committee to investigate farm animal welfare»**

Moreover, on December 7, 2023, the European Commission proposed new rules on the welfare and traceability of dogs and cats and stricter rules during their transport to control the breeding and trade of these animals and fight their illegal trade within the European Union.

## ■ CHALLENGES

Despite these advances, the Vivotecnica lab scandal in Spain highlights ongoing challenges in enforcing animal welfare regulations. The scandal revealed significant noncompliance with the Three Rs, underscoring the difficulties in ensuring adherence to laboratory regulations. To complicate matters more, the Spanish transposition of the EU directive on animal experimentation stipulates that research projects are authorized for five years, but a project justified at the outset may no longer be justifiable within a year or two. Yet, animals continue to be used for research in such projects.

Undercover investigations in other industries, such as Lidl's broiler chicken scandal in Germany, Spain, and Italy, confirm the lack of enforcement of animal welfare regulations. The reality is daunting. Thousands of live animals are transported in overcrowded conditions for long distances. The slaughter line speed makes inspection to ensure compliance with regulations practically impossible. Effective enforcement remains critical, requiring robust oversight and accountability mechanisms. Most importantly, there needs to be a government-supported shift towards a plant-based diet to reduce the production and consumption of animal products drastically.

Additionally, industrial animal agriculture has dominated the legislative debates and policymaking, while the welfare of animals living in nature has been understudied. However, humans are driving climate change and deforestation and continuing hunting and poaching, which are mutilating entire branches of the tree of life (Ceballos & Ehrlich, 2023), causing extreme suffering to animals living in nature. Hence, the legal implementation of animal welfare is more important than ever to alleviate the suffering of animals living in nature and protect their interests.

## ■ TOWARDS A LEGAL SYSTEM THAT PROTECTS ANIMALS

The evolution of animal welfare indicates humanity's evolving morality regarding animal suffering. From the establishment of the Brambell Committee in

# PUBLIC HEARING

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AND RURAL DEVELOPMENT  
COMMITTEE ON PETITIONS



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<https://www.europarl.europa.eu/committees/en/agri/meetings/webstreaming>

European  
Citizens' Initiative

## "End the Cage Age"

Chairs: **Norbert Lins** (AGRI)  
and **Dolors Montserrat** (PETI)



European Parliament

Through the «End the Cage Age» initiative, the European Commission has pledged to phase out the use of cages for farm animals by 2027. This initiative has garnered significant support, with more than 1.4 million signatures from EU citizens.

**«The Vivotecnica lab scandal in Spain  
highlights ongoing challenges in enforcing  
animal welfare regulations»**



Human Society of the United States

The use of gestation cages for sows is a common and cruel practice in pig farming.

1965 to the formulation of the Five Freedoms and subsequent European directives, efforts to codify animal welfare standards have aimed to ensure the basic interests of animals, such as freedom from hunger, discomfort, and pain. The European Union has been a leader in enacting legislation, such as banning battery cages and gestation crates, advancing now to the end of the use of cages, and regulating animal transportation and slaughter practices.

One of the most hotly debated issues, and a source of division among advocates, is the conflict between welfarism and abolitionism. However, this debate has taken a backseat in recent years, as efforts to reduce animal suffering in the short term and develop plant-and-cell-based proteins have gained priority. Nonprofits' advocacy work is far more nuanced than this debate suggests. Labeling *animal welfare* as a negative term only confuses people about the relevance of animal welfare science in safeguarding animals' interests.

However, challenges persist, as highlighted by scandals like Vivotecnica and Lidl's broiler chickens in Europe. These scandals reveal gross gaps in compliance and enforcement with animal welfare regulations, stressing the need for stringent inspection and accountability and, most importantly, a government-supported shift towards a plant-based diet to reduce the production and consumption of animal products drastically. Furthermore, as climate change, habitat destruction, hunting, and poaching threaten animals living in nature, developing and implementing animal welfare for these animals has become increasingly urgent. Collaboration between governments, scientists, advocates, and industry is essential to advance towards a compassionate world that does not exploit animals and a legal system that protects their interests effectively. ☺

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