

2019

Agricultural Exceptionalism and Industrial Animal Food Production: Exploring the Human Rights Nexus

Charlotte E. Blattner
Harvard University

Odile Ammann
University of Zurich

Follow this and additional works at: <https://scholarworks.uark.edu/jflp>

Recommended Citation

Blattner, C. E., & Ammann, O. (2020). Agricultural Exceptionalism and Industrial Animal Food Production: Exploring the Human Rights Nexus. *Journal of Food Law & Policy*, 15(2). Retrieved from <https://scholarworks.uark.edu/jflp/vol15/iss2/9>

This Article is brought to you for free and open access by ScholarWorks@UARK. It has been accepted for inclusion in *Journal of Food Law & Policy* by an authorized editor of ScholarWorks@UARK. For more information, please contact scholar@uark.edu.

—Journal of—
FOOD & LAW
—POLICY—

Volume Fifteen

Number Two

Fall 2019

AGRICULTURAL EXCEPTIONALISM AND INDUSTRIAL ANIMAL
FOOD PRODUCTION: EXPLORING THE HUMAN RIGHTS NEXUS
Charlotte E. Blattner and Odile Ammann

Agricultural Exceptionalism and Industrial Animal Food Production: Exploring the Human Rights Nexus*

Charlotte E. Blattner** & Odile Ammann***

Abstract

The host of negative effects of animal agriculture on the immediate environment, workers, and local communities are well-documented, yet little is known about the global repercussions of animal agriculture, especially on human rights guarantees. This contribution attempts to begin filling this soaring gap. It examines the nexus between industrial animal agriculture (with a focus on concentrated animal feeding operations (CAFOs)) on the one hand, and specific international human rights violations on the other hand. Our emphasis is on the role of government in producing these violations, rather than on the agribusiness itself. Laws originally designed to govern small family farms—so-called “farmers’ rights” laws, including right-to-farm laws and exemptions from environmental and animal law—now protect corporate giants, many of which are multinationals. Governments enacting and upholding farmers’ rights shield agribusiness activities that are damaging to the environment and humans’ livelihoods from regulation. While they are *prima facie* at liberty to do so under domestic law, their laws are subject to the scrutiny of international law, particularly the human rights regime that promises to put a halt to the ongoing insulation of animal agriculture. The human rights perspective adds valuable dynamics to the ongoing debate, is novel in application to the issue, and opens new pathways for academic inquiries and legal strategies because—unlike nuisance laws, environmental laws, and animal protection laws, which *de facto* exempt the issue from judicial scrutiny—these laws can be used to hold governments accountable. The human rights discourse also gives rise to community empowerment and innovative forms of advocacy and forges connections between the different social justice issues implicated in

* This article has benefited immensely from the feedback received from participants at the Harvard Animal Law & Policy Program Workshop, which was held at Harvard Law School on April 24, 2019. Our special thanks go to Salma Waheedi for her critical eye and enthusiasm. The authors also thank Paolo Farah and the participants in the meeting of the international environmental law interest group of the European Society of International Law (Naples, Sept. 6, 2017) for their valuable feedback. Last but not least, we are greatly indebted to JFLP’s editorial team for its outstanding editorial assistance.

** MLaw, PhD in Law, LL.M. (Harvard), Visiting Researcher at Harvard Law School, Cambridge MA (cblattner@law.harvard.edu).

*** MLaw, PhD in Law, LL.M. (Harvard), Postdoctoral Researcher at the University of Zurich, Switzerland (odile.ammann@rwi.uzh.ch).

animal agriculture. Finally, we show how scholars, researchers, stakeholders, and the public concerned about human rights issues can bring animal agriculture into the conversation and prompt their governments to address the issue proactively.

Key words: Animal Agriculture, Human Rights, Right to Food, Right to Water, Right to a Safe Environment, Right to Land, Farming, Food Security, Animal Protection, Food Sovereignty, CAFO

I. North Carolina, the Front Line

Violet Branch, seventy-one, is one of innumerable residents of North Carolina that have an acrid odor of rotting eggs fill their homes at least twice per week, causing them nausea and heavy vomiting.¹ Branch flees to the nearby supermarket, where she “paces the aisles until her breathing returns to normal.”² The odor is a toxic slurry that comes from nearby factory farms, known as CAFOs,³ that confine animals by the thousands, spray manure over nearby fields and houses, and store it in uncovered cesspools. In North Carolina alone, about nine million pigs are raised on 2,300 factories, producing ten billion pounds of wet animal waste per year.⁴ Research shows that the fecal bacteria finds its way into open water, ground water, the air, and homes, and causes hepatitis, typhoid, dysentery, and other diseases.⁵ Long-term health hazards include higher risks of cancer and spontaneous abortions.⁶ Along with Branch, over five hundred plaintiffs brought a total of twenty-six suits against Murphy Brown, a subsidiary of Smithfield Foods, for degrading their quality of life and reducing the value of their property.⁷ The smell drove away their customers; cookouts, playing

¹ Lily Kuo, *The World Eats Cheap Bacon at the Expense of North Carolina's Rural Poor*, QUARTZ (July 14, 2015), <https://qz.com/433750/the-world-eats-cheap-bacon-at-the-expense-of-north-carolinas-rural-poor/>.

² *Id.*

³ In the US, the Environmental Protection Agency (EPA) classifies concentrated animal feeding operations into CAFOs and AFOs (under the NPDES Program). AFO is a “medium-sized” CAFO with 200-699 dairy cows, 750-2499 pigs, 9,000-29,000 laying hens, or 37,500 to 124,999 chickens. 40 C.F.R. § 122.23(b)(6) (2019). Anything beyond that is considered a CAFO. 40 C.F.R. § 122.23(b)(4) (2019).

⁴ Zoë Schlanger, *What Will Happen When Hurricane Florence Hits North Carolina's Massive Pig Manure Lagoons?*, QUARTZ (Sept. 11, 2018), <https://qz.com/1386629/hurricane-florence-threatens-north-carolinas-pig-manure-lagoons/>.

⁵ C.D. Heaney et al., *Source Tracking Swine Fecal Waste in Surface Water Proximal to Swine Concentrated Animal Feeding Operations*, 511 SCI. TOTAL ENV'T 676, 676-77 (2015).

⁶ JoAnn Burkholder et al., *Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality*, 115 ENVTL. HEALTH PERSP. 308, 310 (2007).

⁷ Kuo, *supra* note 1.

in the yard, or just sitting on the porch became impossible; they could not have friends over anymore; feces collected on their houses and cars; swarms of flies followed them; and their children were teased at school.⁸ In this place where “the smell of excrement seeps into all aspects of routine life,”⁹ people are “held prisoners in their own home.”¹⁰

In spring 2018, juries awarded plaintiffs in five cases a total of \$574 million.¹¹ This is the first success for North Carolina communities in a twenty-five-year series of public concern, outrage, and sheer helplessness. Twenty-one of the twenty-six cases are still outstanding—opening a window for an alternative future.¹² Yet, the horrors people living near factory farms incur do not seem to bother North Carolina lawmakers, who just passed new legal protections for the companies, restricting suits over pollution, odor, and other “nuisance” claims.¹³ Following North Carolina, legislators in Utah, Nebraska, Georgia, West Virginia, and Oklahoma have proposed and, in some cases, passed legislation that will make similar lawsuits impossible.¹⁴ Republican Representatives Jimmy Dixon of Duplin County, John Bell of Wayne County, and Tim Moore of Cleveland County, the House speaker, issued a statement saying they “will continue to fight for hardworking North Carolina farm families and their communities by opposing any coordinated legal assault that seeks to profit off their livelihoods and potentially shut down their farms. . . . There is no right more fundamental than the right to feed our families.”¹⁵ The spokesman for the North Carolina Pork Council, Robert Brown, said that the lawsuits are just “another effort by fringe groups” that lacks merit and that “farms and farmers take seriously the obligation to feed people in a responsible way that protects our communities.”¹⁶

⁸ *Id.*

⁹ Schlanger, *supra* note 4.

¹⁰ Kuo, *supra* note 1.

¹¹ The nature of these laws varies. Some reduce the damages (e.g., by banning punitive damages), others limit the distance from the farm at which the neighbor must live. Leah Douglas, *Big Ag is Pushing Laws to Restrict Neighbors' Ability to Sue Farms*, NPR (Apr. 12, 2019), <https://www.npr.org/sections/thesalt/2019/04/12/712227537/big-ag-is-pushing-laws-to-restrict-neighbors-ability-to-sue-farms>.

¹² *Id.*

¹³ Will Doran, *After Smithfield Lost Millions in Lawsuits, NC Changed A Law. Was It Constitutional?*, THE COURIER-TRIBUNE (June 21, 2019), <https://www.courier-tribune.com/news/20190621/after-smithfield-lost-millions-in-lawsuits-nc-changed-law-was-it-constitutional>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

What responsibility means in these circles is as little discussed as the fact that the “hardworking North Carolina farm families” are in fact a single \$15 billion corporation.¹⁷ Another fact kept under wraps by the industry is that black residents are 1.54 times as likely to be affected by industrial pork operations than white residents, American Indian residents 2.18 times as likely, and Hispanic residents 1.39 times as likely.¹⁸ Though Smithfield pledged in 2000 to spend \$17 million to research waste alternatives, “environmentally superior technologies” were never adopted, for the simple reason that they were “too costly.”¹⁹ In a place where pigs outnumber humans thirty-two to one, the real concern of corporate giants is their benefits of keeping the pork as low as \$2.50 per pound,²⁰ rather than the detriments to the community, animals, or the environment.

With democratic processes and the law now being blocked, communities are turning to extra-legal measures. In May 2019, the documentary *Right to Harm* was released, shining light on how people live (and die) for their battles for health, quality of life, and a safe environment.²¹ However, with climate change proceeding at an astounding rate and extreme weather becoming more frequent, North Carolina’s happy years of ignorance and denial are numbered. Hurricanes Floyd (in 1999), Matthew (in 2016), and Florence (in 2018) hit North Carolina with storms, floods, and feces that haunted the area for the past twenty-five years and washed ashore the many human and animal bodies that fall victim to the industry on a daily basis.²²

The topic brings to the fore a host of ethical, socio-political, and economic issues that, as we argue, are not germane to North

¹⁷ *Id.*

¹⁸ Steve Wing & Jill Johnston, *Industrial Hog Operations in North Carolina Disproportionately Impact African-Americans, Hispanics and American Indians*, U. N.C. CHAPEL HILL (Aug. 29, 2014), <http://www.ncpolicywatch.com/wp-content/uploads/2014/09/UNC-Report.pdf>. This disparate impact is also witnessed with regard to the enjoyment of specific human rights. See, e.g., U.N. Human Rights, Office of the High Comm’r for Human Rights, *The Right to Adequate Food: Fact Sheet No. 34*, at 9–17 (Apr. 2010), <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf> [hereinafter *Fact Sheet No. 34*].

¹⁹ Kuo, *supra* note 1.

²⁰ *Id.*

²¹ See Lisa Held, *New Film Captures the Brutal Reality of Living Near Factory Farms*, CIVIL EATS (May 2, 2019), <https://civileats.com/2019/05/02/new-film-captures-the-brutal-reality-of-living-near-factory-farms/>.

²² Schlanger, *supra* note 4; Emily Moon, *North Carolina’s Hog Waste Problem Has a Long History—Why Wasn’t It Solved in Time for Hurricane Florence?*, PACIFIC STANDARD (Sept. 16, 2018), <https://psmag.com/environment/why-wasnt-north-carolinas-hog-waste-problem-solved-before-hurricane-florence>.

Carolina, but that plague the world as a whole. Research has shown the effects of animal agriculture on the environment, local communities, and workers' rights, but we have yet to uncover how the growth and intensification of animal production have begun to threaten and violate human rights more broadly, indirectly, and pervasively. So while the most direct and short-term impacts of agriculture are now well-documented,²³ its long-term impacts and effects on environments and communities more distant are still underexplored. Moreover, the North Carolina experience of nuisance lawsuits and efforts to block them is part of a much larger, worldwide topography in which animal agriculture enjoys quasi-immunity from the law.

In this paper, we analyze factory farming in connection with the laws protecting these businesses under international human rights law, a dimension yet unexamined by legal scholarship and largely unaddressed in public and parliamentary deliberations. We show how animal agriculture—and with it, the laws that insulate it—compromise human rights guarantees such as the right to water, land, food, and a safe environment, and how this must affect public discourse about the legitimacy and continued support of the industry. Our focus is on establishing how governments, by passing these laws or failing to regulate, threaten these human rights, rather than on showing whether agricultural enterprises, as non-state actors, can be held accountable.²⁴ This is not to say that the activities of non-state

²³ See discussion *infra* Section II.A.

²⁴ In other words, we are focusing on the state duty to protect rather than the corporate duty to respect human rights. Multiple sources discuss corporate responsibility for human rights violations. See Human Rights Council, Protect, Respect and Remedy: A Framework for Business and Human Rights, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008); John Ruggie (Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011); U.N. Human Rights, Office of the High Comm'r for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide* (United Nations 2012), https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf. The *Chiquita* cases provide an example, involving allegations of payments made by Chiquita to a paramilitary organization that targeted and killed over four hundred Colombians. After bringing lawsuits in domestic forums for over a decade, in May 2017, human rights organizations urged the International Criminal Court to investigate actions of fourteen former and current Chiquita executives and employees, suggesting they committed or were complicit in crimes against humanity. *Chiquita Lawsuits (re Colombia)*, BUS. & HUMAN RIGHTS RES. CTR., <https://www.business-humanrights.org/en/chiquita-lawsuits-re-colombia> (last visited Dec. 28, 2019); see Caleb Wheeler, *Commentary: ICC Prosecution for Crimes Committed by Chiquita Banana Employees in Columbia Will Most Likely Fail*, BUS. & HUMAN RIGHTS RESOURCE CTR. (Sept. 13, 2018),

actors are not urgent or do not deserve our attention, but in this article, we choose to first center the discussion on the role of states.

The rights we examine in this article are social, cultural, and economic rights, which are typically more difficult to secure and enforce than civil and political rights.²⁵ Hence, the violation of these rights might (wrongly) be shrugged off by powerful corporate and governmental actors. Despite these practical obstacles, the human rights perspective adds valuable dynamics to the ongoing debate, is novel in application to the issue, and may open new pathways for academic inquiries and legal strategies. While to date, nuisance laws, environmental laws, and animal protection laws have remained *de facto* exempt from judicial scrutiny in numerous states, human rights guarantees can be used to hold governments accountable. The human rights discourse also gives rise to a community of empowerment, new forms of advocacy, and the use of legal instruments in defense of marginalized groups.²⁶ It offers new avenues for providing help to vulnerable persons and forges connections between the different social justice issues implicated in animal agriculture. Finally, our aim is to show how scholars, researchers, stakeholders, and the public concerned about human rights issues can bring animal agriculture into the conversation, and begin to use their power to hold their governments accountable and prompt them to address the issue proactively.

We begin with a brief overview of the environmental and social realities of agriculture, the role of law in producing them, and new research uncovering its global ramifications (Part II). We then identify and discuss the most invasive farmers' rights—a broad term that we define as encompassing right-to-farm laws and exemptions from environmental and animal laws—and show how they have come to primarily protect large corporations. We examine the existence, scope, and form of these laws in comparative perspective in the United States (US), Canada, and Australia. We also highlight the situation at the level of the European Union (EU), which—due to its limited competences—does not have comparable right-to-farm laws (Part III). In a third step, we analyze whether and how farmers'

committed-by-chiquita-banana-employees-in-columbia-will-most-likely-fail (providing a recent update).

²⁵ See PAUL FARMER, *PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS AND THE NEW WAR ON THE POOR* 29 (Univ. of Cal. Press 2005).

²⁶ Morten Broberg & Hans-Otto Sano, *Strengths and Weaknesses in a Human Rights-Based Approach to International Development: An Analysis of a Rights-Based Approach to Development Assistance Based on Practical Experiences*, 22 INT'L J. OF HUM. RTS. 664, 668 (2018), <https://www.tandfonline.com/doi/full/10.1080/13642987.2017.1408591>.

rights threaten the enjoyment of international human rights law (Part IV). We emphasize the right to food and the right to water and sanitation, which are entwined with the right to land.²⁷ We also examine whether farmers' rights undermine the people's right to a safe environment and the emerging human right to animal protection. Finally, we connect these developments to show that international human rights law cannot afford to ignore animal agriculture and its impacts on human rights any longer, and sketch the contours of an emerging body of litigation and advocacy (Part V).

Throughout this article, we focus on the biggest contributors to human rights violations in the area of animal agriculture, without regard to corporate form and including sub-contractors. For reasons of scope, we do not grapple with small-scale agriculture and its effect on human rights. We do not deny that such violations take place or deserve our attention, but given the novelty of this topic, we focus on where we think attention is most needed. We also do not examine the human rights implications of plant-based agriculture in this paper. However, as we highlight the drawbacks of animal agriculture, it is important to acknowledge that plant-based agriculture engenders its own difficulties—though on a much lesser scale—including with respect to international human rights law.²⁸ Given the breadth of issues covered in this paper, scope precludes offering an analysis of existing litigation and advocacy, but we do point to different entry points for operationalizing our arguments.

II. Animal Agriculture, Farmers' Rights, and Food Sovereignty

A. *The Realities of Agriculture*

Since 1960, the global population has more than doubled, increasing from three billion to over seven billion people. During this period, meat production has tripled, and egg and dairy production has quadrupled.²⁹ The high demand for animal products is predominantly satisfied by intensifying production in CAFOs where animals are housed in-doors in extreme confinement.³⁰

²⁷ Olivier de Schutter, *The Emerging Right to Land*, 12 INT'L COMMUNITY L. REV. 303 (2010).

²⁸ See, e.g., WWF, THE GROWTH OF SOY: IMPACTS AND SOLUTIONS (2014), http://d2ouvy59p0dg6k.cloudfront.net/downloads/wwf_soy_report_final_feb_4_2014.pdf.

²⁹ PEW COMM'N, REPORT ON INDUSTRIAL FARM ANIMAL PRODUCTION, PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA 50 (2008).

³⁰ *Id.*

Due to its intensification and proliferation, the animal industry has become one of the largest factors in environmental degradation. It consumes 70% of the global freshwater, drains on 38% of the global land in use, and causes 14% of the world's greenhouse gas emissions, generating more methane (CH₄), nitrous oxide (N₂O), and carbon dioxide (CO₂) than the global transport sector.³¹ CAFOs release immense amounts of ammonia (NH₃), hydrogen sulfide (H₂S), volatile organic compounds (VOCs), nitrous oxide (N₂O), and particulate matter (PM) that pollute air and water surfaces.³² CAFOs also produce disproportionate amounts of manure that overwhelm environmental systems and prevent natural cleansing or lead to overflow of manure lagoons.³³ Farmers' widespread use of antibiotics and antimicrobials to increase production has become a driving force in causing antimicrobial

³¹ Thereby, animal production has a much larger ecological footprint (or hoof print!) than plant-based diets. Oxford researchers Poore and Nemecek were the first to conduct a meta analysis of ~38,000 farms producing forty different agricultural goods around the world to assess the impacts of food production and consumption. They found, specifically, that plant-based diets reduce food emissions by up to 73% depending on where a person lives. Moreover, the impacts even of the lowest-impact animal products typically exceed those of vegetable substitutes. J. Poore & T. Nemecek, *Reducing Food's Environmental Impact Through Producers and Consumers*, 360 SCI. 987, 988 (2019); see also Camille Lacour et al., *Environmental Impacts of Plant-Based Diets: How Does Organic Food Consumption Contribute to Environmental Sustainability?*, FRONTIERS IN NUTRITION, Feb. 2018, at 4–5 (2018) (finding that “a higher pro-vegetarian score was associated with lower environmental impacts”); see also 2050: *A Third More Mouths to Feed*, FAO.ORG (Sept. 23, 2009), <http://www.fao.org/news/story/en/item/35571/icode/>; UNEP, ASSESSING THE ENVIRONMENTAL IMPACTS OF CONSUMPTION AND PRODUCTION: PRIORITY PRODUCTS AND MATERIALS 51, 79 (2010).

³² Susan M. Brehm, *From Red Barn to Facility: Changing Environmental Liability to Fit the Changing Structure of Livestock Production*, 93 CAL. L. REV. 797, 813 (2005); Sarah C. Wilson, *Hogwash! Why Industrial Animal Agriculture Is Not Beyond the Scope of Clean Air Act Regulation*, 24 PACE ENVTL. L. REV. 439, 441, 444 (2007). To put this into perspective, in Oregon, 52,300 dairy cows at Threemile Canyon Farms, LLC produce 5,675,500 pounds of ammonia per year, exceeding the top manufacturing source of ammonia pollution in the US by 75,000 pounds. *Id.* at 439, 441, 456.

³³ JIM MASON & PETER SINGER, ANIMAL FACTORIES 122 (Harmony Books 1990); PEW COMM'N, *supra* note 29, at 50; FOOD & AGRIC. ORG., LIVESTOCK'S LONG SHADOW, ENVIRONMENTAL ISSUES AND OPTIONS 272 (2006); ORG. FOR ECON. AND CO-OPERATION DEV., AGRICULTURE AND THE ENVIRONMENT: LESSONS LEARNED FROM A DECADE OF OECD WORK (2004), <http://www.oecd.org/greengrowth/sustainable-agriculture/agri-environmentalindicatorsandpolicies/33913449.pdf>. A CAFO that holds 500,000 pigs produces 6.5 million pounds of waste per day, the equivalent of waste produced per day by the city of Philadelphia with 6.2 million people. US CENSUS BUREAU, POPULATION CHANGE AND DISTRIBUTION: 1990 TO 2000, at 6 (Apr. 2001), <https://www.census.gov/prod/2001pubs/c2kbr01-2.pdf>. In 1995, a lagoon overflowed in North Carolina, spilling twenty-five million gallons of pig waste onto land and rivers; the Exxon Valdez oil spill, by contrast, emitted half of the volume. Brehm, *supra* note 32, at 812.

resistance in bacteria.³⁴ For example, pork industry workers in many countries are more often infected by *streptococcus aureus* than other individuals who do not work in this sector.³⁵ The most common bacterium is the ST 398 strain, which is multi-resistant to antibiotics.³⁶ The resulting reservoirs of resistant bacteria are of great concern from a public health and food security perspective.³⁷ Overuse of antimicrobials and antibiotics also increases the probability of new treatment-resistant strains (“superbugs”) that sometimes jump between species, and have been declared epidemic.³⁸ Persons suffering from zoonoses such as A/H7N7, AH5N1, AH1N1, and swine flu are chiefly industrial farm workers, who often lack protection by either their employer or the state.³⁹

More and more organizations are documenting these human rights violations in animal agriculture. *Human Rights Watch*, for example, found that:

Employers put workers at predictable risk of serious physical injury even though the means to avoid such injury are known and feasible. They frustrate workers’ efforts to obtain compensation for workplace injuries when they occur. They crush workers’ self-organizing efforts and rights of association. They exploit the perceived vulnerability

³⁴ Michael J. Martin et al., *Antibiotics Overuse in Animal Agriculture: A Call to Action for Health Care Providers*, 105 AM. J. PUB. HEALTH 2409 (2015); PEW COMM’N, *supra* note 29, at 11. In 2017, the World Health Organization (WHO) recommended that farmers and the food industry stop using antibiotics routinely to promote growth and prevent disease in healthy animals. *See Stop Using Antibiotics in Healthy Animals to Prevent the Spread of Antibiotic Resistance*, WORLD HEALTH ORG. (Nov. 7, 2017), <https://www.who.int/news-room/detail/07-11-2017-stop-using-antibiotics-in-healthy-animals-to-prevent-the-spread-of-antibiotic-resistance> (“WHO strongly recommends an overall reduction in the use of all classes of medically important antibiotics in food-producing animals, including complete restriction of these antibiotics for growth promotion and disease prevention without diagnosis. Healthy animals should only receive antibiotics to prevent disease if it has been diagnosed in other animals in the same flock, herd, or fish population.”).

³⁵ Anne Oppliger et al., *Antimicrobial Resistance of Staphylococcus Aureus Strains Acquired by Pig Farmers from Pigs*, 78 APPLIED AND ENVTL. MICROBIOLOGY 8010 (2012).

³⁶ *Id.*

³⁷ PEW COMM’N, REPORT ON ANTIMICROBIAL RESISTANCE AND HUMAN HEALTH 11 (2008); COMM’N ON GENETIC RES. FOR FOOD AND AGRIC., GLOBAL PLAN OF ACTION FOR ANIMAL GENETIC RESOURCES AND THE INTERLAKEN DECLARATION (2007).

³⁸ PEW COMM’N, *supra* note 29, at 15; WORLD HEALTH ORG., REPORT ON GLOBAL SURVEILLANCE OF EPIDEMIC-PRONE INFECTIOUS DISEASES 25–31 (2000), <https://www.who.int/csr/resources/publications/surveillance/plague.pdf?ua=1>.

³⁹ JOCELYNE PORCHER, THE ETHICS OF ANIMAL LABOR: A COLLABORATIVE UTOPIA 57 (Palgrave Macmillan 2017).

of a predominantly immigrant labor force in many of their work sites.⁴⁰

B. Farmers' Rights and Agricultural Exceptionalism

These inquiries and observations have brought issues to the fore that have been plaguing animal agriculture for many years. A key driver responsible for the ongoing proliferation of CAFO issues are “farmers’ rights,” which denote laws and regulations set up with the purpose of protecting farmers and their businesses by either shielding them from lawsuits or exempting them from the law altogether.

“Farmers’ rights” come in two forms: (i) right-to-farm laws and (ii) exemptions from environmental and animal laws. Right-to-farm laws prevent nuisance lawsuits⁴¹ against farmers engaging in “practices that are commonly or reasonably associated with agricultural production.”⁴² These laws declare such practices infeasible through statutory limitations for nuisance suits, through exemptions from zoning and disclosure, by declaring void opposing local ordinances, or by granting a fee recovery for the successful defense of a nuisance lawsuit.⁴³ By 1992, all fifty states of the US had enacted such laws, and equivalent legislation was passed in Australia and Canada soon after.⁴⁴ Right-to-farm laws emerged from an effort to preserve and promote small-scale farmers, to whom most people have an emotional connection and who many think make a valuable contribution to society.⁴⁵ Today, thanks to the corporatization of animal agriculture, these laws have come to benefit vertically integrated and monopolized corporations by insulating their actions and giving them virtual standard-setting authority.⁴⁶ Pointing to the host of environmental and social harms that emerged from this blanket authorization, critics label these laws

⁴⁰ HUMAN RIGHTS WATCH, BLOOD, SWEAT, AND FEAR: WORKERS’ RIGHTS IN US MEAT AND POULTRY PLANTS 1–2 (2004).

⁴¹ *E.g.*, nuisance lawsuits regarding noise, odors, visual clutter, or cruelty inflicted on animals.

⁴² *See, e.g.*, ARK. CODE ANN. § 2-4-107(b)(1) (West 2009).

⁴³ *See, e.g., id.*

⁴⁴ Laura Alford & Sarah Berger Richardson, *Right-to-Farm Legislation in Canada: Exceptional Protection for Standard Farm Practices*, 50 OTTAWA L. REV. 131, 136 (2018).

⁴⁵ *Id.* at 150.

⁴⁶ *Id.* at 151; David Pimentel, *Ethical Issues of Global Corporatization: Agriculture and Beyond*, 83 POULTRY SCI. SYMP.: BIOETHICAL CONSIDERATIONS IN ANIMAL PRODUCTION 321 (2004).

“right-to-harm bills.”⁴⁷ Parallel to the rise of right-to-farm laws, agribusiness successfully lobbied for numerous exemptions from laws seeking to protect water, land, soil, air, and, ultimately, human health and life.⁴⁸

These exemptions and right-to-farm laws are the most noteworthy farmers’ rights we examine herein, but they are only one manifestation of a broader, and more pervasive problem, namely that of agricultural exceptionalism. Agricultural exceptionalism is a belief system that fuels a range of exemptions or laws protecting agriculture from the purview of the public, including in the areas of environmental law, animal law, and property law (as we examine in this article), but also in trade law, employment law, and many other areas.⁴⁹ Agricultural exceptionalism became “fully established as part of the post-war welfare consensus”⁵⁰ and is today sustained by widely held views among the public, legislators, and the judiciary that farmers do us a service by providing the public with food. Even with readily available evidence showing that large animal agricultural business is often doing the opposite, as we will show in this article, the industry has resisted substantial transformation.⁵¹ Agricultural exceptionalism, by insulating agricultural producers from regulation, remains the dominant paradigm.

⁴⁷ Greg Stotelmyer, *Right to Farm or Right to Harm?*, PUB. NEWS SERV. (Apr. 3, 2015), <http://www.publicnewsservice.org/2015-04-03/animal-welfare/right-to-farm-or-right-to-harm/a45361-1>.

⁴⁸ See generally Alexandra Lizano & Elizabeth Rumley, *States’ Right-To-Farm Statutes*, NAT’L AGRIC. L. CTR., <https://nationalaglawcenter.org/state-compilations/right-to-farm/> (last updated June 11, 2019) (compilation of right-to-farm statutes for all fifty states).

⁴⁹ In the area of employment law, general health and safety regulations, minimum wage, and overtime requirements are all subject to exceptions for agricultural workers under the Fair Labor Standards Act. 29 U.S.C. § 213(a)(6) (2006). Regarding labor law, the most notable exemption is that the National Labor Relations Act, the US’s primary legislation governing the rights of workers to bargain collectively, excludes “agricultural laborers” from its definition of “employee” and its attendant protections. 29 U.S.C. § 213(b)(12) (2006); see generally Guadalupe T. Luna, *An Infinite Distance?: Agricultural Exceptionalism and Agricultural Labor* 1 U. OF PA. J. OF LAB. AND EMP. L. 487 (1998); Michael Trebilcock & Pue Kristen, *The Puzzle of Agricultural Exceptionalism in Trade Policy*, 18 J. OF INT’L ECON. L. 233 (2015) (analyzing agricultural exceptionalism in trade law).

⁵⁰ Carsten Daugbjerg & Peter Feindt, *Post-Exceptionalism in Public Policy: Transforming Food and Agricultural Policy*, 24 J. OF EUR. PUB. POL’Y 1565, 1570 (2017).

⁵¹ CARSTEN DAUGBJERG & ALAN SWINBANK, *IDEAS, INSTITUTIONS, AND TRADE: THE WTO AND THE CURIOUS ROLE OF EU FARM POLICY IN TRADE LIBERALIZATION* 12–14 (Oxford University Press 2009).

C. North Carolina is Everywhere

The short-term impacts of animal agriculture (and, thus, the laws exempting it) are now well-documented,⁵² but the long-term impacts and effects of these farming activities on the environments and communities further apart are still underexplored, including their contribution to global food shortages.⁵³ CAFOs remain the standard method of generating animal products while being grossly unsustainable from an ecological perspective and a driving cause of food scarcity. The ever-increasing consumption of animal products requires a significant portion of the world's crop production, raises cereal prices, and depletes grain available for direct human consumption. Because meat-based diets use far more of the global food and water resources than they provide, the high demand for water and protein-rich plants to produce meat threatens agriculture and drinking water supplies.⁵⁴ The inefficiency of animal agriculture compared to plant agriculture is striking: CAFOs require ten times the land and eleven times the fossil fuel-based energy that plant farming uses.⁵⁵

The continually high contribution of animal agriculture to food insecurity⁵⁶ has a disparate impact on the poor, locally and internationally. Locally, agricultural business practices stifle low-income communities, racial minorities, and migrant workers.⁵⁷ Animal agriculture is also contributing considerably to hunger and death on foreign soil: “[e]ighty-two percent of the world’s starving children live in countries where food is fed to animals, which are then killed and eaten by wealthier individuals in developed countries like

⁵² See discussion *infra* Section II.A.

⁵³ See discussion *infra* Sections IV.A, IV.D.

⁵⁴ See FOOD & AGRIC. ORG., STATISTICAL POCKETBOOK WORLD FOOD AND AGRICULTURE 30 (2015); UNEP, *supra* note 31, at 5; Felicity Carus, *UN Urges Global Move to Meat and Dairy-Free Diet*, THE GUARDIAN (June 2, 2010), <https://www.theguardian.com/environment/2010/jun/02/un-report-meat-free-diet>.

⁵⁵ Claus Leitzmann, *Nutrition Ecology: The Contribution of Vegetarian Diets*, 78 AM. J. CLINICAL NUTRITION 657 (2003); David Pimentel & Marcia Pimentel, *Sustainability of Meat-Based and Plant-Based Diets and the Environment*, 78 AM. J. CLINICAL NUTRITION 660S (2003).

⁵⁶ FOOD & AGRIC. ORG., WORLD FOOD SUMMIT PLAN OF ACTION ¶ 1 (1996) (“Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”).

⁵⁷ E.g., ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY (Routledge 3d ed. 2000); Catarina Passidomo, *Whose Right to (Farm) the City? Race and Food Justice Activism Post-Katrina New Orleans*, 31 AGRIC. & HUM. VALUES 385 (2014); MARY JANE ANGELO, JASON J. CZARNEZKI & WILLIAM S. EUBANKS II, FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW 90–91 (Envtl. Law Inst. 2013).

the US, UK, and in Europe.”⁵⁸ As the Food and Agriculture Organization (FAO) explains, due to the ongoing growth of CAFOs, “Sub-Saharan Africa’s share in the global number of hungry people could rise from 24 percent to between 40 and 50 percent” by 2050.⁵⁹ In line with this prediction, in March 2017, the United Nations (UN) announced that the world will soon witness the most severe famine since 1945.⁶⁰ Twenty million people face the threat of starvation and famine in Kenya, Somalia, South Sudan, and Yemen.⁶¹

Civil society’s growing awareness of the threat of food scarcity and dependence on foreign nations has sparked a global movement for food sovereignty, mostly in majority world countries.⁶² In 2007, five hundred delegates from eighty countries signed the Declaration of Nyéléni, a soft law instrument which recognizes peoples’ right to define their own agriculture and food

⁵⁸ Richard Oppenlander, *Animal Agriculture, Hunger, and How to Feed a Growing Global Population: Part One of Two*, FORKS OVER KNIVES (Aug. 20, 2013), <https://www.forksoverknives.com/animal-agriculture-hunger-and-how-to-feed-a-growing-global-population-part-one-of-two/#gs.nl6lav>; see also ERIC HOLT-GIMÉNEZ, POLICY BRIEF No. 16: THE WORLD FOOD CRISIS: WHAT’S BEHIND IT AND WHAT CAN WE DO ABOUT IT (Food First: Inst. for Food and Dev. Policy 2008).

⁵⁹ FOOD & AGRIC. ORG., HOW TO FEED THE WORLD IN 2050, at 30 (2009).

⁶⁰ See *UN Aid Chief Urges Global Action as Starvation, Famine Loom for 20 Million Across Four Countries*, U.N. NEWS (Mar. 10, 2017), <https://news.un.org/en/story/2017/03/553152-un-aid-chief-urges-global-action-starvation-famine-loom-20-million-across-four> (stating “at the beginning of the year [2017] we are facing the largest humanitarian crisis since the creation of the UN”).

⁶¹ U.N. NEWS, *supra* note 60. In the year 2017 alone, 1.4 million children were expected to starve to death. *UNICEF Warns That 1.4 Million Children Could Die from Famine in Four Countries*, DEUTSCHE WELLE (Feb. 21, 2017), <https://www.dw.com/en/unicef-warns-that-14-million-children-could-die-from-famine-in-four-countries/a-37643854> (stating “[a]lmost 1.4 million children suffering from severe malnutrition could die this year from famine in Nigeria, Somalia, South Sudan and Yemen . . .”).

⁶² In international law, we typically speak of “developing states” or the “Third World” to denote countries in juxtaposition to “developed countries.” These terms imply that development is a standardized and linear process, and that certain countries have finished developing while others are still striving to reach this form of development. Because there are many ways in which states evolve over time, and because nations should be recognized for their different strengths and challenges, these terms seem both incorrect and inappropriate. In recognition thereof, scholarship is increasingly using the terms “majority world” and “minority world.” The former highlights the fact that the majority of the world’s population lives in these parts of the world previously identified as “developing,” and the latter refers to those countries traditionally identified as “developed,” where a minority of the world’s population resides. See, e.g., Shahidul Alam, *Majority World: Challenging the West’s Rhetoric of Democracy*, 34 AMERASIA J. 87 (2008); Samantha Punch, *Exploring Children’s Agency Across Majority and Minority World Contexts*, in RECONCEPTUALISING AGENCY AND CHILDHOOD: NEW PERSPECTIVES IN CHILDHOOD STUDIES 183 ff. (Florian Esser et al. eds., 2016).

policies.⁶³ In the years following the declaration, Bolivia, Ecuador, Egypt, Mali, Nepal, Senegal, Venezuela, and other states have enshrined the right to food sovereignty in their constitutions, making it a core aspiration of their policies to reclaim authority in decision-making and the production of food.⁶⁴ This movement strongly resonates with the early motivations for right-to-farm laws, namely to ensure that food can be produced locally and feeds the people. Thanks to the appropriation of right-to-farm laws by corporate giants, however, the two are now diametrically opposed: the Global South struggles to regain security over food, while the Global North claims a right to harm.

This brief overview of the most pressing issues that dominate the intersections of animal agriculture, the environment, and human rights paints a dire picture, yet a loosely connected one. In what follows, we zoom in on the most invasive farmers' rights in the US, Canada, Australia, and the EU. We focus on existing laws and regulations, but also discuss proposed bills. We show how these laws have withstood judicial and public scrutiny even in the face of the most flagrant pollutions and human rights violations, among others, because they have come to protect primarily large corporations. As we will argue, it is these farmers' rights—forming part of the web of agricultural exceptionalism—that make human rights violations possible. After all, states are not only uncommitted to regulating the issue, but they aim to declare legal grossly illegal practices. While states are *prima facie* at liberty to do so under domestic law (when it comes to environmental law, animal law, etc.), their laws are subject to international scrutiny, particularly the international human rights law regime, which can put a halt to the ongoing insulation of animal agriculture.

III. The Rise of Farmers' Rights

A. United States

Under the long-standing US common law nuisance rule, agricultural operations could not unreasonably interfere with other landowners' use and enjoyment of land or cause them personal or emotional harm.⁶⁵ In 1980, due to the rapid demographic expansion

⁶³ See, e.g., *Declaration of Nyéléni*, NYELENI.ORG (Feb. 27, 2007), <https://nyeleni.org/spip.php?article290>.

⁶⁴ Adam Payne & Stanka Becheva, *Food Sovereignty from the Ground Up*, ILEIA (Apr. 18, 2017), <https://www.ileia.org/2017/04/18/editorial-food-sovereignty-from-the-ground-up/>.

⁶⁵ Jason Jordan, *A Pig in the Parlor or Food on the Table: Is Texas' Right to Farm Act an Unconstitutional Mechanism to Perpetuate Nuisances or Sound Public Policy*

and urbanization witnessed in the US, the country was estimated to lose close to three million acres of land previously used for agricultural purposes per year.⁶⁶ In reaction to the growing urban sprawl, Iowa, Louisiana, and Wyoming passed the first right-to-farm statutes in 1978.⁶⁷ The goals of these laws were to shield farmers from nuisance suits and to prevent further loss of agricultural land.⁶⁸ Starting in the 1980s, all fifty states began to enact right-to-farm laws,⁶⁹ a development pushed by strong agricultural lobbying and spurred by Congressional plans to exempt farms from federal environmental laws.⁷⁰

While US right-to-farm laws widely differ in terms of scope and applicability, they all protect agricultural practices through one or several of the following means:

- *The “Coming to the Nuisance Doctrine”*: Nuisance lawsuits aimed at halting disproportionate noise, odors, visual clutter, or cruelty inflicted on animals cannot be brought against operations that preexisted surrounding land uses.⁷¹
- *Statutes of Limitations*: Plaintiffs can introduce a lawsuit during a limited period of time only (usually one year) after the beginning of a harmful activity. US

Ensuring Sustainable Growth?, 42 TEX. TECH L. REV. 943, 951 (2010); see, e.g., *Pendoley v. Ferreira*, 187 N.E.2d 143, 146–47 (Mass. 1963) (providing an example in which a pig producer had to liquidate his business as he expanded his pig production, due to nuisance suits by the nearby village).

⁶⁶ NAT’L AGRIC. LANDS STUDY, FINAL REPORT 1981, at 8, 35 (1981) (stating “the United States has been converting agricultural land to nonagricultural uses at the rate of about three million acres per year . . .”). In Oakland County, for example, 50.8% of the land area constituted farmland in 1950, while in 1978, this proportion had shrunk to 13.9%. 1 BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, UNITED STATES CENSUS OF AGRICULTURE: 1950, pt. 6, at 46 (1952); 1 BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, 1978 CENSUS OF AGRICULTURE 1978, pt. 22, at 504 (1981).

⁶⁷ Jeffrey R. Gittins, *Bormann Revisited: Using the Penn Central Test To Determine the Constitutionality of Right-To-Farm Statutes*, 2006 BYU L. REV. 1381, 1383.

⁶⁸ *Id.*

⁶⁹ Ross H. Pifer, *Right to Farm Statutes and the Changing State of Modern Architecture*, 46 CREIGHTON L. REV. 707, 710 (2013).

⁷⁰ David N. Cassuto, *THE CAFO HOTHOUSE: CLIMATE CHANGE, INDUSTRIAL AGRICULTURE AND THE LAW 8* (Animals & Soc’y Inst., 2010).

⁷¹ Terence J. Centner, *Governments and Unconstitutional Takings: When Do Right-to-Farm Laws Go Too Far?* 33 B.C. ENVTL. AFF. L. REV. 87, 95 (2006).

states that have adopted this rule include Minnesota,⁷² Mississippi,⁷³ Pennsylvania,⁷⁴ and Texas.⁷⁵

- *Immunity for Agricultural Startups or Business Expansion:* When agribusiness expands, or when a new agricultural business may pose a new environmental threat or nuisance to its neighbors, some states, such as Georgia, deny a new running period for statutes of limitations. They thereby allow farms to expand to whatever size they prefer, regardless of the nature and scale of their impact on the environment.⁷⁶ In other states, such as Minnesota, new claims can only be made if an operation expands by at least 25%.⁷⁷

With right-to-farm laws in place, it is possible for agricultural businesses to enjoy *de facto* immunity from law, especially if a state chooses to combine these three means. However, it is worth noting that, while said exemptions cover all types of agricultural businesses, only “practices commonly or reasonably associated with agricultural production”⁷⁸ (known as “generally accepted agricultural management practices,” or “GAAMPs”) remain exempt from review.⁷⁹ Moreover, many states still require that agribusinesses do not negligently⁸⁰ or illegally⁸¹ impact their neighbors or public goods.

Still, CAFOs remain very well protected. In the best case, what counts as a generally accepted practice is determined by

⁷² MINN. STAT. ANN. § 561.19(2) (West Supp. 2010).

⁷³ MISS. CODE ANN. § 95-3-29(1) (West Supp. 2009).

⁷⁴ 3 PA. STAT. AND CONS. STAT. ANN. §§ 951–957, §954(a) (Westlaw through 2019 Sess.).

⁷⁵ TEX. AGRIC. CODE ANN. §§ 251.001–.006, § 251.004 (West Supp. 2009).

⁷⁶ GA. CODE ANN. § 41-1-7(d) (West Supp. 2009) (“If the physical facilities of the agricultural operation or the agricultural support facility are subsequently expanded or new technology adopted, the established date of operation for each change is not a separately and independently established date of operation and the commencement of the expanded operation does not divest the agricultural operation or agricultural support facility of a previously established date of operation.”).

⁷⁷ MINN. STAT. ANN. § 561.19(b) (West Supp. 2010).

⁷⁸ *Bormann v. Bd. of Supervisors In and For Kossuth Cty.*, 584 N.W.2d 309, 315–21 (Iowa 1998).

⁷⁹ FLA. STAT. ANN. § 823.14(4)(a) (West 2012); HAW. REV. STAT. ANN. § 165-4 (West 2001); MICH. COMP. LAWS ANN. § 286.473 (West 1981).

⁸⁰ KY. REV. STAT. ANN. § 413.072 (West 2010) (exempting negligent behavior).

⁸¹ OHIO REV. CODE ANN. § 3767.13 (West 1982) (failing to exempt any action that becomes injurious to the health, comfort, or property of individuals or of the public).

commissions of agriculture.⁸² Such bodies suffer from a democratic deficit because they lack an electorate and, therefore, public accountability.⁸³ In all other cases, the agri-food industry itself sets the standard for GAAMPs, and farmers are allowed to set up and rely on unwritten GAAMPs.⁸⁴ Thus, even if a practice is woefully intrusive, it can be deemed “generally accepted.”⁸⁵ GAAMPs in most cases do not demand adherence to practices a reasonable person would consider adequate, but, instead, revolve around a standard of “normalcy.”⁸⁶ “Normal farm practices” are those practices that prevail in the industry and are shared by a large enough number of agribusinesses.⁸⁷ This is a considerable degree of self-regulation given to agricultural corporations that risks threatening public goods, as the practices these corporations set often do not reflect the same balancing of interests between economic growth, sustainability, and food security that would be expected from legislatively-defined standards.⁸⁸

Most states only lift CAFOs’ nuisance immunity if their activities have “a *substantial* adverse effect on public health and safety.”⁸⁹ This caveat is highly questionable from a common good perspective, because the public cannot be assumed to have agreed to sweeping immunities threatening public goods, such as a safe environment, sustainable food policies, and the humane treatment of animals. Moreover, specific provisions state that farms that did not constitute a nuisance prior to land use changes need not comply with GAAMPs to benefit from nuisance protection.⁹⁰ Right-to-farm laws also often shift the burden of proof to the affected parties, who must show that the CAFO producer acted unreasonably.⁹¹ This conflicts with the aforementioned long-standing rule under the common law.⁹²

⁸² See, e.g., MICH. COMP. LAWS ANN. § 286.472(d) (West 1995).

⁸³ Also, the GAAMPs are neither debated and passed by parliament nor published in administrative codes. Patricia Norris, Gary Taylor & Mark Wyckoff, *When Urban Agriculture Meets Michigan’s Right to Farm Act: The Pig’s in the Parlor*, 2 MICH. ST. L. REV. 365, 388, 397 (2011).

⁸⁴ *Milan Twp. v. Jaworski*, No. 240444, 2003 Mich. App. LEXIS 3105, at *14 (Mich. Ct. App. Dec. 4, 2003) (relying on the absence of a provision that determines the list is conclusive to argue that other practices are covered as GAAMPs).

⁸⁵ Alford & Berger Richardson, *supra* note 44, at 152.

⁸⁶ *Id.* at 131.

⁸⁷ *Id.* at 142–43.

⁸⁸ *Id.* at 143.

⁸⁹ WASH. REV. CODE, § 7.48.305 (2009) (emphasis added).

⁹⁰ Norris, Taylor & Wyckoff, *supra* note 83, at 383–84 (reading MICH. COMP. LAWS § 286.473(1) and (2) (1995) independently).

⁹¹ Gittins, *supra* note 67, at 1392.

⁹² Garrett Chrostek, *A Critique of Vermont’s Right-to-Farm Law and Proposals for Better Protecting the State’s Agricultural Future*, 36 VT. L. REV. 233, 236 (2012).

Many states (such as Georgia)⁹³ do not provide immunity to farmers from only private nuisance; they also shield them from public nuisance claims, i.e., claims pertaining to nuisances threatening public health, safety, or welfare, or community resources, such as water supplies.⁹⁴ The right-to-farm laws of several states also preclude nuisance claims against zoning ordinances and other local laws.⁹⁵ In Kentucky, legislators have gone so far as to make it a statutory rule that “[n]o agricultural or silvicultural operation or any of its appurtenances shall be . . . subject to any ordinance that would restrict the right of the operator of the agricultural or silvicultural operation to utilize normal and accepted practices.”⁹⁶

Right-to-farm laws emerged from a relatively innocuous desire to support traditional family-run farms as more and more people moved to the countryside.⁹⁷ Today, most continue to defend the legitimacy of these laws by invoking this narrative.⁹⁸ However, in the past decades, agriculture has been subject to immense restructuring, in particular as regards the concentration of production. As technological changes have increased the number of animals that can be handled at a plant, producers keeping up with economies of scale have driven out or taken over weaker competitors through horizontal integration. Corporations with large assets began to take over the landscape through vertical integration, setting up mergers and acquisitions with feed producers, breeders, food processors, and meatpackers.⁹⁹ The structural changes of agribusiness mean that right-to-farm laws are now primarily

⁹³ GA. CODE ANN. § 41-1-7 (West 2018).

⁹⁴ *Commonwealth v. MacDonald*, 347 A.2d 290, 301 (Pa. 1975); Jennifer L. Beidel, *Pennsylvania's Right-to-Farm Law: A Relief for Farmers or an Unconstitutional Taking?* 110 PENN ST. L. REV. 163, 167 (2005).

⁹⁵ MICH. COMP. LAWS ANN. § 286.473 (West 2018); *Charter Twp. of Shelby v. Papesh*, 704 N.W.2d. 92, 96–102 (Mich. Ct. App. 2005) (“[I]f defendants’ farm is commercial in nature and in compliance with the GAAMPs, it is a farm operation protected by the RTFA. The ordinance conflicts with the RTFA to the extent that it allows plaintiff [township] to preclude a protected farm operation by limiting the size of a farm.”).

⁹⁶ KY. REV. STAT. ANN. § 413.072(2) (Westlaw through 2019 Sess.).

⁹⁷ See Madeleine Skaller, *Protecting the Right to Harm: Why State Right to Farm Laws Should Not Shield Factory Farms from Nuisance Liability*, 27 SAN JOAQUIN AGRIC. L. REV. 209, 216 (2018) (stating “[r]ight to farm laws were passed to ensure the viability of agricultural operations when people were moving from urban to rural areas”). Some criticize that the fear of urban sprawl impacting agriculture is a myth and that most complainants were in fact rural residents. Alford & Berger Richardson, *supra* note 44, at 149–50.

⁹⁸ Brehm, *supra* note 32, at 797.

⁹⁹ Note, *Challenging Concentration of Control in the American Meat Industry*, 117 HARV. L. REV. 2643 (2004).

profiting large-scale and industrialized methods of production, but these laws are ill-equipped to handle the impact of these methods on the environment, animals, and human health. Moreover, in some cases, state legislatures have begun to limit right-to-farm laws to commercial operations and have denied non-commercial farmers and hobbyists the benefits of anti-nuisance protection.¹⁰⁰ In this sense, and as Alford and Berger Richardson argue, “RTFs [right-to-farm laws] are less about ensuring the right to ‘farm’ and more about ensuring the right to cheaply ‘produce’ large quantities of food.”¹⁰¹

These various features of right-to-farm laws confirm that unlike food sovereignty legislation, which seeks to empower the public, right-to-farm laws protect the interests of agribusiness at the expense of the collective. In *Bormann* (1998), the Iowa Supreme Court became the first US judicial institution to invalidate a state’s right-to-farm laws—which granted farmers unlimited immunity, regardless of how long they had been running their business.¹⁰² The Court found that these laws were an unconstitutional taking.¹⁰³ The *Bormann* ruling, however, has been widely criticized for qualifying the issue as a *per se* taking, instead of a regulatory taking.¹⁰⁴ Six years later, in *Gacke*, the same court declared Iowa right-to-farm laws to be in violation of the state’s constitutional clause on inalienable rights.¹⁰⁵ This trend, though anxiously awaited by agricultural industries, was followed only by few neighboring states.¹⁰⁶

Besides benefitting from right-to-farm laws, animal agriculture enjoys exemptions from environmental and animal protection laws across the US at both the federal and state level. On the federal plane, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), which provides that polluters are responsible for the expenses of the cleanup of hazardous substances release, does not expressly cover agricultural

¹⁰⁰ Sean McElwain, *The Misnomer of Right to Farm: How Right-to-Farm Statutes Disadvantage Organic Farming*, 55 WASHBURN L. J. 223, 243 (2015).

¹⁰¹ Alford & Berger Richardson, *supra* note 44, at 149.

¹⁰² *Bormann*, 584 N.W.2d at 309; IOWA CODE ANN. § 352.11(1)(a) (Westlaw through 2019 legislation).

¹⁰³ *Bormann*, 584 N.W.2d at 309; IOWA CODE ANN. § 352.11(1)(a) (Westlaw through 2019 legislation).

¹⁰⁴ Centner, *supra* note 71, at 124–25; Beidel, *supra* note 94, at 177.

¹⁰⁵ *Gacke v. Pork Xtra, L.L.C.*, 684 N.W.2d 168, 179 (Iowa 2004).

¹⁰⁶ Examples of states that followed this trend include Maryland and North Carolina. *McIlrath v. Prestage Farms of Iowa, L.L.C.*, No. 15-1599, 2016 WL 6902328 (Iowa Ct. App. Nov. 23, 2016); *In re NC Swine Farm Nuisance Litig.*, No. 5:15-CV-00013-BR, 2017 WL 5178038 (E.D. N.C., Nov. 8, 2017).

practices.¹⁰⁷ While there is a recent trend to hold agricultural producers liable under the CERCLA,¹⁰⁸ animal agricultural industries continue to escape the Resource Conservation and Recovery Act (RCRA). The RCRA, the nation's principal hazardous waste management and disposal regulation law, fails to classify waste from CAFOs as hazardous.¹⁰⁹ The situation is markedly better under the federal Clean Water Act (CWA). Since 2002, large CAFOs must obtain a permit under the National Pollutant Discharge Elimination System (NPDES) to discharge animal waste, fertilizers, and pesticides into the waters of the US.¹¹⁰ Nonetheless, the CWA remains largely toothless, as it expressly excludes agricultural stormwater “discharges . . . [and] return flows from irrigated agriculture,”¹¹¹ permitting “most agricultural sources to escape Section 402 regulation . . .”¹¹² Another major federal law, the Clean

¹⁰⁷ Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601–9676 (1994).

¹⁰⁸ *City of Tulsa v. Tyson Foods Inc.*, 258 F. Supp. 2d 1263 (N.D. Okla. 2003) (finding Tyson Foods to be liable under CERCLA due to eutrophication in Tulsa area lakes); *Sierra Club v. Seaboard Farms Inc.*, 387 F.3d 1167 (10th Cir. 2004) (holding Dorman Farms, a pig CAFO, responsible for ammonia emissions); *City of Waco v. Schouten*, 385 F. Supp. 2d 595 (W.D. Tex. 2005) (holding that phosphorus in cow manure is a hazardous substance under CERCLA).

¹⁰⁹ 40 C.F.R. § 261.4(b)(2)(ii) (1999); *see also* 42 U.S.C.A. § 6903(27) (Westlaw through Pub. L. No. 116-91).

¹¹⁰ This is because CAFOs, given the requisite size, qualify as a “point source.” To successfully apply for a permit, CAFOs must, among others, develop and implement nutrient management plans. *See* Clean Water Act of 1977, Pub. L. No. 95-217, 91 Stat. 1566 (1977) (codified as amended at 33 U.S.C. §§ 1251–1387 (1997 & Supp. III 1997)). The Clean Water Act of 1977 was amended by the National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, which explicitly stated that “[t]his rule establishes a mandatory duty for all CAFOs to apply for an NPDES permit and to develop and implement a nutrient [manure and wastewater] management plan.” National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, 68 Fed. Reg. 7176 (Feb. 12, 2003) (codified at 40 C.F.R. pts. 9, 122, 123, 412).

¹¹¹ 33 U.S.C. § 1342(l)(1) (1997 & Supp. III 1997) (“The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.”); 33 U.S.C. § 1362(14) (1997 & Supp. III 1997) (providing that the term “point source” “does not include agricultural stormwater discharges and return flows from irrigated agriculture”); 33 U.S.C. § 1344(f)(1)(A) (1997 & Supp. III 1997) (exempting from the prohibition of discharge of dredged or fill material, material “from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices”); *see also* J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 *ECOLOGY L. Q.* 263, 295 (2000).

¹¹² Jan G. Laitos & Heidi Ruckriegle, *The Clean Water Act and the Challenge of Agricultural Pollution*, 37 *VT. L. REV.* 1033, 1058 (2013).

Air Act (CAA), which regulates hazardous air pollutants,¹¹³ exempts all CAFOs from coverage. Indeed, the administrator has the authority to “establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.”¹¹⁴ Even if the CAA were applicable to CAFOs, it is important to consider that the US Environmental Protection Agency (EPA) has declined to bring cases against CAFOs based on CAA violations.¹¹⁵ As a result, environmental law has given animal farms a “virtual license”¹¹⁶ to cause habitat loss, soil erosion and degradation, water depletion, and to pollute water and air across the US.

Similar, if not more sweeping, exemptions have been put in place to inhibit animal welfare claims. The North Dakota Constitution was amended in response to California’s Proposition 2 amendment, which required all confined farmed animals to have sufficient space to stand up, turn around freely, and fully extend limbs and wings, by adding that:

The right of farmers and ranchers to engage in modern farming and ranching practices shall be forever guaranteed in this state. No law shall be enacted which abridges the right of farmers and ranchers to employ agricultural technology, modern livestock production, and ranching practices.¹¹⁷

Thereby, the adoption of laws that would guarantee animals a bearable life during confinement has been rendered infeasible. Similarly, under the New York Agriculture and Markets Law, local laws, ordinances, rules, or regulations may restrict the operations of agricultural districts only if public health or safety is threatened.¹¹⁸ Animal welfare, though of public concern, cannot limit any of these agricultural operations, as it is not deemed to fall under these exceptions.

Those benefiting from these immunities and rights are primarily corporations (rather than individual farmers), which aligns with the growing lobbying efforts of business to secure immunity through ag-gag laws and veggie libel laws. Ag-gag laws generally

¹¹³ Clean Air Act of 1970, Pub. L. No. 91-604, 84 Stat. 1676 (1970) (codified as amended at 42 U.S.C. §§ 7401–7431 (1994 & Supp. III 1997)).

¹¹⁴ 42 U.S.C. §§ 7412(r)(5) (1994 & Supp. III 1997); *see also* Wilson, *supra* note 32, at 441.

¹¹⁵ Ruhl, *supra* note 111, at 263.

¹¹⁶ *Id.* at 263.

¹¹⁷ N.D. CONST., art. XI, § 29; *see* Pifer, *supra* note 69, at 716.

¹¹⁸ N.Y. AGRIC. & MKTS. LAW § 305-a(1).

criminalize activities that expose and denounce animal agricultural activities without the consent of their owner, particularly when these activities are inhumane, unsafe, or even illegal.¹¹⁹ In the US, seven states have passed ag-gag laws and more than twenty-four such bills have been introduced in other states.¹²⁰ Veggie libel laws, which establish (strict) liability for members of the public who publicly criticize food production practices, have passed in more than thirteen US states.¹²¹

In addition, the federal Animal Welfare Act (AWA), the Twenty-Eight Hour Law, and the Humane Methods of Slaughter Act (HMSA) all turn a blind eye to farmed animals. The AWA does not apply to farmed animals;¹²² the Twenty-Eight Hour Law, which seeks to protect animals during transport, fails to cover transport by truck, by air, and on water (and hence most of farm animal transportation);¹²³ and the HMSA, which requires farmed animals to be rendered insensible to pain prior to being hoisted, shackled, or cut, does not apply to chickens and fish, which represent the highest number of animals killed for the purposes of food production.¹²⁴ On a state level, animal anti-cruelty statutes have largely exempted farm practices from their application because they consider them to be “common farm practices.”¹²⁵ As Schaffner explains, this creates a paradox by which “criminal laws, designed to protect animals from the intentional infliction of pain and suffering, perpetuate and in fact endorse institutionalized cruelty to animals.”¹²⁶ As a consequence,

¹¹⁹ *What is Ag-Gag Legislation?*, ASPCA.ORG, <https://www.aspc.org/animal-protection/public-policy/what-ag-gag-legislation> (last visited Dec. 21, 2019).

¹²⁰ Aurora Moses & Paige Tomaselli, *Industrial Animal Agriculture in the United States: Concentrated Animal Feeding Operations (CAFOs)*, in INTERNATIONAL FARM ANIMAL, WILDLIFE AND FOOD SAFETY LAW 185, 199 (Gabriela Steier & Kiran K. Patel eds., 2017).

¹²¹ Those are Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Louisiana, Mississippi, North Dakota, Ohio, Oklahoma, South Dakota, and Texas. *Id.*

¹²² 7 U.S.C.A. § 2131, § 2132(g) (Westlaw through Pub. L. No. 116-91); see F. Barbara Orlans, *The Injustice of Excluding Laboratory Rats, Mice, and Birds from the Animal Welfare Act*, 10 KENNEDY INST. OF ETHICS J. 229 (2000) (discussing the limits set by the US AWA on research animals); Gaverick Matheny & Cheryl Leahy, *Farm-Animal Welfare, Legislation and Trade*, 70 L. & CONTEMP. PROBS. 325, 334 (2007) (discussing the same for farm animals); David J. Wolfson & Mariann Sullivan, *Foxes in the Hen House*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 206 (Cass Sunstein & Martha Nussbaum eds., 2004). The AWA is, therefore, inapplicable to 95% of all animals raised in the US. *Id.*; Matheny & Leahy, *supra*.

¹²³ 49 U.S.C. § 80502(a) (2019).

¹²⁴ 7 U.S.C. §§ 1901, 1902(a) (2019); 9 C.F.R. § 301.2 (2019).

¹²⁵ See PAMELA D. FRASCHET AL., ANIMAL LAW IN A NUTSHELL 335 (West Acad. publ'g 2d ed. 2016); Wolfson & Sullivan, *supra* note 122, at 212–16.

¹²⁶ JOAN E. SCHAFFNER, AN INTRODUCTION TO ANIMALS AND THE LAW 28 (2011); Paul Waldau, *Second Wave Animal Law and the Arrival of Animal Studies*, in ANIMAL

only wrongs committed against animals that do not restrict farmers' common economic interests (such as causing animals to starve or giving them inappropriate shelter) constitute animal cruelty.¹²⁷ Considering that the US is home to over 450,000 CAFOs,¹²⁸ these far-reaching exemptions have the effect of rendering most laws generally inapplicable to the animal agricultural sector.

B. Canada

Nuisance laws protecting property owners from interference in their property rights have been part of a long-standing common law rule in Canada since the 1880s.¹²⁹ Under these nuisance laws, plaintiffs could ask the court to issue an injunction to cease disturbance (such as excessive noise, manure smell or overflow, or even excessive screams by animals), and seek monetary damages and compensation for harms.¹³⁰

Over the past forty years, however, all states and provinces of Canada have passed right-to-farm laws that greatly limit anti-nuisance claims. The first right-to-farm laws were enacted in Manitoba in 1976.¹³¹ They were followed by Quebec (1978), New Brunswick (1986), Alberta (1987), Ontario (1988), British Columbia (1989), Saskatchewan (1995), Prince Edward Island (1998), and Newfoundland and Labrador (2003).¹³² The initial purpose of these laws was to prevent urban encroachment on agricultural land through nuisance complaints about odor, noise, chemicals, pests, etc., because "those moving into the country may be seeking fresh air, quiet, and scenery. The expectations of new country residents can come into conflict with agriculture when they experience the realities of modern agricultural production."¹³³

LAW AND WELFARE: INTERNATIONAL PERSPECTIVES 37 (Deborah Cao & Steven White eds., 2016).

¹²⁷ *E.g.*, *Westfall v. State*, 10 S.W.3d 85 (Tex. Ct. App. 1999); *see also* FRASCHET AL., *supra* note 125, at 79.

¹²⁸ Wilson, *supra* note 32, at 440.

¹²⁹ BETH BILSON, *THE CANADIAN LAW OF NUISANCE* (Butterworths 1991); *Rylands v. Fletcher* [1868], UKHL 1, 3 H.L. 330.

¹³⁰ Patrick McCormally, *Right-to-Farm Legislation in Canada*, PROBE INT'L 1 (July 2007), <http://www.probeinternational.org/envirowaterarticles/rightofarmcanada.pdf>.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Keith Wilson, *Are You Losing Your Right to Farm?*, 20 WCDS ADVANCES IN DAIRY TECH. 245, 246 (2008).

The scope of Canadian right-to-farm laws is typically restricted to “normal farm practices.” British Columbia, for instance, defines such a practice as one that “is conducted by a farm business in a manner consistent with”:

- (a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and
- (b) any standards prescribed by the Lieutenant Governor in Council, and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices . . .¹³⁴

The burden of proof usually lies on the complainant, who must show that a disturbance lies outside normal agricultural practices.¹³⁵ The effect of right-to-farm laws in Canada is analogous to that of their US counterparts: no damages can be awarded for the infringement of private property by “normal agricultural practices,” and no injunction can be obtained to stop the nuisance.¹³⁶

The more disturbing aspect of right-to-farm laws in Canada and elsewhere, however, is that the concept of “normal agricultural or farm practice” may render legal otherwise illegal practices, such as dumping toxic waste or inflicting cruelty to animals, provided a sufficiently representative number of farmers engages in them.¹³⁷ This is, for example, the case in Saskatchewan.¹³⁸ Another illustration is Ontario’s Farming and Food Production Protection Act, which determines that “[n]o municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation.”¹³⁹ Thus, not only are people prevented from accessing courts to ask for economic and injunctive relief: they are further barred from using their political rights in local policy-making.¹⁴⁰ Because environmental regulation may fall under the authority of the municipalities, scholars have linked rising environmental pollution

¹³⁴ Farm Practices Protection (Right to Farm) Act, R.S.B.C. 1996, c. 131, s. 1 (Can. B.C.).

¹³⁵ *E.g.*, Agriculture Operations Practices Act, R.S.A. 2000, c. A-7, s. 2(3) (Can. Alta.); *see also* R.J. Farms & Grain Transport Ltd. v. Saskatchewan (Agric. Review Bd.), 2011 SKQB 185 (Can. Sask.).

¹³⁶ McCormally, *supra* note 130, at 2.

¹³⁷ *Id.*

¹³⁸ The Agricultural Operations Act, R.S.S. 1995, c. A-12.1, s. 3, amended by S.S. 2013, c. 27 (Can. Sask.).

¹³⁹ Farming and Food Production Protection Act, S.O. 1998, c. 1, 6(1) (Can. Ont.).

¹⁴⁰ Alford & Berger Richardson, *supra* note 44, at 156.

and degradation to the adoption of right-to-farm laws.¹⁴¹ Only a few Canadian provinces (such as British Columbia, Prince Edward Island, and Quebec) have determined that nuisance suits can only be excluded if the practices do not violate other laws, such as environmental protection acts or laws protecting human health.¹⁴²

Canadian right-to-farm laws provide that claims about nuisances are adjudicated by the Agricultural Operations Review Board, and not by a court.¹⁴³ The board is headed by current or former farmers,¹⁴⁴ is only rarely used, and does not make its decisions publicly available.¹⁴⁵ Although judicial bodies can review board decisions using the standard of reasonableness,¹⁴⁶ they usually show great deference, commending the specialized knowledge of these boards and their ability to gather firsthand evidence.¹⁴⁷ The immunization from administrative adjudication, paired with broad judicial deference and strict time limits for appeal, all “insulate the farming industry from civil liability.”¹⁴⁸

In Canada, agriculture is mainly regulated on a provincial level, and occasionally on a municipal level, with the exception of, *inter alia*, the Canadian Environmental Protection Act, the Pest Control Products Act, the Water Act, and the Fisheries Act.¹⁴⁹ All of Canada’s provinces lay down environmental standards that prohibit depositing pollutants into water bodies unless the discharge

¹⁴¹ ELIZABETH BRUBAKER, *GREENER PASTURES: DECENTRALIZING THE REGULATION OF AGRICULTURAL POLLUTION* (Andrew Stark ed., 2007); DAVID R. BOYD, *UNNATURAL LAW: RETHINKING CANADIAN ENVIRONMENTAL LAW AND POLICY* (Sarah Wight ed., 2003).

¹⁴² *E.g.*, Farm Practices Act, R.S.P.E.I. 1998, c. 87, s. 2 (Can. P.E.I.); Act Respecting the Preservation of Agricultural Land and Agricultural Activities, R.S.Q. 1996, c. 26, s. 79.17–79.19.2, s. 100 (Can. Que.); Farm Practices Protection (Right to Farm) Act, R.S.B.C. 1996 c. 131, s. 2 (Can. B.C.).

¹⁴³ McCormally, *supra* note 130, at 3.

¹⁴⁴ In Saskatchewan, the Board is composed of six members representing the milk industry, cattle feeder producers, three producers at large, and a representative of the Saskatchewan Association of Rural Municipalities. *Id.*

¹⁴⁵ There is an exception for the Farm Industry Review Board of British Columbia, which publishes all of its decisions online. *Id.*

¹⁴⁶ R.J. Farms & Grain Transport Ltd. v. Saskatchewan (Agric. Review Bd.), 2011 SKQB 185, paras. 17–22 (Can. Sask.).

¹⁴⁷ Lubchynski v. British Columbia (Farm Practices Bd.), 2004 BCSC 657 (Can. B.C.) (“[A]bsent special circumstances, questions of whether, in the context of a nuisance action, a disturbance constitutes a ‘normal farm practice’ should generally be left to the Board to determine.”); *see also* Lone Pine Comm. v. Alberta (Nat. Res. Conservation Bd.), 2005 ABCA 348, paras. 14, 16 (Can. Alta.); Pyke v. Tri Gro Enterprises Ltd. 2001 CarswellOnt 2762, paras. 55–57 (Can. Ont. C.A.).

¹⁴⁸ Alford & Berger Richardson, *supra* note 44, at 156.

¹⁴⁹ BRUBAKER *supra* note 141, at 10.

has been expressly permitted.¹⁵⁰ Some have also introduced “minimum distance separation” requirements between livestock facilities and their neighbors.¹⁵¹ Among the Canadian provinces, only Quebec¹⁵² and Saskatchewan¹⁵³ have specific acts designed to cover CAFOs. Many of the laws still lack limitations on livestock densities or total sizes.¹⁵⁴ Another notable weakness of environmental policy regulation in Canada is the fact that these are merely guidelines or best practices issued by private organizations. As a result, CAFO regulation chiefly lies with corporate authorities, and the odor and water effects of CAFOs remain outside the reach of collective agricultural supply management policies.¹⁵⁵

In May 2000, the city of Walkerton, Ontario, suffered a widespread contamination of *Escherichia coli* and *Campylobacter jejuni* bacteria that came from manure that had been spread on a nearby farm, as a consequence of which seven people died and many more suffered long-lasting injuries.¹⁵⁶ Since then, many provinces have reviewed their laws,¹⁵⁷ though sweeping exemptions are still common. To date, the rules on waste of the Ontario Environmental Protection Act do “not apply to animal wastes disposed of in accordance with both normal farming practices and the regulations

¹⁵⁰ *E.g.*, Environmental Management and Protection Act, R.S.S. 2010, c. E-10.22, s. 8 (Can. Sask.); *e.g.*, Clean Water Act, R.S.N.B. 1989, c. C-6.1, s. 12(1) (Can. N.B.); *e.g.*, Environment Quality Act, C.Q.L.R., c. Q-2, s. 20, 22 (Can. Que.); *e.g.*, *Règlement sur les exploitations agricoles*, R.R.Q., Q-2 r. 26, s. 4–5 (Can. Que.).

¹⁵¹ Most of these range at minimum at 150 meters. *E.g.*, Standards and Administration Regulation, Alta. Reg. 267/2001, s. 3 (Can. Alta.). The distance is typically calculated based on a specific formula. *E.g.*, $A \times B \times C$; A equals 500 meters, B equals manure factor, and C equals livestock factor. JERRY SPEIR ET AL., COMPARATIVE STANDARDS FOR INTENSIVE LIVESTOCK OPERATIONS IN CANADA, MEXICO, AND THE UNITED STATES 54 (Comm’n for Env’tl. Cooperation 2003).

¹⁵² Agricultural Operations Regulation, C.Q.L.R., c. Q-2, s. 1–2 (Can. Que.).

¹⁵³ Agricultural Operations Act, R.S.S. 1995, c. A-12.1 s. 19–23 (Can. Sask.).

¹⁵⁴ Most of them only do so indirectly via Nutrient Management Plans (NMPs). *A Review of Selected Jurisdictions and Their Approach to Regulating Intensive Farming Operations*, ONT. MINISTRY OF AGRIC., FOOD, AND RURAL AFFAIRS, <http://www.omafra.gov.on.ca/english/agops/otherregs1.htm> (last updated May 23, 2003).

¹⁵⁵ Joel Novek, *Intensive Livestock Operations, Disembedding, and Community Polarization in Manitoba*, 7 SOC’Y & NAT. RESOURCES 567, 567 (2003).

¹⁵⁶ Scott Prudham, *Poisoning the Well: Neoliberalism and the Contamination of Municipal Water in Walkerton, Ontario*, 35 GEOFORUM 343, 349 (2004).

¹⁵⁷ Until relatively recently, environmental policies have also exempted Canadian agriculture from scrutiny. Predrag Rajsic et al., *Canadian Agricultural Environmental Policy: From the Right to Farm to Farming Right*, in THE ECONOMICS OF REGULATION IN AGRICULTURE: COMPLIANCE WITH PUBLIC AND PRIVATE STANDARDS 55, 56 (Floor Brouwer, Glenn Fox, Roel Jongenee & R. A. Jongeneel eds., 2012).

made under the Nutrient Management Act.”¹⁵⁸ Similarly, under the British Columbia Environmental Management Act, rules on waste disposal do not prohibit “emission into the air of soil particles or grit in the course of agriculture or horticulture.”¹⁵⁹ Under the Manitoba Environment Act, “[a] person involved in an agricultural operation” will not be punished for the unauthorized release of pollutants “if the release occurred through the use of normal farm practices.”¹⁶⁰

Analogously to their US counterparts, Canadian agricultural industries enjoy substantial discretion as to how they treat the animals they own. Cruelty inflicted on animals used for agricultural purposes is exempt under the laws of Alberta,¹⁶¹ British Columbia,¹⁶² Manitoba,¹⁶³ Nova Scotia,¹⁶⁴ Ontario,¹⁶⁵ Prince Edward Island,¹⁶⁶ Quebec,¹⁶⁷ Saskatchewan,¹⁶⁸ and Yukon.¹⁶⁹ Thus, in these provinces, “common farm practices,” regardless of whether they inflict suffering or even blatant cruelty on animals, never constitute animal cruelty in a legal sense.¹⁷⁰ As a consequence, harm caused to animals in the agricultural sector is deemed legal.¹⁷¹

C. Australia

Australian law (like English law, upon which it heavily draws) in principle provides that claims can be brought against both public and private nuisances to stop a nuisance and to claim

¹⁵⁸ Environmental Protection Act, R.S.O. 1990, c. E.19, s. 6(2) (Can. Ont.).

¹⁵⁹ Environmental Management Act, S.B.C. 2003, c. 53, s. 2(6)(5)(i) (Can. B.C.).

¹⁶⁰ The Environment Act, C.C.S.M. 2019, c. E125, 30.1(2) (Can. Man.).

¹⁶¹ Animal Protection Act, R.S.A. 2000, c. A-41, s. 2(2) (Can. Atla.) (“This section does not apply if the distress results from an activity carried on in accordance with the regulations or in accordance with reasonable and generally accepted practices of animal care, management, husbandry, hunting, fishing, trapping, pest control or slaughter.”).

¹⁶² Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372, s. 24.02 (Can. B.C.) (“A person must not be convicted of an offence under this Act in relation to an animal in distress if . . . the distress results from an activity that is carried out in accordance with reasonable and generally accepted practices of animal management that apply to the activity in which the person is engaged, unless the person is an operator and those practices are inconsistent with prescribed standards.”).

¹⁶³ Animal Care Act, C.C.S.M. 2015, c. A84, s. 2(2) (Can. Man.).

¹⁶⁴ Animal Protection Act, S.N.S. 2008, c. 33, s. 21(4) (Can. N.S.).

¹⁶⁵ Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1990, c. O.36, s. 2(a) (Can. Ont.).

¹⁶⁶ Animal Health and Protection Act, R.S.P.E.I. 2005, c. A-11.1, s. 4(1) (Can. P.E.I.).

¹⁶⁷ Animal Welfare and Safety Act, C.Q.L.R. 2016, c. B-3.1, s. 7 (Can. Que.).

¹⁶⁸ Animal Protection Act, R.S.S. 2018, c. A-21.2, s. 2(3)(b) (Can. Sask.).

¹⁶⁹ Animal Protection Act, R.S.Y. 2002, c. 6, s. (3)(3) (Can. Yukon).

¹⁷⁰ See also Wolfson & Sullivan, *supra* note 122, at 205.

¹⁷¹ See also *id.*

damages.¹⁷² Sometimes, however, the activity at stake is authorized under the law of the Australian states (New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia) and territories.¹⁷³ Compared to the US and Canada, Australian right-to-farm legislation is recent and scarce.

Like most states, Australia witnessed “a socio-historical transition from small, family-operated farming concerns to large, corporate-owned agricultural enterprises.”¹⁷⁴ As Alex Bruce and Thomas Faunce observe, this development severed the close relationship and emotional bond that farmers had with their animals and the environment.¹⁷⁵ Still, in the early 1990s, Australian authors noted that the US experience with right-to-farm laws did not provide compelling reasons for introducing similar legislation in Australia.¹⁷⁶ The first and, to date, only¹⁷⁷ Australian right-to-farm law—the Primary Industries Activities Protection Act 1995—was passed by Tasmania in 1995.¹⁷⁸ The reasons leading to the adoption of the Act resemble those that motivated the passing of analogous legislation in North America, namely the concerns that growing urbanization might jeopardize or constrain farming¹⁷⁹ and that environmental regulation would restrict farming practices.¹⁸⁰ In light of these concerns, the Tasmanian Act aims, on the one hand, to “protect persons engaged in primary industry by limiting the operation of the common law of nuisance in respect of certain activities that are

¹⁷² The law of nuisance is based on the common law, and it has been codified in some statutes. *See, e.g., Primary Industries Activities Protection Act 1995* (Tas.) s. 3(1) (Austl.).

¹⁷³ One example is the statutory exceptions established by the Civil Liability Acts adopted in various Australian states. *See, e.g., Wrongs Act 1958* (Vict.) s 30 (Austl.); *Civil Liability Act 2002* (N.S.W.) s 72(1) (Austl.).

¹⁷⁴ Alex Bruce & Thomas Faunce, *Food Production and Animal Welfare Legislation in Australia: Failing Both Animals and the Environment*, in INTERNATIONAL FARM ANIMAL, WILDLIFE AND FOOD SAFETY LAW 359, 360 (Gabriela Steier & Kiran K. Patel eds., 2017).

¹⁷⁵ *Id.* at 363.

¹⁷⁶ *E.g.,* John Paterson, *A Right to Farm; A Right to Live?*, 28 AUSTRALIAN PLANNER 8, 8 (1990).

¹⁷⁷ GARETH GRIFFITH, NSW PARLIAMENTARY RESEARCH SERV., RIGHT TO FARM LAWS 10 (2014), <https://www.parliament.nsw.gov.au/researchpapers/Documents/right-to-farm-laws/The%20right%20to%20farm.pdf>.

¹⁷⁸ *Primary Industries Activities Protection Act 1995* (Tas.) (Austl.).

¹⁷⁹ DEP’T OF PRIMARY INDUS., PARKS, WATER & ENV’T., REVIEW OF THE PRIMARY INDUSTRIES ACTIVITIES PROTECTION ACT 1995—ISSUES PAPER 9 (2014). Such concerns are for instance expressed by the Victorian Farmers Federation. VICTORIAN FARMERS FED’N., INQUIRY INTO THE SUSTAINABLE DEVELOPMENT OF AGRIBUSINESS IN OUTER SUBURBAN MELBOURNE (2009).

¹⁸⁰ *E.g.,* ANDREW MACINTOSH & RICHARD DENNIS, PROPERTY RIGHTS AND THE ENVIRONMENT: SHOULD FARMERS HAVE A RIGHT TO COMPENSATION? (Austl. Inst. 2004), https://www.tai.org.au/sites/default/files/DP74_8.pdf.

incidental to efficient and commercially viable primary production.”¹⁸¹ It limits the power of courts to order the complete cessation of the activity at stake.¹⁸² On the other hand, for farming activities not to constitute a nuisance, a number of conditions must be fulfilled, including the condition that “the activity is not being improperly or negligently carried out.”¹⁸³ Moreover, farming activities must respect state and Commonwealth laws and council by-laws,¹⁸⁴ and they cannot derogate from “the operation or effect of any other Act.”¹⁸⁵ In other terms, environmental regulation may still apply. In light of these caveats, it is surprising that the Tasmanian Environmental Management and Pollution Control Act of 1994 provides that an activity that conforms with the state’s right-to-farm law does not constitute an environmental nuisance.¹⁸⁶ When reviewing the Primary Industries Activities Protection Act in 2014, the Tasmanian government expressed its intent “to strengthen the legal protection of farmers” in the future.¹⁸⁷

While Tasmania is, as mentioned, the only Australian state that has adopted a right-to-farm law, other states have recently witnessed similar legislative proposals. In New South Wales, member of the state parliament, Don Page, introduced the Protection of Agricultural Production (Right-to-Farm) Bill in 2005, which is based on similar concerns as those that led to the enactment of right-to-farm legislation in Tasmania and in the US.¹⁸⁸ However, the Bill did not garner enough support in the state parliament.¹⁸⁹ Meanwhile, farmers in New South Wales continue to lobby for such a right.¹⁹⁰ The government has adopted a “right-to-farm policy” to respond to these concerns and to address land use conflicts.¹⁹¹

¹⁸¹ *Primary Industries Activities Protection Act 1995* (Tas.) (Austl.).

¹⁸² *Id.* at s 5(1).

¹⁸³ *Id.* at s 4(d).

¹⁸⁴ *Id.* at s 3(1).

¹⁸⁵ *Id.* at s 6.

¹⁸⁶ *Environmental Management and Pollution Control Act 1994* (Tas.) s 53(5)(b)(i) (Austl.); see also GRIFFITH, *supra* note 177, at 11–12.

¹⁸⁷ DEP’T OF PRIMARY INDUS., *supra* note 179, at 9; see generally AUSTRALIAN NETWORK OF ENVTL. DEF. OFFICES INC., SUBMISSION TO THE PRODUCTIVITY COMMISSION ON REGULATION OF AGRICULTURE: ISSUES PAPER (2015).

¹⁸⁸ Protection of Agricultural Production (Right to Farm) Bill 2005 (N.S.W.) (Austl.); see also GRIFFITH, *supra* note 177, at 13–15 (showing the similarity of the clauses used in the legislation).

¹⁸⁹ GRIFFITH, *supra* note 177, at 13.

¹⁹⁰ Nicola Bell & Samantha Noon, *NSW Farmers Want Their Right to Farm Enshrined in Law*, NSW FARMERS (Jan. 2019), http://www.nswfarmers.org.au/NSW_FA/Posts/The_Farmer/Rural_Affairs/NSW_farmers_want_their_right_to_farm_enshrined_in_law.aspx.

¹⁹¹ *See Right to Farm Policy*, N.S.W. GOV’T DEP’T OF PRIMARY INDUS., <https://www.dpi.nsw.gov.au/agriculture/lup/legislation-and-policy/right-to-farm-po>

In South Australia, member of the state legislative council Robert Brokenshire repeatedly proposed the adoption of US-inspired right-to-farm legislation.¹⁹² One of the stated goals of the bill is to “ensure that protected farming activities are not subject to civil or criminal liability under environmental legislation.”¹⁹³ So far, none of Brokenshire’s proposals have been endorsed by the state parliament, but farmers are pushing for the right-to-farm to be recognized by the law.¹⁹⁴

Further steps have been taken in order to protect farmers’ rights in Australia. One example is the Intergovernmental Agreement on a National Water Initiative.¹⁹⁵ This agreement—between the Commonwealth of Australia and the governments of the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, and Victoria—grants farmers a right to compensation when the amount of water they need to irrigate their fields is restricted by environmental policy.¹⁹⁶ Moreover, farming lobbies have sought to obtain a statutory right to compensation for environmental measures. They have done so by drawing on the Inquiry Report published by the Australian government’s Productivity Commission in 2004.¹⁹⁷ This report states:

[T]he wider public should bear the costs of actions to promote public-good environmental services—such as biodiversity, threatened species preservation and greenhouse gas abatement—that it apparently

licy (last visited Dec. 30, 2019).

¹⁹² See GRIFFITH, *supra* note 177, at 16–18 (explaining the bill was also introduced in 2009, 2010, 2012, and 2015).

¹⁹³ Right to Farm Bill 2012 (S. Austl.) ss 4–5 (Austl.).

¹⁹⁴ Tom Nancarrow & Sowaibah Hanifie, *Land Clash: Farmers Battle Urban Creep With ‘Right to Farm’ Legislation*, ABC RURAL (Mar. 13, 2018, 12:13 AM), <https://www.abc.net.au/news/rural/2018-03-13/sa-growers-push-for-right-to-farm-legislation-amid-urbanisation/95433062019>.

¹⁹⁵ *Intergovernmental Agreement On a National Water Initiative Between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory and the Northern Territory*, AUSTRALIAN GOV’T DEP’T OF AGRIC. (June 25, 2004), <https://www.agriculture.gov.au/sites/default/files/sitecollectiondocuments/water/Intergovernmental-Agreement-on-a-national-water-initiative.pdf>.

¹⁹⁶ See, e.g., *id.* at ¶ 50. But cf. MACINTOSH & DENNISS, *supra* note 180, at 2 (providing a critical appraisal of the intergovernmental agreement).

¹⁹⁷ E.g., MACINTOSH & DENNISS, *supra* note 180, at 2. The Productivity Commission is an independent body advising the Australian government on a range of issues pertaining to industry. See *Productivity Commission Act 1998* (Cth) (Austl.) (defining the functions of the Commission).

demands, and which are likely to impinge significantly on the capacity of landholders to utilise their land for production.¹⁹⁸

It is also important to stress that farmed animals are, in practice, excluded from the scope of Australian animal welfare legislation. Since the 1980s, the Australian states and territories have typically been regulating farmed animal welfare in codes. These codes are often based on Model Codes of Practice elaborated by federal and local industries ministers.¹⁹⁹ Yet, Steven White notes that such codes are significantly less protective of animals than standard animal welfare legislation because farmers are among the issuers of the codes and they themselves are not legally obliged to comply with the codes.²⁰⁰ More generally, scholars highlight that the regulation of factory farming is hampered by lobbying efforts of the farming industry and conflicts of interest on the part of the regulators.²⁰¹ A further issue is the use of indeterminate language, which leaves considerable discretion to decisionmakers and may serve the interests of the factory farming industry.²⁰²

A contrary trend to these laws and legislative proposals consists in *limiting* farmers' rights—or at least in not taking those rights for granted. Such a tendency is observed in the state of Victoria, where the Sales of Land Amendment Act 2014 provides that prospective purchasers of land must be given a due diligence checklist.²⁰³ The checklist recommends that potential buyers of land in a rural zone assess whether the “surrounding land use [is] compatible with [their] lifestyle expectations . . .”²⁰⁴

¹⁹⁸ PRODUCTIVITY COMM'N, IMPACTS OF NATIVE VEGETATION AND BIODIVERSITY REGULATIONS: PRODUCTIVITY COMMISSION INQUIRY REPORT NO. 29 (Commonwealth of Austl. 2004), https://www.pc.gov.au/_data/assets/pdf_file/0005/49235/nativevegetation.pdf; MACINTOSH & DENNISS, *supra* note 180, at 8.

¹⁹⁹ Arnja Dale, *Animal Welfare Codes and Regulations—The Devil in Disguise?*, in ANIMAL LAW IN AUSTRALASIA 174 (Peter White et al. eds., 2d ed. 2013).

²⁰⁰ Steven White, *Regulation of Animal Welfare in Australia and the Emergent Commonwealth: Entrenching the Traditional Approach of the States and Territories or Laying the Ground for Reform?* 35 FED. L. REV. 347, 355 (2007); see also Bruce & Faunce, *supra* note 174, at 381.

²⁰¹ Jed Goodfellow, *Regulatory Capture and the Welfare of Farm Animals in Australia*, in ANIMAL LAW AND WELFARE—INTERNATIONAL PERSPECTIVES 195, 195 (Deborah Cao & Steven White eds., 2016); Elizabeth Ellis, *Making Sausages & Law: The Failure of Animal Welfare Laws to Protect Both Animals and Fundamental Tenets of Australia's Legal System*, 4 AUSTRALIAN ANIMAL PROTECTION L. J. 6, 9 (2010).

²⁰² Ellis, *supra* note 201, at 8.

²⁰³ *Sales of Land Amendment Act 2014* (Vict.) s 5 (Austl.).

²⁰⁴ *Due Diligence Checklist—for Home and Residential Property Buyers*, CONSUMER AFFAIRS VICT., <https://www.consumer.vic.gov.au/duediligencechecklist> (last visited Nov. 26, 2019); see also *Sales of Land Amendment Act 2014* (Vict.) s 5 (Austl.); see

Notwithstanding, the Australian legal landscape paints an overall dreadful picture: the various measures and compensatory claims in place to protect farmers neglect to recognize that the environment is a public good. This is all the more worrisome given Australian farmers' intent to further intensify their production to meet an ever-growing global demand (especially in Asia) for animal products.²⁰⁵ Another obstacle is the multilayered and fragmented character of the Australian regulatory framework pertaining to animals.²⁰⁶

D. European Union

In contrast to the other jurisdictions under scrutiny in this paper, right-to-farm legislation is, by and large, foreign to EU law. One important explanation for this is that agriculture and fisheries are a shared competence between the EU and its member states,²⁰⁷ and the EU can only act pursuant to the principle of conferral.²⁰⁸ Moreover, when comparing agricultural policies in and outside the EU, and more generally across states, one component to factor in is the demand for environmental regulation tailored to the characteristics of the agriculture of one state or group of states.²⁰⁹ The present subsection examines how EU law regulates the activity of CAFOs. It focuses on the EU's Common Agricultural Policy (CAP), which represents a substantial share of the EU budget.²¹⁰ It also examines EU laws on animal welfare, which apply to animals in CAFOs.

The CAP, the establishment of which dates back to the Treaty of Rome, has undergone various changes since the late

also New Landholders, AGRIC. VICT., <http://agriculture.vic.gov.au/agriculture/farm-management/business-management/new-landholders> (last visited Nov. 26, 2019) (drawing the attention of prospective purchasers to their legal obligations and recommending sustainable land management).

²⁰⁵ Bruce & Faunce, *supra* note 174, at 366.

²⁰⁶ *Id.* at 389.

²⁰⁷ Consolidated Version of the Treaty on the Functioning of the European Union art. 4(2)(d), June 7, 2016, 2016 O.J. (C 202) 47.

²⁰⁸ Consolidated Version of the Treaty on European Union, arts. 4–5, June 7, 2016, 2016 O.J. (C 202) 13.

²⁰⁹ For instance, Rajsic et al. note that “the demand for agricultural environmental regulation in countries like the Netherlands and Belgium might be much more intense than would be the case in relatively low nutrient intensity agricultures like Australia, Argentina and Canada.” Rajsic et al., *supra* note 157, at 61.

²¹⁰ See *Reform of the Common Agricultural Policy Post 2013*, EUROPEAN COUNCIL, <https://www.consilium.europa.eu/en/policies/cap-reform/#> (last visited Nov. 25, 2019) (noting that the CAP policy for 2014-2020 takes up 38% of the EU's overall budget, but that the percentage should drop over the next few years).

1950s.²¹¹ Initially, reforms were primarily aimed at improving the economic efficiency of farming—for instance, by encouraging large-scale agriculture.²¹² More recently, the CAP has shifted to incorporate non-economic concerns, including health, social concerns, animal welfare, and environmental considerations.²¹³ One important reform occurred in 2003 with the adoption of the Single Payment Scheme (granting direct payments to farmers) and the decoupling of subsidies from the types (and quantities) of crops produced.²¹⁴ Instead, payments became contingent on farmers complying with specific environmental, animal welfare, and food safety standards (this process is known as “cross-compliance”).²¹⁵

The last reform of the CAP entered into force in 2014 and covers the period of 2014-2020.²¹⁶ It provides for the so-called “greening” of farm payments, i.e., the financial encouragement of agricultural businesses that are “beneficial for the climate and the environment.”²¹⁷ It also seeks to reduce inequalities between small-scale and large-scale farming, e.g., by introducing a cap on subsidies for farms exceeding a specific size.²¹⁸

²¹¹ Both the official webpage of the Directorate General for Agriculture and Rural Development and the webpage of the Commissioner for Agriculture and Rural Development provide today’s focus of the CAP. *Agriculture and Rural Development*, EUROPEAN COMM’N, https://ec.europa.eu/info/departments/agriculture-and-rural-development_en (last visited Nov. 25, 2019); *Commissioner of the Agriculture & Rural Development*, EUROPEAN COMM’N, https://ec.europa.eu/commission/commissioners/2014-2019/hogan_en (last visited Nov. 25, 2019).

²¹² E.g., *Memorandum on the Reform of Agriculture in the European Economic Community and Annexes*, at ¶¶ 36, 89, COM (68), 1000 Parts A and B (Dec. 18, 1968), https://ec.europa.eu/agriculture/sites/agriculture/files/cap-history/crisis-years-1970s/com68-1000_en.pdf.

²¹³ Alicia Epstein, *The Ecological and Perpetual Dimensions of European Food Security: The Case for Sustainable Agriculture*, in *AGRICULTURAL LAW CURRENT ISSUES FROM A GLOBAL PERSPECTIVE* 19, 20 (Mariagrazia Alabrese et al. eds., 2017).

²¹⁴ *Id.* at 34.

²¹⁵ *Id.* at 32.

²¹⁶ EUROPEAN COUNCIL, *supra* note 210.

²¹⁷ Regulation 1307/2013, of the European Parliament and of the Council of 17 December 2013 on Establishing Rules for Direct Payments to Farmers Under Support Schemes Within the Framework of the Common Agricultural Policy and Repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, 2013 O.J. (L 347) 608, art. 37 [hereinafter Regulation 1307/2013]. *But cf.* CHARLES E. HANRAHAN & JEFFREY ZINN, CONG. RESEARCH SERV., RL 32624, GREEN PAYMENTS IN THE U.S. AND EUROPEAN UNION AGRICULTURAL POLICY 1–21 (2005), https://digital.library.unt.edu/ark:/67531/metacrs9126/m1/1/high_res_d/RL32624_2005Nov22.pdf (providing a skeptical view on whether the European model can inspire other jurisdictions to adopt the same legislations, as it is unclear whether some aspects of EU policy, such as cross-compliance, could garner enough political support elsewhere, for example in the US).

²¹⁸ Regulation 1307/2013, *supra* note 217, at art. 11(1).

The CAP has been criticized on several counts.²¹⁹ With respect to the 2014 amendments, Diane Ryland notes that “[t]he reformed CAP instruments are disappointing in that they do not aim explicitly and directly to improve farm animal welfare.”²²⁰ Others criticize the fact that the CAP leads to deforestation²²¹ and other types of environmental degradation,²²² or that it does not sufficiently support small-scale farming.²²³ Another point is that the CAP does not prohibit specific practices. Instead, it merely creates incentives for farmers to conform to specific environmental and animal welfare standards.

In 2018, the EU Commission published regulatory proposals to “modernize and simplify” the CAP for 2021-2027.²²⁴ The budget proposed for this period is expected to represent close to one-third of the total EU budget.²²⁵ The Commission’s proposal moves away from a “one-size-fits-all” approach to a more flexible scheme, allowing Member States to better account for local specificities.²²⁶ It puts greater emphasis on environmental goals and on fighting climate change. Through the new CAP, the Commission also seeks to encourage “small and medium sized family farms.”²²⁷ At the time of writing, the EU institutions were debating the new CAP.²²⁸ The extent to which the proposal will be accepted and implemented remains to be seen.

Several EU legal instruments deal with animal welfare in CAFOs. One example is the Directive 98/58/EC,²²⁹ which regulates

²¹⁹ See, e.g., FRIENDS OF THE EARTH EUR., A NEW FOOD AND AGRICULTURE POLICY FOR THE EUROPEAN UNION (2010), https://www.foeeurope.org/sites/default/files/cap_pp_full_final1.pdf (highlighting the range of problems caused by CAFOs in the EU).

²²⁰ Diane Ryland, *Animal Welfare in the Reformed Common Agricultural Policy: Wherefore Art Thou?*, 17 ENVTL. L. REV. 22, 22 (2015).

²²¹ E.g., Markus Sommerauer, *Common Agricultural Policy (CAP) of the EU, FLEGT and REDD+*, FOREST INDUS., <http://www.forestindustries.eu/content/comm-on-agricultural-policy-cap-eu-flegt-and-redd> (last visited Nov. 23, 2019).

²²² Epstein, *supra* note 213, at 20.

²²³ E.g., FRIENDS OF THE EARTH, BRIEFING: FACTORY FARMING IN EUROPE: THE IMPACTS AND OUR DEMANDS OF THE COMMON AGRICULTURAL POLICY 2 (2012), https://www.foe.co.uk/sites/default/files/downloads/cap_briefing_2012.pdf.

²²⁴ See EUROPEAN COMMISSION, EU BUDGET: THE CAP AFTER 2020 (2018), https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-modernising-cap_en.pdf (providing a summary).

²²⁵ *Id.* at 1.

²²⁶ *Id.* at 1.

²²⁷ *Id.* at 3.

²²⁸ See, e.g., *Future of the CAP Post 2020*, EUR. COUNCIL, <https://www.consilium.europa.eu/en/policies/cap-future-2020/> (last visited Nov. 23, 2019) (providing a timeline of the CAP progression).

²²⁹ Council Directive 98/58, 1998 O.J. (L 221) 23.

the protection of animals kept for farming purposes. The Directive in a general manner states that the EU Members States “shall ensure that the conditions under which animals . . . are bred or kept, having regard to their species and to their degree of development, adaptation and domestication, and to their physiological and ethological needs in accordance with established experience and scientific knowledge, comply with the provisions set out in the Annex.”²³⁰ The Directive has been subject of extensive literature, which we do not want to replicate here.²³¹ It suffices to note that the Directive “cleaned up around the edges,”²³² but by and large failed to change the *status quo*, namely that animals are industrially produced and killed by the billions.²³³ Moreover, the Directive does not deal with other externalities caused by CAFOs, such as their effects on the environment or human rights affected by their operation.

EU norms on organic farming address some concerns relating to animal welfare.²³⁴ Regulation 834/2007 on Organic Production and Labelling of Organic Products defines organic production as:

[A]n overall system of farm management and food production that combines best environmental practices, a high level of biodiversity, the preservation of natural resources, *the application of high animal welfare standards*[,] and a production method in line with the preference of certain consumers for products produced using natural substances and processes.²³⁵

²³⁰ *Id.* art. 4.

²³¹ *E.g.*, Magdalena Gajdzinska, *Implementation of Council Directive 98/58/EC Concerning the Protection of Animals Kept for Farming Purposes*, EUROPEAN ENF’T NETWORK (Sept. 8, 2016), <http://www.lawyersforanimalprotection.eu/2016/09/08/implementation-of-council-directive-9858ec-concerning-the-protection-of-animals-kept-for-farming-purposes/>.

²³² THOMAS G. KELCH, *GLOBALIZATION AND ANIMAL LAW: COMPARATIVE LAW, INTERNATIONAL LAW AND INTERNATIONAL TRADE* 99 (2d ed. 2017).

²³³ *See, e.g.*, CHARLOTTE E. BLATTNER, *PROTECTING ANIMALS WITHIN AND ACROSS BORDERS: EXTRATERRITORIAL JURISDICTION AND THE CHALLENGES OF GLOBALIZATION* 345–46 (Oxford Univ. Press 2019).

²³⁴ Council Regulation (EC) No 834/2007 of June 28, 2007 on Organic Production and Labelling of Organic Products and Repealing Council Regulation (EEC) No 2092/91, 2007 O.J. (L 189) 1 [hereinafter Council Regulation 834/2007]; Commission Regulation (EC) 889/2008 of 5 September 2008 Laying Down Detailed Rules for the Implementation of Council Regulation (EC) No. 834/2007 on Organic Production and Labelling of Organic Products with Regard to Organic Production, Labelling and Control, 2008 O.J. (L 250) 1.

²³⁵ Council Regulation 834/2007, *supra* note 234, at recital 1 (emphasis added).

Yet, these norms only aim at regulating organic production and labelling; they do not impose mandatory standards on all farmers.

IV. How Farmers' Rights Threaten Human Rights Guarantees

In this section, we examine how farmers' rights (rather than agriculture itself), including right-to-farm laws and other legislation exempting animal agribusiness, threaten and even violate human rights. For reasons of scope, we limit our analysis to five rights: the right to food (Part A), the right to water and sanitation (Part B), the right to a safe environment (Part C), the emerging right to land (Part D), and the right to animal protection (Part E). However, it is important to note that many other human rights, such as the right to privacy, home, and family life, may be affected by these laws as well.

A. Right to Food

The right to food has been described as one of “the least realized human rights”²³⁶ and even as “the most violated human right worldwide.”²³⁷ It is rejected by major global players such as the US²³⁸ and deemed non-justiciable by states such as Canada.²³⁹ While European states tend to support the right to food abroad, they are much more cautious to implement this right within their own jurisdiction.²⁴⁰ Moreover, as highlighted by the Office of the High Commissioner for Human Rights (OHCHR), the right to food is often misunderstood.²⁴¹ Yet the right to food is protected by the Universal Declaration of Human Rights (UDHR)²⁴² and guaranteed by various

²³⁶ Kerstin Mechlem, *Food, Right to, International Protection*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 1 (Rüdiger Wolfrum Online 2017).

²³⁷ See *The Most Violated Human Right Worldwide: The Right to Food*, CIVIL SOC'Y & INDIGENOUS PEOPLES' MECHANISM FOR RELATIONS WITH UN COMM. ON WORLD FOOD SECURITY (Oct. 12, 2018), <http://www.csm4cfs.org/violated-human-right-worldwide-right-food/>.

²³⁸ The US is not a party to the ICESCR, which guarantees the right to adequate food. International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; see Sandra Raponi, *A Defense of the Human Right to Adequate Food*, 23 RES PUBLICA 99–100 (2017); see also Eve Garrow & Jack Day, *Strengthening the Human Right to Food*, 7 U.C. IRVINE L. REV. 275–76 (2017) (discussing food security in the United States).

²³⁹ See, e.g., Priscilla Claeys, *The Right to Food: Many Developments, More Challenges*, 2 CAN. FOOD STUD. 60 (2015).

²⁴⁰ Jose Luis Vivero Pol & Claudio Schuftan, *No Right to Food and Nutrition in the SDGs: Mistake or Success?*, 1 BMJ GLOBAL HEALTH 1, 3 (2016).

²⁴¹ See Fact Sheet No. 34, *supra* note 18, at 3.

²⁴² G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25(1) (1948) [hereinafter UDHR].

international human rights treaties,²⁴³ including the International Covenant on Economic, Social, and Cultural Rights (ICESCR),²⁴⁴ the Convention on the Rights of the Child (CRC),²⁴⁵ the Convention on the Elimination of All Form of Discrimination Against Women (CEDAW),²⁴⁶ and the Convention on the Rights of Persons With Disabilities (CRPD).²⁴⁷ Many of the UN human rights treaty bodies have dealt with this right,²⁴⁸ and the Human Rights Council has called upon states to protect it.²⁴⁹ Scholars endorse the right to food as well.²⁵⁰ Some commentators point to several UN General Assembly resolutions that acknowledge the existence of the right to food²⁵¹ to argue that this right has the status of customary international law,²⁵² and the OHCHR considers that “at least freedom from hunger can be considered as a norm of international customary law.”²⁵³ All in all, human rights lawyers converge in saying that the right to food is one of the most fundamental human rights.²⁵⁴

Article 11 ICESCR, upon which we focus in this subsection, “deals more comprehensively”²⁵⁵ with this right in international law. It states that the parties to the Covenant “recognize the right of everyone to . . . adequate food.”²⁵⁶ Moreover, it provides that states commit to “improve methods of production . . . of food,” *inter alia*

²⁴³ See, e.g., OFFICE OF THE HIGH COMM’R OF HUMAN RIGHTS, *International Standards*, <http://www.ohchr.org/EN/Issues/Food/Pages/Standards.aspx> (last visited Dec. 30, 2019) (providing a list of international standards and rights).

²⁴⁴ We do not focus on the right to be free from hunger, which is also guaranteed by the ICESCR. ICESCR, *supra* note 238, art. 11(2).

²⁴⁵ Convention on the Rights of the Child, arts. 24(2)(c),(e), 27(3), Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

²⁴⁶ Convention on the Elimination of All Forms of Discrimination Against Women, art. 12(2), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

²⁴⁷ Convention on the Rights of Persons with Disabilities, art. 25(f), Dec. 13, 2006, 2515 U.N.T.S. 3 [hereinafter CRPD].

²⁴⁸ See Fact Sheet No. 34, *supra* note 18, at 34–35.

²⁴⁹ See Human Rights Council Res. 7/14, ¶ 8 (Mar. 27, 2008).

²⁵⁰ Ana Ayala & Benjamin Mason Meier, *A Human Rights Approach to the Health Implications of Food & Nutrition Insecurity*, 38 PUB. HEALTH REV. 1 (2017); Vivero Pol & Schuftan, *supra* note 240, at 1; Garrow & Day, *supra* note 238, at 275; Naomi Hossain & Dolf te Lintelo, *A Common Sense Approach to the Right to Food*, 10 J. HUM. RTS. PRAC. 367 (2018) (discussing how an understanding of the right to food is shared across different cultures).

²⁵¹ G.A. Res. 71/191 The Right to Food (Jan. 18, 2017).

²⁵² Mechlem, *supra* note 236, at 13.

²⁵³ See Fact Sheet No. 34, *supra* note 18, at 9.

²⁵⁴ See, e.g., Hilal Elver (Special Rapporteur on the Right to Food), *Interim Report on the Right to Food*, U.N. Doc. A/72/188, ¶ 5 (July 21, 2017).

²⁵⁵ U.N. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 12: The Right to Adequate Food, ¶ 1, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter General Comment 12].

²⁵⁶ ICESCR, *supra* note 238, art. 11(1).

“by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.”²⁵⁷ Pursuant to article 2(1) ICESCR, states have a duty of progressive realization with respect to this right.²⁵⁸ They cannot discriminate against specific groups of individuals when giving effect to the right to food (article 2(2) ICESCR), nor can they take so-called retrogressive measures impairing its realization.²⁵⁹

It is widely held that agriculture is necessary to realize the right to food.²⁶⁰ On this basis, one could consider that guaranteeing the right to food requires maintaining and further developing existing agricultural practices, including industrial animal agriculture businesses. However, several arguments show that this assumption is treacherous and actually prevents states from complying with their duty to respect, protect, and fulfill²⁶¹ the right to food. As the UN Committee on Economic, Social, and Cultural Rights has stressed, the concepts of adequacy, sustainability, availability, and accessibility are central to the right to food.²⁶² For our purposes, adequacy and sustainability are particularly important.²⁶³

In regards to adequacy, the UN Committee on Economic, Social, and Cultural Rights has noted:

²⁵⁷ *Id.* at art. 11(2).

²⁵⁸ *Id.* at art. 2(1).

²⁵⁹ *Special Rapporteur on the Right to Food*, OFFICE OF THE HIGH COMM’R OF HUMAN RIGHTS, <http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx> (last visited Dec. 30, 2019).

²⁶⁰ See, e.g., Kerstin Mechlem, *Harmonizing Trade in Agriculture and Human Rights: Options for the Integration of the Right to Food Into the Agreement on Agriculture*, 10 MAX PLANCK YEARBOOK OF U.N. L. 127 (2006); see Fact Sheet No. 34, *supra* note 18, at 10; see also Jean Ziegler (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur of the Commission on Human Rights on the Right to Food*, ¶ 22, U.N. Doc. A/57/356 (Aug. 27, 2002) [hereinafter U.N. Doc. A/57/356] (emphasizing the importance of access to land); Olivier de Schutter (Special Rapporteur on the Right to Food), *Interim Rep. of the Special Rapporteur on the Right to Food*, ¶ 1, U.N. Doc. A/66/262 (Aug. 4, 2011) [hereinafter U.N. Doc. A/66/262].

²⁶¹ See, e.g., Mechlem, *supra* note 236, at 19; see also HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND US FOREIGN POLICY* (Princeton Univ. Press 1980).

²⁶² General Comment 12, *supra* note 255, ¶ 7; see also Hilal Elver (Special Rapporteur on the Right to Food), *Interim Report of the Special Rapporteur on the Right to Food*, U.N. Doc. A/70/287 (Aug. 5, 2015) [hereinafter U.N. Doc. A/70/287].

²⁶³ However, other aspects are relevant as well, considering that the UN Committee on Economic, Social, and Cultural Rights has stated that the “roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food.” Meat production, in particular, deprives individuals from crops and other plant-based food because these products are fed to animals in large quantities rather than being directly used to feed local populations. See General Comment 12, *supra* note 255, ¶ 5.

[T]he right to adequate food implies: [t]he availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; [t]he accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.²⁶⁴

It has further stated that the meaning of adequacy is “to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions.”²⁶⁵ As previously stated in the introductory section,²⁶⁶ the prevailing animal agricultural production methods (CAFOs) create massive negative externalities from an environmental perspective, which puts into question their adequacy as a means to guarantee the right to food.

Similarly, sustainability, which can be defined as the accessibility of food for both present and future generations,²⁶⁷ supports abandoning agricultural products that are major drivers of climate change and that jeopardize food security.²⁶⁸ It has been shown, in this context, that meat production consumes particularly large amounts of resources (e.g., water, energy, and land) compared to plant-based diets. For instance, the production of 1 kg of beef meat consumes over 15,400 liters of water.²⁶⁹ The water footprint of the same quantity (1 kg) of rice consumes 2,497 liters; 1 kg of cereals uses 1,644 liters; and 1 kg of potatoes requires 287 liters.²⁷⁰ Because

²⁶⁴ *Id.* ¶ 8.

²⁶⁵ *Id.* ¶ 7.

²⁶⁶ See *supra* Part I.

²⁶⁷ See General Comment 12, *supra* note 255, ¶ 7.

²⁶⁸ See U.N. Doc. A/70/287, *supra* note 262, ¶ 41.

²⁶⁹ *Water Footprint of Crop and Animal Products: A Comparison*, WATER FOOTPRINT NETWORK, <https://waterfootprint.org/en/water-footprint/product-water-footprint/water-footprint-crop-and-animal-products/> (last visited Dec. 10, 2019); see also *How Much Water Is Needed to Produce Food and How Much Do We Waste?*, THE GUARDIAN (Jan. 10, 2013), <https://www.theguardian.com/news/datablog/2013/jan/10/how-much-water-food-production-waste#data>; see also *How Much Water Does It Take to Produce Meat?*, THE CATTLE SITE (Apr. 26, 2016), <http://www.thecattlesite.com/news/49594/how-much-water-does-it-take-to-produce-meat/>; ANKE SONNENBERG ET AL., DER WASSER-FUSSABDRUCK DEUTSCHLANDS 7 (WWF 2009), http://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/wwf_studie_wasserfussabdruck.pdf (last visited on Oct. 14, 2019).

²⁷⁰ WATER FOOTPRINT NETWORK, *supra* note 269; see also THE GUARDIAN, *supra* note 269. The Water Footprint Network is a non-profit organization which, to date, constitutes the main source of information in terms of the water used to produce various goods. See also *Global Water Footprint Standard*, WATER FOOTPRINT NETWORK, <https://waterfootprint.org/en/water-footprint/global-water-footprint-standard/> (last visited Dec. 15, 2019) (providing the methodology used in this context). While some methodological concerns remain, the water footprint standard is widely

meat-based diets are so nutritionally inefficient and unsustainable, animal agricultural production greatly inhibits states' ability to ensure food security in the long term. As Alex Bruce and Thomas Faunce put it, animal farming has a highly damaging "environmental domino effect."²⁷¹

Civil society actors are increasingly highlighting that a rational solution to world hunger would consist of shifting toward a plant-based diet.²⁷² A report of the UN Environmental Programme published in 2010 reached the same conclusion, stating:

Impacts from agriculture are expected to increase substantially due to population growth increasing consumption of animal products. Unlike fossil fuels, it is difficult to look for alternatives: people have to eat. A substantial reduction of impacts would only be possible with a substantial worldwide diet change, away from animal products.²⁷³

Despite compelling evidence regarding the environmental and human rights benefits of a plant-based diet, the UN Special Rapporteurs on the right to food have thus far refrained from explicitly describing an adequate diet as primarily plant-based—or even as based on the consumption of little meat. This omission might be owed to political and strategic reasons given that the Rapporteurs readily highlight the health benefits of consuming fruit and vegetables²⁷⁴ and that they stress the health and other (including food-supply) problems created by increasing meat consumption.²⁷⁵ The Rapporteurs have also pointed to the negative nutritional effects of industrial food, which is typically the product of factory

regarded as directionally accurate. See Jonathan Chenoweth, Michalis Hadjikakou & Christos Zoumides, *Quantifying the Human Impact on Water Resources: A Critical Review of the Water Footprint Concept*, 18 *HYDROLOGY & EARTH SYS. SCI.* 2325, 2337 (2014).

²⁷¹ Bruce & Faunce, *supra* note 174, at 385.

²⁷² *Nachhaltige Ernährung*, SENTIENCE POLITICS, <https://sentience-politics.org/de/positionspapiere/nachhaltige-ernaehrung-ch> (last visited Dec. 15, 2019).

²⁷³ See UNEP, *supra* note 31, at 82; see also HARALD VON WITZKE, STEFFEN NOLEPPA & INGA ZHIRKOVA, *FLEISCH FRISST LAND: ERNÄHRUNGSWEISEN FLEISCHKONSUM FLÄCHENVERBRAUCH* (WWF 2014), https://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/WWF_Fleischkonsum_web.pdf.

²⁷⁴ See, e.g., Olivier de Schutter (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food*, U.N. Doc. A/HRC/19/59 (Dec. 26, 2011).

²⁷⁵ Olivier de Schutter (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food*, ¶ 7, U.N. Doc. A/HRC/16/49 (Dec. 20, 2010) [hereinafter U.N. Doc. A/HRC/16/49].

farming,²⁷⁶ and they have recommended shifting away from this type of industrial agricultural production.²⁷⁷ They have further emphasized states' obligation to respect farmers' right to food.²⁷⁸ However, instead of advocating for changing food habits, the UN Special Rapporteurs have primarily recommended relying on agroecology as an alternative to industrial agriculture.²⁷⁹ They have stressed that article 11 ICESCR calls for small-scale farming in light of the benefits that this type of farming generates, e.g., in terms of employment, sustainability, and non-discrimination of vulnerable populations.²⁸⁰

As scholars note, “[a] strong linkage exists between the right to food, sustainable agriculture, and sustainable soil management.”²⁸¹ Goal 2 of the UN’s 2030 Agenda for Sustainable Development states that the UN members undertake to “end hunger, achieve food security and improved nutrition[,] and promote sustainable agriculture.”²⁸² Similarly, the FAO recommends that “[s]tates should assist farmers and other primary producers to follow good agricultural practices,” so as to ensure the progressive realization of the right to adequate food.²⁸³

In view of the aforementioned observations, however, profound reforms of current agricultural practices, and especially of factory farming, appear necessary to guarantee the right to food.

²⁷⁶ Hilal Elver (Special Rapporteur on the Right to Food), *Interim Rep. on the Right to Food*, ¶¶ 22, 23, U.N. Doc. A/71/282 (Aug. 3, 2016) [hereinafter U.N. Doc. A/71/282]; Hilal Elver (Special Rapporteur on the Right to Food), *Interim Rep. on the Right to Food*, ¶ 7, U.N. Doc. A/73/164 (July 16 2018).

²⁷⁷ U.N. Doc. A/71/282, *supra* note 276, ¶ 92.

²⁷⁸ *Id.*

²⁷⁹ See U.N. Doc. A/HRC/16/49, *supra* note 275 (on agroecology); see also Anastasia Telesetsky, *Fulfilling the Human Right to Food and a Healthy Environment: Is It Time for an Agroecological and Aquaeological Revolution?*, 40 VT. L. REV. 791, 806–07 (2016).

²⁸⁰ U.N. Doc. A/66/262, *supra* note 260; U.N. Doc. A/57/356, *supra* note 260, ¶¶ 22–42; Olivier de Schutter (Special Rapporteur on the Right to Food), *Interim Rep. of the Special Rapporteur on the Right to Food*, ¶¶ 27–38, U.N. Doc. A/65/281 (Aug. 11, 2010) [hereinafter U.N. Doc. A/65/281]; Human Rights Council, Rep. of the Special Rapporteur on the Right to Food, ¶ 104, U.N. Doc. A/HRC/34/48 (Jan. 24, 2017).

²⁸¹ Tina Beuchelt et al., *The Human Right to Food and Sustainable Soil Management: Linking Voluntary Agricultural Sustainability Standards with Food Security*, in INTERNATIONAL YEARBOOK OF SOIL LAW AND POLICY 237, 242 (Harald Ginzky et al. eds., 2017).

²⁸² G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, at 14 (Sept. 25, 2015) [hereinafter G.A. Res. 70/1] (emphasis added).

²⁸³ See FOOD & AGRIC. ORG., VOLUNTARY GUIDELINES ON THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD SECURITY 20 (2005), <http://www.fao.org/3/a-y7937e.pdf>.

Indeed, “[i]ndustrial agriculture and fishing practices encourage the waste of natural capital, such as soil, and violate the human right-to-food.”²⁸⁴ By contrast, plant-based diets “could play an important role in preserving environmental resources and reducing hunger and malnutrition in poorer nations.”²⁸⁵ This issue needs to be addressed urgently, not least because of the steady growth of the global human population and its reliance (and dependence) on finite resources.

B. Right to Water and Sanitation

The CEDAW, adopted in 1979, is the first international human rights treaty to have mentioned the right to water and sanitation.²⁸⁶ Since then, other treaties have included this right in their text.²⁸⁷ In 2002, the UN Committee on Economic, Social, and Cultural Rights stated that this right is contained in article 11 ICESCR, which protects “the right to an adequate standard of living . . . including adequate food, clothing and housing.”²⁸⁸ Moreover, the Committee deems the right to water and sanitation “inextricably related”²⁸⁹ to article 12(1) ICESCR (which guarantees the right to health),²⁹⁰ article 11(1) ICESCR (which protects the right to housing and the right to food),²⁹¹ and the right to life.²⁹² Later, in 2010, the UN Human Rights Council reaffirmed these statements²⁹³ a few months after the UN General Assembly had recognized the human

²⁸⁴ Telesetsky, *supra* note 279, at 803.

²⁸⁵ Simona Baroni et al., *Evaluating the Environmental Impact of Various Dietary Patterns Combined with Different Food Production Systems*, 61 EUROPEAN J. OF CLINICAL NUTRITION 279, 285 (2007), <https://www.nature.com/articles/1602522.pdf>.

²⁸⁶ CEDAW, *supra* note 246, art. 14(2)(h).

²⁸⁷ CRC, *supra* note 245, arts. 24, 27(3); CRPD, *supra* note 247, art. 28.

²⁸⁸ U.N. Comm. on Econ., Soc. & Cultural Rights, General Comment No. 15: The Right to Water, ¶ 3, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter General Comment 15].

²⁸⁹ Human Rights Council Res. 15/9, U.N. Doc. A/HRC/RES/15/9, ¶ 3 (Oct. 6, 2010) [hereinafter HRC Res. 15/9] (“[T]he human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.”); see also Amanda Cahill, *The Human Right to Water—A Right of Unique Status: The Legal Status and Normative Content of the Right to Water*, 9 INT’L J. OF HUM. RTS. 389, 391 (2005) (discussing the right to water as a “derivative right,” in a broader sense than in the Human Rights Council’s terminology).

²⁹⁰ General Comment 15, *supra* note 288, ¶ 3.

²⁹¹ See e.g., Jean Ziegler (Special Rapporteur on the Right to Food), *Rep. Submitted by the Special Rapporteur on the Right to Food in Accordance with Commission on Human Rights Resolution 2002/25*, U.N. Doc. E/CN.4/2003/54 (Jan. 10, 2003).

²⁹² See also Stephen McCaffrey et al., *The Emergence of a Human Right to Water and Sanitation: The Many Challenges*, 106 PROC. OF THE ASIL ANN. MEETING 43, 46 (2012).

²⁹³ HRC Res. 15/9, *supra* note 289, ¶ 3.

right to water and sanitation.²⁹⁴ Goal 6 of the UN's Sustainable Development Goals is to "[e]nsure availability and sustainable management of water and sanitation for all."²⁹⁵ However, among states and international lawyers, this right remains controversial,²⁹⁶ and it is not deemed part of customary international law.²⁹⁷ Researchers have highlighted "the complex interplay of interests behind the recognition of the right to water."²⁹⁸ This explains why the right to water and sanitation has been pictured as a right requiring further development and institutionalization.²⁹⁹

Given that the right to water is "inextricably related" to the right to food, it comes as no surprise that agricultural practices can threaten this right as well. As a matter of fact, agriculture currently consumes, on average, 70% of the water used worldwide.³⁰⁰ Animal agriculture absorbs a large share of this portion, since meat-based diets require particularly high amounts of water compared to plant-based diets.³⁰¹ For instance, in California, agriculture draws more than 90% of the total water, with animal agriculture consuming 47%.³⁰² The substantial water depletion caused by animal agriculture jeopardizes water security, which is currently under high

²⁹⁴ U.N. GAOR, 64th Sess., 108th plen. mtg., at 9, U.N. Doc. A/64/PV.108 (July 28, 2010); G.A. Res. 64/292, ¶ 1 (July 28, 2010).

²⁹⁵ G.A. Res. 70/1, *supra* note 282, at 14.

²⁹⁶ One manifestation of this conflict is that forty-one nations, including Australia, Canada, and the US, did not vote in favor of General Assembly Resolution 64/292, adopted on July 28, 2010. U.N. GAOR, 64th Sess., 108th plen. mtg., at 8, 9, 11, 17, U.N. Doc. A/64/PV.108 (July 28, 2010); Colin Brown et al., *The Human Right to Water and Sanitation: A New Perspective for Public Policies*, 21 CIÊNCIA & SAÚDE COLETIVA 661, 663 (2016).

²⁹⁷ *E.g.*, Stephen McCaffrey, *The Human Right to Water: A False Promise?*, 47 U. PAC. L. REV. 221, 227, 231 (2016); George S. McGraw, *Defining and Defending the Right to Water and Its Minimum Core: Legal Construction and the Role of National Jurisprudence*, 8 LOY. U. CHI. INT'L L. REV. 127, 143–45, 161, 189–91 (2011).

²⁹⁸ JOOTAEK LEE & MARAYA BEST, *THE HUMAN RIGHT TO WATER: A RESEARCH GUIDE & ANNOTATED BIBLIOGRAPHY* 4 (Ne. U. Sch. of L. 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2924632.

²⁹⁹ Lady Justice Arden, *Water for All? Developing a Human Right to Water in National and International Law*, 65 INT'L & COMP. L. Q. 771, 782–87 (2016).

³⁰⁰ Catarina de Albuquerque (Special Rapporteur on the Right to Safe Drinking Water and Sanitation), *Rep. of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation in Accordance with Human Rights Council Resolution 16/2*, ¶ 35, U.N. Doc. A/68/264 (Aug. 5, 2013) [hereinafter U.N. Doc. A/68/264]; *see also* FOOD & AGRIC. ORG., *AGRICULTURE, FOOD AND WATER* 17–27 (2003) (discussing the use of water in agriculture).

³⁰¹ *See* Pimentel & Pimentel, *supra* note 55, at 660S, 662S; *see generally* *The Water Footprint of Beef: Industrial vs. Pasture-Raised*, WATER FOOTPRINT CALCULATOR (Nov. 29, 2018), <https://www.watercalculator.org/water-use/water-footprint-beef-industrial-pasture/>.

³⁰² JULIAN FULTON ET AL., *CALIFORNIA'S WATER FOOTPRINT* 3 (Pac. Inst. 2012), http://pacinst.org/wp-content/uploads/2013/02/ca_ftprint_full_report3.pdf.

threat across the world.³⁰³ While California was the first US state to recognize the human right to water (in 2012),³⁰⁴ the implementation of this right has been incomplete.³⁰⁵

The FAO³⁰⁶ and the UN Special Rapporteurs on the Human Rights to Safe Drinking Water and Sanitation³⁰⁷ have also highlighted the link between agriculture and environmental pollution—more specifically, water pollution.³⁰⁸ Animal agriculture pollutes water to a disproportionate extent compared to the production of plant-based food,³⁰⁹ notably through animal excrements, antibiotics, hormones, fertilizers, and pesticides for fodder cultivation.³¹⁰ In the US, for instance, animal agriculture is responsible for 37% of all pesticides applied and 50% of all antibiotics consumed,³¹¹ which run off into ground and fresh water reserves.³¹² The FAO succinctly summarizes that “the livestock sector has an enormous impact on water use, water quality, hydrology and aquatic ecosystems.”³¹³

With animal agriculture resulting in water depletion, large investments in animal agriculture jeopardize the human right to water. This right, according to the UN Committee on Economic, Social, and Cultural Rights, requires that water be “sufficient, safe, acceptable, physically accessible, and affordable . . .”³¹⁴ Problems

³⁰³ C. J. Vörösmarty et al., *Rivers in Crisis: “Global Water Insecurity for Humans and Biodiversity,”* 467 NATURE 555 (2010).

³⁰⁴ CAL. WAT. CODE § 106.3(a) (West 2013).

³⁰⁵ KENA CADOR & ANGÉLICA SALCEDA, A SURVEY OF EFFORTS TO ACHIEVE UNIVERSAL ACCESS TO WATER AND SANITATION IN CALIFORNIA 1, 3–5, 25 (ACLU N. Cal. & Pac. Inst. 2018), <https://www.aclunc.org/sites/default/files/SurveyReport.pdf>.

³⁰⁶ E.g., FOOD & AGRIC. ORG., *supra* note 300, 43–46.

³⁰⁷ The initial denomination (for 2008–2014) was that of “Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation.” This expert was appointed by the Human Rights Council in 2008. *See* Human Rights Council Res. 7/22, ¶ 2 (Mar. 28, 2008). The mandate was extended and transformed into that of a Special Rapporteur in 2011. *See* HRC Res. 16/2 (Apr. 8, 2011).

³⁰⁸ U.N. Doc. A/68/264, *supra* note 300, ¶ 35.

³⁰⁹ Leo Horrigan et al., *How Sustainable Agriculture Can Address the Environmental and Human Health Harms of Industrial Agriculture*, 110 ENVTL. HEALTH PERSP. 445, 445–49 (2002); Margot J. Pollans, *Regulating Farming: Balancing Food Safety and Environmental Protection in a Cooperative Governance Scheme*, 50 WAKE FOREST L. REV. 399, 404 (2015); *see also* FOOD & AGRIC. ORG., *supra* note 33, at 125–32.

³¹⁰ *Ernährung*, *supra* note 272.

³¹¹ FOOD & AGRIC. ORG., *supra* note 33, at 168.

³¹² *Id.* at 137–39, 142–43, 145.

³¹³ *Id.* at 167.

³¹⁴ General Comment 15, *supra* note 288, ¶ 2 (although these terms are sometimes replaced by synonyms or by related adjectives).

arise with regard to the criterion of safety, which requires that water be “free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health.”³¹⁵ Of course, when water is accessible to factory farmers to the detriment of local populations, the criteria of sufficiency, physical accessibility, and affordability are likely to be undermined as well. The same problems arise when water is driven away from local populations to meet the needs of meat production. The end product is mostly consumed by individuals living in rich, minority world countries. In the US, for instance, the standard food diet requires 4,200 gallons (15,899 liters) of water per day, while a person on a vegan food diet only needs 300 gallons (1,136 liters) of water per day.³¹⁶ What is more, when water is lacking, other human rights can be affected. For instance, inadequate access to water has a disparate impact on women and girls.³¹⁷ Instead of investing water resources into an unsustainable system that accounts for adverse and discriminatory effects, these resources could be used for direct consumption and thereby make it more likely for the human right to water of local and foreign populations to be guaranteed.³¹⁸

C. Right to a Safe Environment

The strong link between human rights and the environment became salient at latest in 1972, when the Stockholm Conference on the Human Environment issued a declaration that recognized a quality environment as a precondition for “a life of dignity and well-being.”³¹⁹ As political and civil society actors increasingly recognized environmental protection as essential for the enjoyment of the right to life, health, home life, and property,³²⁰ calls for a right

³¹⁵ *Id.* ¶ 12(b).

³¹⁶ Aisling Maria Cronin, *You Can Save Over 200,000 Gallons of Water a Year With One Simple Choice*, ONE GREEN PLANET, <http://www.onegreenplanet.org/environment/how-to-save-water-with-one-simple-choice/> (last visited Dec. 19, 2019).

³¹⁷ Léo Heller (Special Rapporteur), *Rep. of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, ¶¶ 1–14, U.N. Doc. A/HRC/33/49 (July 27, 2016).

³¹⁸ See e.g., Mark W. Rosegrant & Claudia Ringler, *Impact on Food Security and Rural Development of Transferring Water Out of Agriculture*, 6 WATER POL’Y 567 (2000).

³¹⁹ U.N. Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, at 4, princ. 1, U.N. Doc. A/CONF.48/14/Rev.1 (June 5–16, 1972); see G.A. Res. 45/94 (Dec. 14, 1990).

³²⁰ Melissa Thorne, *Establishing Environment as a Human Right*, 19 DENV. J. INT’L L. & POL’Y 301, 310–11 (1991); Dinah Shelton, *Human Rights and the Environment: Substantive Rights*, in RESEARCH HANDBOOK ON INTERNATIONAL ENVIRONMENTAL LAW 265 (Malgosia Fitzmaurice et al. eds., 2011).

to a safe environment became stronger, both nationally and internationally.³²¹

Today, over one hundred constitutions worldwide—adopted since 1992—enshrine the right to a clean and healthy environment.³²² For example, Section 20(2) of the Finnish constitution recognizes “. . . the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.”³²³ More than one hundred states incorporated an explicit right to a healthy environment in domestic environmental legislation, totaling 155 states that are obligated to respect, protect, and fulfill the right to a healthy environment under domestic law.³²⁴ On the international level, the African Charter for Human and Peoples’ Rights³²⁵ and the Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights³²⁶ both provide for a human right to a healthy environment. General Comment No. 14 to article 12 of the ICCPR (which guarantees the right to the highest attainable standard of health) stipulates that “the right to health embraces a wide range of socio-

³²¹ James W. Nickel, *The Human Right to a Safe Environment: Philosophical Perspectives on Its Scope and Justification*, 18 YALE J. INT’L L. 281, 281 (1993).

³²² Those include Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Cape Verde, Chad, Chechnya, Chile, Colombia, Congo, Costa Rica, Croatia, Cuba, Czech Republic, Ecuador, El Salvador, Ethiopia, Finland, Georgia, Honduras, Hungary, Kyrgyzstan, Latvia, Macedonia, Mali, Moldova, Mongolia, Mozambique, Nicaragua, Niger, Norway, Paraguay, Philippines, Portugal, Russia, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Tajikistan, Togo, Turkey, Ukraine, and Yugoslavia. *EarthJustice Presents 2004 ‘Human Rights and the Environment’ Report to UN*, EARTHJUSTICE (Apr. 6, 2004), <https://earthjustice.org/news/press/2004/earthjustice-presents-2004-human-rights-and-the-environment-report-to-un>; see David R. Boyd (Special Rapporteur on Human Rights and the Environment), *Rep. of the Special Rapporteur: Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶¶ 7–16, U.N. Doc. A/HRC/40/55 (Jan. 8, 2019) [hereinafter U.N. Doc. A/HRC/40/55]; see also Dinah Shelton, *Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized*, 35 DENV. J. INT’L L. & POL’Y 129, 164–65, 164 n. 172 (2008). Some countries, like Argentina, Chile, Ecuador, and Brazil, guarantee this right as a fundamental individual right, while others, like Colombia, Costa Rica, and Nicaragua, enshrine it as a collective right.

³²³ SUOMEN PERUSTUSLAKI, [CONSTITUTION], June 11, 1999, 731, § 20 (Fin.).

³²⁴ U.N. Doc. A/HRC/40/55, *supra* note 322, ¶¶ 15–16.

³²⁵ African Charter on Human and Peoples Rights, art. 24, June 27, 1981, 21 I.L.M. 58 [hereinafter African Charter on Human and People’s Rights] (“All peoples shall have the right to a general satisfactory environment favourable to their development.”).

³²⁶ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol San Salvador” art. 11, Nov. 17, 1988, O.A.S.T.S. No. 69, 28 I.L.M. 1641 (stating that “everyone shall have the right to live in a healthy environment . . .”).

economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinates of health, such as . . . a healthy environment.”³²⁷ In 2003, the Council of Europe’s Parliamentary Assembly issued a recommendation for the governments of the member states of the Council of Europe to “recognize a human right to a healthy, viable and decent environment.”³²⁸ The European Convention on Human Rights (ECHR)³²⁹ does not expressly provide for a right to a healthy environment, but it covers those instances in which an unsafe environment threatens people’s right to life (article 2 ECHR), the right to privacy and family life (article 8 ECHR) and, in the ECHR’s Protocol No. 1, the right to property (article 1).³³⁰

Though widely recognized domestically and internationally, the content of the right to a healthy environment is still in dispute. Some scholars argue for a broad definition of the right, namely as a right to a safe, healthy, secure, clean, sustainable, or ecologically-balanced environment,³³¹ as enshrined in the constitutions of Honduras,³³² Portugal,³³³ or South Korea.³³⁴ Another camp argues for a narrower interpretation of this right, i.e., for guaranteeing the right to a *safe* environment.³³⁵ In this view, environments must not

³²⁷ U.N. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health, ¶ 4, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter General Comment 14]. “[I]n March 2012, the Human Rights Council decided to establish a mandate on human rights and the environment, which will (among other tasks) study the human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, and promote best practices relating to the use of human rights in environmental policymaking.” *UN Mandate, UN SPECIAL RAPORTEUR ON HUMAN RIGHTS AND THE ENVT.*, <http://srenvironment.org/un-mandate> (last visited Dec. 30, 2019).

³²⁸ Eur. Parl. Ass., *Environment and Human Rights*, 3d Sess., Doc. No. 1614, ¶ 9.2 (2003).

³²⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 2, 8, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR].

³³⁰ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1, Mar. 20, 1952, 213 U.N.T.S. 262.

³³¹ Thorne, *supra* note 320, at 310 (1991); *see also* Shelton, *supra* note 320, at 265.

³³² *See* REPÚBLICA DE HONDURAS CONSTITUCIÓN DE 1982 CON REFORMAS HASTA 2019 [CONSTITUTION], Jan. 29, 2019, art. 145 (Hond.) (mentioning “an adequate environment to protect the health of persons”).

³³³ *See* CONSTITUCIÓN DE LA REPÚBLICA PORTUGUESA [CONSTITUTION], Apr. 2, 1976, art. 66, ¶ 1 (Port.) (mentioning the right to “a healthy and ecologically balanced human living environment”).

³³⁴ *See* 대한민국 헌법 [CONSTITUTION], Oct. 29, 1987, art. 35 (S. Kor.) (mentioning the right to “a healthy and pleasant environment”).

³³⁵ Nickel, *supra* note 321, at 281–82. Scholars argue that, in the environmental domain, it is more appropriate to appeal to *obligations* and *responsibilities* towards the environment, or to the *respect* of environmental goods. *See* Cynthia Giagnocavo

be destructive to human health and must provide protection from contamination and pollution.³³⁶ Activities that cause adverse environmental effects but do not manifest a damage or threat to human health, such as noises emanating from nearby farms, are not covered by this narrower, anthropocentric³³⁷ reading.³³⁸ Critics question what such a narrow right adds to existing human rights, such as the right to life or the right to property, and denounce a “rights inflation”—dangers of “policy and resource overload” that may occur because of too many human rights enunciations.³³⁹ In the following, we examine the right to an environment through the narrower lens, due to the fact that this perspective seems to more closely follow the current state of international law, and because it acknowledges the close connection between human rights and the environment. After all, the environment is the physical basis, the *sine qua non*, without which there are no human rights to enjoy or protect, as famously stated by Judge Weeramantry in his separate opinion to the *Gabčíkovo-Nagymaros* judgment of the International Court of Justice.³⁴⁰

The right to environmental protection only imposes a duty on natural and legal persons to refrain from activities that damage or threaten the environment to the determined extent (i.e., when these activities threaten human safety), and to restore damage and pay compensation to those affected.³⁴¹ Governments, in contrast, are “obligated to respect, protect, and fulfill the right to a healthy environment,” as the UN Special Rapporteur on Human Rights and the Environment, David R. Boyd, noted in a report unanimously adopted by the UN General Assembly in January 2019.³⁴² States have both a “negative duty to refrain from actions . . . [threatening] human life and health,” and a positive “duty to protect the inhabitants of their territories against environmental risks . . . [caused] by

& Howard Goldstein, *Law Reform or World Re-form: The Problem of Environmental Rights*, 35 MCGILL L. J. 345, 359–60, 373–74 (1990).

³³⁶ Nickel, *supra* note 321, at 284.

³³⁷ Non-anthropocentric values, such as “duties toward the environment” and “rights of nature,” are protected by the Earth Charter and numerous international environmental law treaties. Shelton, *supra* note 322, at 131–32.

³³⁸ Nickel, *supra* note 321, at 285.

³³⁹ Shelton, *supra* note 320, at 279; see generally Upendra Baxi, *Too Many, or Too Few, Human Rights?*, 1 HUM. RTS. L. REV. 1 (2001) (providing an in-depth discussion of the “human rights overload”).

³⁴⁰ *Gabčíkovo-Nagymaros Project* (Hung. v. Slov.), Separate Opinion of Judge Weeramantry, 1997 I.C.J. 7, at 91 (Sept. 25) (“The protection of the environment is . . . a *sine qua non* for numerous human rights such as the right to health and the right to life itself.”).

³⁴¹ Nickel, *supra* note 321, at 286.

³⁴² U.N. Doc. A/HRC/40/55, *supra* note 322, ¶ 6.

governments or private agencies.”³⁴³ The duty to protect more specifically calls on governments to prevent, investigate, and prosecute violations as well as to provide appropriate redress.³⁴⁴ The right to environmental protection also encompasses procedural duties, such as the duty to allow individuals to sue polluters, participate in the formation of environmental laws, and access information.³⁴⁵ In this scheme, international law does not directly enable victims to sue private enterprises; only states can be held accountable for failure to do so and for the resulting harm.³⁴⁶ So far, claims that the human right to a safe environment is threatened or violated have mostly been raised against oil and logging industries.³⁴⁷

The consumption of meat and milk products has for years been marketed as beneficial to human health and even as an indicator

³⁴³ Nickel, *supra* note 321, at 286.

³⁴⁴ Shelton, *supra* note 322, at 130.

³⁴⁵ Access to judicial and administrative proceedings, including redress and remedy, is guaranteed by: the Rio Declaration; the Aarhus Convention on Access to Information Public, Participation and Access to Justice in Environmental Matters; the United Nations Framework Convention on Climate Change; the UDHR; the ICCPR; the ECHR; the American Declaration of the Rights and Duties of Man; the African Charter; and the Committee on Economic Social and Cultural Rights' General Comment No. 14 to Article 12 of the Covenant. U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (Vol. I), princ. 10 (Aug. 12, 1992); Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, art. 9, June 25, 1998, 2161 U.N.T.S. 447; United Nations Framework Convention on Climate Change, art. 6, May 9, 1992, 1771 U.N.T.S. 107; *see* UDHR, *supra* note 242, art. 8; International Covenant on Civil and Political Rights, art. 2(3), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; ECHR, *supra* note 329, art. 6; American Declaration of the Rights and Duties of Man, art. XVIII, May 2, 1948, O.A.S. Res. XXX; African Charter on Human and Peoples' Rights, *supra* note 325, arts. 7, 24; General Comment 14, *supra* note 327, art. 12, ¶¶ 11, 59.

³⁴⁶ Shelton, *supra* note 322, at 130.

³⁴⁷ Statements by United Nations Special Rapporteur John H. Knox provide an example of logging. *See Statement of United Nations Special Rapporteur John H. Knox on the Conclusion of His Mission to Madagascar*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMM'R (Oct. 31, 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20791&LangID=E>. In June 2017, the Pennsylvania Supreme Court set a precedent by challenging fracking under the right to a safe environment, referencing the Declaration of Rights of Pennsylvania's state constitution, which recognizes "environmental rights as commensurate with their most sacred political and individual rights." *See* Pa. Env'tl. Def. Found. v. Commonwealth, 161 A.3d 911, 916 (Pa. 2017); *see generally* John C. Dernbach, Kenneth T. Kristl & James R. May, *Recognition of Environmental Rights for Pennsylvania Citizens: Pennsylvania Environmental Defense Foundation v. Commonwealth of Pennsylvania*, 70 RUTGERS U. L. REV. 803 (providing a discussion of the case).

of the prosperity of a civilized nation.³⁴⁸ This framing, pushed by corporate lobbying,³⁴⁹ largely ignores the human health costs of animal agriculture. As CAFOs become larger and more intensified, there is a rising awareness of the fact that emissions of excessive nitrates cause blue baby syndrome, affect the development of the central nervous system, and lead to miscarriages.³⁵⁰ Hydrogen sulfide is associated with mild cerebral dysfunction and brain damage for people living close to CAFOs.³⁵¹ Asthma, chronic bronchitis, declining lung functions, cardiovascular irritation, headaches, and even brain damage and death have been observed due to the exposure of CAFO workers and their families to hydrogen sulfide, ammonia, and dust.³⁵² People living near CAFOs have been reported to suffer from increased levels of depression, anxiety, and sleep disturbances.³⁵³ Surroundings of CAFOs are also increasingly exposed to pathogen outbreaks, including bacteria, fungi, viruses, helminths (parasitic worms), and protozoa.³⁵⁴ The high toxicity of CAFOs becomes evident with the example of Mexico: due to animal waste and fertilizer runoff, there is now a dead zone of 20,000 km² with no marine life in the Gulf of Mexico.³⁵⁵ The multi-level contamination of water, air, and soil by CAFOs directly and fundamentally threatens people's health and life.

Because they continue to subsidize and even to immunize CAFOs from environmental responsibility, governments can and should be held accountable for violating their duty to refrain from

³⁴⁸ After the postwar period, milk and other animal products were identified as products of wealth and economic growth. See ANNE MENDELSON, *MILK: THE SURPRISING STORY OF MILK THROUGH THE AGES* 45 (2008).

³⁴⁹ See Melissa Mialon & Jonathan Mialon, *Corporate Political Activity of the Dairy Industry in France: An Analysis of Publicly Available Information*, 20 PUB. HEALTH NUTRITION 2432, 2435–36 (2017); see SHARON TREAT & SHEFALI SHARMA, *SELLING OFF THE FARM: CORPORATE MEAT'S TAKEOVER THROUGH TTP* 16, 45 (2016); see Julie C. Keller, Margaret Gray & Jill Lindsey Harrison, *Milking Workers, Breaking Bodies: Health Inequality in the Dairy Industry*, 26 NEW LAB. F. 36, 36–37 (2017).

³⁵⁰ Wilson, *supra* note 32, at 445 & n. 45 (discussing ammonia emissions from animal agriculture and studies of the effects of such emissions in North Carolina and Iowa); Brehm, *supra* note 32, at 813–14; Marc B. Schenker et al., *Respiratory Health Hazards in Agriculture*, 158 AM. J. RESPIRATORY & CRITICAL CARE MED. S1, S2 (1998).

³⁵¹ Brehm, *supra* note 32, at 814.

³⁵² *Id.*; Wilson, *supra* note 32, at 446.

³⁵³ Kelley J. Donham et al., *Community Health and Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, 115 ENVTL. HEALTH PERSP. 317, 318 (2007).

³⁵⁴ U.S. ENVTL. PROT. AGENCY, *RISK ASSESSMENT EVALUATION FOR CONCENTRATED ANIMAL FEEDING OPERATIONS* 29 (2004).

³⁵⁵ Janet Raloff, *Dead Waters: Massive Oxygen-Starved Zones Are Developing Along the World's Coasts*, SCI. NEWS (May 30, 2004, 4:30 PM), <https://www.science.org/article/dead-waters>.

damaging human life and health, as well as for their failure to fulfill their duty to protect people from harm to life and health caused by third parties (i.e., animal agribusinesses). As Shelton argues, “there may be little difference between a state that arbitrarily executes persons and a state that knowingly allows drinking water to be poisoned by contaminants.”³⁵⁶

D. Right to Land

The right to land, or land rights, can be defined as “rights to use, control, and transfer a parcel of land.”³⁵⁷ Some voices, including land rights movements within civil society,³⁵⁸ have called for the recognition of such a right in international human rights law.³⁵⁹ One such voice is that of Miloon Kothari, the former UN Special Rapporteur on adequate housing.³⁶⁰ Olivier de Schutter, the former Special Rapporteur on the right to food, even speaks of an “emerging human right to land.”³⁶¹

Together with food sovereignty claims,³⁶² the legal recognition of the right to land is one of the main concerns of the transnational movement *La Via Campesina*, composed of farmers and members of rural and indigenous populations.³⁶³ The movement emerged in response to the growing commodification of land and to the large-scale acquisitions of land by corporate actors over the past decades.³⁶⁴ Presently, the right to land is not explicitly recognized as a self-standing human right in international human rights law; land is only mentioned at the margins³⁶⁵ or via related concepts, such as property³⁶⁶ or housing.³⁶⁷

³⁵⁶ Shelton, *supra* note 322, at 171.

³⁵⁷ Jérémie Gilbert, *Land Rights as Human Rights: The Case for a Specific Right to Land*, 18 SUR INT’L J. ON HUM. RTS. 115, 115 (2013).

³⁵⁸ *Id.* at 116; Priscilla Claeys, *The Right to Land and Territory: New Human Right and Collective Action Frame*, 75 REVUE INTERDISCIPLINAIRE D’ÉTUDES JURIDIQUES 115, 117, 124 (2015).

³⁵⁹ De Schutter, *supra* note 27, at 305; Gilbert, *supra* note 357, at 116; Jennifer C. Franco, Sofia Monsalve & Saturnino M. Borrás, *Democratic Land Control and Human Rights*, 15 CURRENT OPINION IN ENVTL. SUSTAINABILITY 66, 66, 68 (2015).

³⁶⁰ Miloon Kothari (Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living), *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, ¶¶ 25–31, U.N. Doc. A/HRC/4/18 (Feb. 5, 2007).

³⁶¹ De Schutter, *supra* note 27, at 303.

³⁶² Saturnino M. Borrás Jr., Jennifer C. Franco & Sofia Monsalve Suárez, *Land and Food Sovereignty*, 36 THIRD WORLD Q. 600, 603 (2015).

³⁶³ Claeys, *supra* note 358, at 117.

³⁶⁴ *Id.* at 116–17.

³⁶⁵ *E.g.*, CEDAW, *supra* note 246, art. 14.

³⁶⁶ *E.g.*, UDHR, *supra* note 242, art. 17.

³⁶⁷ *E.g.*, ICESCR, *supra* note 238, art. 11(1).

Why talk about land if no corresponding right exists in contemporary international law? Simply because it is widely accepted that access to land is key to the realization of other human rights.³⁶⁸ As a matter of fact, land rights are present in several ways in international human rights law.³⁶⁹ In a report published in 2014, the UN High Commissioner for Human Rights noted that land issues, including large-scale agriculture, affect a variety of human rights, namely the right to self-determination, non-discrimination and equality, the right to life, the right to an adequate standard of living (including food, housing, and water), freedom from hunger, the right to an effective judicial remedy, freedom of opinion, expression, assembly and association, and the right to take part in public affairs.³⁷⁰ Following a number of scholars,³⁷¹ the Commissioner has advocated viewing land issues through a human rights lens.³⁷²

Right-to-farm laws and exemptions for animal agricultural industries greatly threaten the (emerging) human right to land. In 2014, agriculture took up 36.99% of all available land.³⁷³ Meat-

³⁶⁸ *E.g.*, Gilbert, *supra* note 357, at 115; *see also Land and Human Rights*, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMMISSIONER, <http://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx> (last visited Oct. 14, 2019) [hereinafter *Land and Human Rights*].

³⁶⁹ Gilbert, *supra* note 357, at 115 (mentioning property law, the protection of indigenous peoples, the right to food, and housing); *see* UDHR, *supra* note 242, arts. 15, 25; *see* International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, Mar. 7, 1966, 660 U.N.T.S. 195; *see* CEDAW, *supra* note 246, arts. 14(2)(h), 16; *see* ICCPR, *supra* note 345, art. 27; *see* ICESCR, *supra* note 238, art. 11; *see* CRC, *supra* note 245, art. 27(3); *see also* U.N. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 4: The Right to Adequate Housing, art. 11(1), U.N. Doc. E/1992/23 (Dec. 13, 1991); U.N. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 7: The Right to Adequate Housing: Forced Evictions, art. 11.1, U.N. Doc. E/1998/22 (May 20, 1997).

³⁷⁰ Econ. and Soc. Council, Rep. of the High Commissioner for Human Rights, ¶¶ 15–34, U.N. Doc. E/2014/86 (July 11, 2014) [hereinafter U.N. Doc. E/2014/86]; *see also Land and Human Rights*, *supra* note 368 (“[T]he shift to large-scale farming has . . . led to forced evictions, displacements and local food insecurity, which in turn has contributed to an increase in rural to urban migration and consequently further pressure on access to urban land and housing.”); *see generally* Office of the High Commissioner for Human Rights, Land and Human Rights: Standards and Applications, at 10, U.N. Doc. HR/PUB/15/5/Add.1 (2015), http://www.ohchr.org/Documents/Publications/Land_HRStandardsApplications.pdf [hereinafter Standards and Applications] (providing a comprehensive overview of the human rights implications of land-related issues).

³⁷¹ *E.g.*, Gilbert, *supra* note 357, at 115; De Schutter, *supra* note 27, at 303.

³⁷² U.N. Doc. E/2014/86, *supra* note 370, at ¶¶ 62–66; *see also* Standards and Applications, *supra* note 370, at 53–54.

³⁷³ *Land Use Statistical Data*, FOOD & AGRIC. ORG., <http://www.fao.org/faostat/en/#data> (last visited Dec. 21, 2019) (follow “Land Use Indicators” hyperlink under “Agri-Environmental Indicators” heading; select “World + (Total)” under

based nutrition requires significantly more land than plant-based nutrition.³⁷⁴ According to the FAO, the livestock sector uses 78% of all agricultural land and 33% of all cropland.³⁷⁵ More specifically, a study conducted in the Netherlands for the year 1990 has shown that meat production required 57.9 m² of land per kg (with beef meat requiring 20.9 m²/kg), while the total production of cereals, sugar, potatoes, vegetables, and fruit required only 3.8 m² of land per kg (over fifteen times less).³⁷⁶ To satisfy the demand for meat, many minority world countries today need more land than the surface that is available domestically. For instance, between 2008 and 2010, the EU used a surface of almost fifteen million hectares of land, thirteen of which were located in South America.³⁷⁷

These developments do not necessarily lead to investment relationships from which all parties benefit. As a matter of fact, these global “land grab policies” often lead to dire conflicts as arable land is taken away from populations in the Global South, who simultaneously bear the environmental and human rights externalities of meat production.³⁷⁸ In South America, for example, approximately four million hectares of forest are disappearing every year, mainly due to the spread of agricultural activity.³⁷⁹ CAFOs also threaten grasslands, which are frequently replaced by monoculture production.³⁸⁰ Given the continuous growth of the world population and the steady increase in meat consumption,³⁸¹ these issues will only become more severe in the future.

The use of land for the purpose of animal agriculture affects individuals and their environment in a myriad of ways: it accelerates climate change and it leads to the pollution of water and soil, land degradation, and water depletion.³⁸² Intensive animal agriculture

“Regions”; select “Agricultural Land” under “Items”; select “All” under “Elements”; select “2014” under “Years”; and then select “Show Data”).

³⁷⁴ FOOD & AGRIC. ORG., *supra* note 33, at 74.

³⁷⁵ *Id.*

³⁷⁶ See P. Winnie Gerbens-Leenes, Sanderine Nonhebel & Wilfried P.M.F. Ivens, *A Method to Determine Land Requirements Relating to Food Consumption Patterns*, 90 AGRIC., ECOSYSTEMS AND ENV'T. 47 (2002) (discussing the amount of agricultural land required for plant-based versus meat-based food production); see also WITZKE, NOLEPPA & ZHIRKOVA, *supra* note 273; FOOD & AGRIC. ORG., *supra* note 33, at 23–74.

³⁷⁷ WITZKE, NOLEPPA & ZHIRKOVA, *supra* note 273, at 6.

³⁷⁸ *Id.* at 7.

³⁷⁹ *Id.* at 17.

³⁸⁰ FOOD & AGRIC. ORG., *supra* note 33, at 34–35.

³⁸¹ WITZKE, NOLEPPA & ZHIRKOVA, *supra* note 273, at 15–17 (discussing the increasing consumption of meat in Germany in recent years).

³⁸² In the US, for example, livestock is estimated to be responsible for 55% of soil erosion on agricultural land. FOOD & AGRIC. ORG., *supra* note 33, at 73.

also catalyzes soil acidification, notably because of the fertilizers on which it relies.³⁸³ The appropriation of land to meet the demands of agriculture can threaten specific human rights, such as the right to housing when the demand for land triggers forced evictions and displacements.³⁸⁴ The environmental and human rights side effects of animal agriculture are particularly palpable for specially vulnerable groups, such as indigenous communities.³⁸⁵

Land issues related to factory farming have major consequences for the right to food. The UN Special Rapporteur has frequently stressed that access to land is a prerequisite for realizing the right to food.³⁸⁶ It emerges from de Schutter's analysis that factory farming increases the poverty (and hence jeopardizes the right to food) of small-scale farmers, but also of agricultural workers on large farms.³⁸⁷ Addressing these issues requires reforming agricultural policy to ensure an equal distribution of land and security of tenure.³⁸⁸ Moreover, given the high impact of animal agriculture on these rights, the relevant policies need to be designed based on a holistic approach so as to take into account the interlinkage between CAFO production, land use, and the enjoyment of human rights.

³⁸³ See *Fertilizers and Soil Acidity*, CROPNUTRITION (Apr. 2013), <http://www.cropnutrition.com/fertilizers-and-soil-acidity>.

³⁸⁴ See Miloon Kothari (Special Rapporteur), *Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the Rep. of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, U.N. Doc. A/HRC/4/18 (Feb. 5, 2007).

³⁸⁵ E.g., G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

³⁸⁶ See U.N. Doc. A/57/356, *supra* note 260; see also U.N. Doc. A/65/281, *supra* note 280, ¶ 27 (discussing access to land and the right to food); Oliver de Schutter (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food, Addendum on Large-Scale Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge*, U.N. Doc. A/HRC/13/33/Add.2 (Dec. 28, 2009). De Schutter argues that access to land is sometimes a self-standing right and sometimes instrumental to the right to food. See De Schutter, *supra* note 27.

³⁸⁷ De Schutter, *supra* note 27.

³⁸⁸ *Id.*; Olivier de Schutter, *The Green Rush: The Global Race for Farmland and the Rights of Land Users*, 52 HARV. INT'L L. J. 504 (2011); see also ICESCR, *supra* note 238, art. 11(2)(a); U.N. Doc. A/57/356, *supra* note 260, ¶ 30 (“[A]ccess to land and agrarian reform must form a key part of the right to food.”) (cited by Elisabeth Wickeri & Anil Kalhan, *Land Rights Issues in International Human Rights Law*, 4 MALAYSIAN J. ON HUM. RTS. 16 (2010)); U.N. Doc. A/70/287, *supra* note 262, ¶ 34. The importance of ensuring security of land tenure has, for example, been mentioned by the FAO. See FOOD & AGRIC. ORG., VOLUNTARY GUIDELINES ON THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD SECURITY 17 (2005) (referring to Guideline 8B).

E. Right to Animal Protection

Today, many animal protection and animal welfare acts throughout the world recognize animals as sentient, living beings, whom we owe moral and legal duties. These laws provide that animals ought not to be treated inhumanely or caused unnecessary suffering. This “general principle of animal welfare”³⁸⁹ is established law in, among others, the following countries and supra- or international organizations: the EU, the Council of Europe, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Costa Rica, Croatia, Estonia, Fiji, Finland, France, Germany, Gibraltar, Greece, Hong Kong, Iceland, India, Indonesia, Israel, Kenya, Latvia, Liechtenstein, Lithuania, Malaysia, Malta, Myanmar, the Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Papua New Guinea, Paraguay, the Philippines, Poland, Portugal, Puerto Rico, Slovenia, Solomon Islands, South Africa, South Korea, Sri Lanka, Sweden, Switzerland, Taiwan, Tanzania, Tonga, Turkey, Uganda, Ukraine, the UK, the US, Vanuatu, Venezuela, and Zambia.³⁹⁰ In addition, more and more states (such as Brazil, Egypt, Germany, India, Luxemburg, and Switzerland) have expressed their concern for animals at a constitutional level, including by setting up duties owed to animals.³⁹¹ These provisions make an important value statement about the claims of animals against us and

³⁸⁹ MICHAEL BOWMAN ET AL., *LYSTER’S INTERNATIONAL WILDLIFE LAW* 678 (2d ed. 2010); Sabine Brels, *Animal Welfare Protection: A Universal Concern to Properly Address in International Law*, *J. ANIMAL WELFARE L.* 34, 37 (2012); Katie Sykes, *Sealing Animal Welfare Into the GATT Exceptions: The International Dimension of Animal Welfare in WTO Disputes*, 13 *WORLD TRADE REV.* 471 (2014); Neil Trent et al., *International Animal Law, With a Concentration on Latin America, Asia, and Africa*, in *THE STATE OF THE ANIMALS III* 65, 77 (Deborah J. Salem & Andrew N. Rowan eds., 2005); Steven White, *Into the Void: International Law and the Protection of Animal Welfare*, 4 *GLOBAL POL’Y* 391 (2013).

³⁹⁰ Charlotte E. Blattner, *An Assessment of Recent Trade Law Developments From an Animal Law Perspective: Trade Law as the Sheep in Wolf’s Clothing?*, 22 *ANIMAL L.* 277, 304–6 (2016).

³⁹¹ Article 225 paragraph 1 VII of the Brazilian Constitution states that it is “the responsibility of the Government to . . . prohibiting, as provided by law, all practices that . . . subject animals to cruelty.” CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL [C.F.] [Constitution] Oct. 5, 1988, art. 225, para. 1(IV) (Braz.). Article 45 of the Egyptian Constitution commits the state to “the protection of plants, livestock and fisheries; the protection of endangered species; and the prevention of cruelty to animals.” CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT [CONSTITUTION] Jan. 15, 2014, art. 45 (Egypt); see also *Egypt’s Constitution of 2014*, INT’L IDEA, https://www.constituteproject.org/constitution/Egypt_2014.pdf (last updated Dec. 4, 2019) (providing a translated version of Egypt’s Constitution). In Germany, article 20a of the Basic Law identifies animal protection as a state objective. See GRUNDGESETZ [GG] [BASIC LAW] May 23, 1949, art. 20a (Ger.), <https://www.btg-bestellservice.de/pdf/80201000.pdf>; ENTWURF EINES GESETZES ZUR ÄNDERUNG DES GRUNDGESETZES (STAATSZIEL TIERSCHUTZ) [LAW TO CHANGE THE BASIC LAW

“bring . . . [animals] into the very structure of the body politic.”³⁹²

Also on the international level, we are observing a growing awareness of the importance of thinking about the impacts of human activity on animals, e.g., under the auspices of the World Organization for Animal Health (OIE),³⁹³ the UN,³⁹⁴ the Council of

(STATE OBJECTIVE OF ANIMAL PROTECTION)] July 31, 2002, BGBl. I at 2862 (Ger.) (amendments introduced by the Gesetz zur Änderung des Grundgesetzes). Article 51 of the Indian Constitution, introduced in 1976, provides that “[i]t shall be the duty of every citizen of India . . . to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.” THE CONSTITUTION OF INDIA Nov. 26, 1949, art. 51 A(g) (India). Luxembourg’s constitution provides in article 11: “The State guarantees the protection of the human and cultural environment, and works for the establishment of a durable equilibrium between the conservation of nature, in particular its capacity for renewal, and the satisfaction of the needs of present and future generations. It promotes the protection and well-being of animals.” CONSTITUTION OF THE GRAND DUCHY OF LUXEMBOURG Oct. 17, 1868, art. 11bis (Lux.). The Swiss Constitution protects the dignity of animals. See FEDERAL CONSTITUTION OF THE SWISS CONFEDERATION Apr. 18, 1999, art. 120, para. 2 (Switz.); see generally Jessica Eisen & Kristen Stilt, *Protection and Status of Animals*, in MAX PLANCK ENCYCLOPEDIA OF COMPARATIVE CONSTITUTIONAL LAW 55 (Rainer Grote, Frauke Lachenmann & Rüdiger Wolfrum online eds., 2017) (providing an in-depth discussion of the aforementioned provisions). Some Constitutions also allocate competences among state institutions or regulatory levels over animal protection matters, e.g., in Austria and Slovenia.

³⁹² BRUCE A. WAGMAN & MATTHEW LIEBMAN, A WORLDVIEW OF ANIMAL LAW 260 (2011).

³⁹³ World Organization for Animal Health [OIE], *Terrestrial Animal Health Code*, s. 7 (2018); OIE, *Aquatic Animal Health Code*, s. 7 (2018); see also OIE, *Third Strategic Plan 2001-2005*, 69 GS/FR (2000); see also OIE, *Sixth Strategic Plan 2016-2020*, at 3, 83 SG/17 (2015) (identifying animal welfare as a mandate of the organization); see also FOOD & AGRIC. ORG., LEGISLATIVE AND REGULATORY OPTIONS FOR ANIMAL WELFARE 7 (2010).

³⁹⁴ G.A. Res. 66/750, at 8, 15, 18 (Mar. 20, 2012); U.N. NGO Branch, Dep’t of Econ. & Soc. Affairs, 64th UN DPI/NGO Conference, *Bonn Declaration on Rio+20 Presented to the General Assembly* (Apr. 26, 2011) (arguing that safeguarding animal welfare is a requirement for achieving the goals of sustainable development and eradication of poverty, that the Millennium Consumption Goals should respect animal welfare, and that global agricultural production should ensure both good animal health and welfare); see also *Gateway to Farm Animal Welfare*, FOOD & AGRIC. ORG., <http://www.fao.org/ag/againfo/themes/animal-welfare/aw-abthegat/aw-whaistgate/en/> (last visited Dec. 18, 2019) (a multi-stakeholder platform to exchange national and international knowledge about farm animal welfare).

Europe,³⁹⁵ and the World Trade Organization (WTO).³⁹⁶ Viewed together, these developments suggest an emerging universal consensus about the relevance of animal issues and that human diligence must be exercised when interacting with animals.

In parallel, more and more scholars argue that humans feel violated themselves—in their dignity, and even in their rights—when animal protection laws are not adhered to or when governments fail to enact such laws in the first place. This claim rests on an argument that ethicists have been raising for centuries, namely that there is a direct link between treating animals unkindly and the degradation of man. Immanuel Kant famously stated it as:

If a man shoots his dog because the animal is no longer capable of service, he does not fail in his duty to the dog, for the dog cannot judge, but his act is inhuman and damages in himself that humanity which it is his duty to show towards mankind. If he is not to stifle his human feelings, he must practice kindness towards animals, for he who is cruel to animals becomes hard also in his dealings with men.³⁹⁷

Today, policy makers recognize the connection between preventing animal cruelty and curbing human crimes, on the one hand, and animal cruelty and the brutalization of society, on the other. People who are cruel towards humans often have a history of animal cruelty; vice versa, animal abuse is regularly an indicator for abuse of other family members (in the literature, these correlations are known as “the link”).³⁹⁸

³⁹⁵ Council of Europe, Convention for the Protection of Animals During International Transport, Dec. 13, 1968, C.E.T.S. No. 065; Council of Europe, Convention for the Protection of Animals During International Transport (revised), Nov. 6, 2003, C.E.T.S. No. 193; Council of Europe, Convention for the Protection of Animals Kept for Farming Purposes, Mar. 10, 1976, C.E.T.S. No. 087; Council of Europe, Convention for the Protection of Animals for Slaughter, May 10, 1979, C.E.T.S. No. 102; Council of Europe, Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes, Mar. 18, 1986, C.E.T.S. No. 123; Council of Europe, Convention for the Protection of Pet Animals, Nov. 13, 1987, C.E.T.S. No. 125.

³⁹⁶ See Appellate Body Report, *EC—Measures Prohibiting the Importation and Marketing of Seal Products*, WTO Doc. WT/DS400/AB/R, WT/DS401/AB/R (adopted June 18, 2014).

³⁹⁷ IMMANUEL KANT, LECTURES ON ETHICS 212 (P. Heath & J.B. Schneewind trans., 1997).

³⁹⁸ This link is noticed and examined by Rebecca L. Bucchieri. See Rebecca L. Bucchieri, *Bridging the Gap: The Connection between Violence Against Animals and Violence Against Humans*, 11 J. ANIMAL & NAT. RESOURCE L. 115 (2015); see also

Drawing on these insights, Konstantin Leondarakis argues for a human right to animal protection, providing the following: “It is a right of every person to reasonably safeguard the lives and integrity of animals, and ensure they are treated with dignity.”³⁹⁹ Such a right is needed, he claims, because current violations of animal interests cannot be redressed by animals, and because humans have only a limited ability to contribute to the proper enforcement of these laws; indeed, humans themselves lack standing because they have not suffered an injury.⁴⁰⁰ Leondarakis argues that a discrete human right to animal protection should be established, but that it could also be drawn from existing human rights guarantees, like the human right to privacy and family life,⁴⁰¹ and the protection of human dignity.⁴⁰²

In CAFOs, farmed animals suffer from numerous production-related cardiovascular, skeletal, and respiratory diseases as well as mutilation, mourning, aggression, frustration, and lethal stress syndromes.⁴⁰³ Against this background, exempting animal cruelty in agriculture from the purview of the law is problematic in two ways. First, the general principle of animal welfare⁴⁰⁴ demands

FRASCH ET AL., *supra* note 125, at 107; HUMANE SOC’Y OF THE U.S., FIRST STRIKE: THE VIOLENCE CONNECTION (2008), https://www.sheriffs.org/publications/first_strike.pdf; KONSTANTIN LEONDARAKIS, ETHIK IM RECHT: DIE VERLETZUNG VON MENSCHENRECHTEN DURCH DIE VERLETZUNG VON BELANGEN AN TIEREN 34 (2001); ANDREW LINZEY, THE LINK BETWEEN ANIMAL ABUSE AND HUMAN VIOLENCE (2009); SCHAFFNER, *supra* note 126, at 28; WAGMAN & LIEBMAN, *supra* note 392, at 145.

³⁹⁹ KONSTANTIN LEONDARAKIS, MENSCHENRECHT “TIERSCHUTZ”: DIE VERLETZUNG VON MENSCHENRECHTEN DURCH DIE VERLETZUNG VON BELANGEN VON TIEREN 54 (2006) (authors’ translation).

⁴⁰⁰ *Id.* at 30.

⁴⁰¹ *Id.* at 41. Article 8 ECHR protects relationships to other beings, namely animals. See ECHR, *supra* note 329, art. 8 (providing that “[e]veryone has the right to respect for his private and family life, his home and his correspondence.”).

⁴⁰² Not only does a violation of animal protection violate a person’s subjective dignity; it also infringes the objective worth of dignity. LEONDARAKIS, *supra* note 398, at 42.

⁴⁰³ The animal industry has changed the morphology and physiology of animals, which impairs their ability to adapt. Today, chickens reach the weight of two kilograms twice as fast as they did fifty years ago. Dairy cows were intensively bred for more productive mammary glands. Cows used for meat production now have enormous muscle mass, which strains their internal organs. Joy M. Verrinder, Nicki McGrath & Clive J.C. Phillips, *Science, Animal Ethics and the Law*, in ANIMAL LAW AND WELFARE: INTERNATIONAL PERSPECTIVES 63, 63–64 (Deborah Cao & Steven White eds., 2016). In CAFOs, animals are mutilated to prevent injuries that arise at high stocking densities: tails are docked; beaks, teeth, and toes are clipped; ears are notched; horns are removed; and castration is undertaken without anesthetics. See David N. Cassuto, *Bred Meat: The Cultural Foundation of Factory Farm*, 70 L. & CONTEMP. PROBS. 59, 64 (2007); Matheny & Leahy, *supra* note 122, at 328; PEW COMM’N, *supra* note 29, at 35.

⁴⁰⁴ See *supra* text accompanying note 389.

that animals be treated humanely and that they be spared from suffering. Because agricultural production affects the highest number of domesticated animals, it is, from a teleological perspective, unjustifiable not to apply this principle to the agricultural sector. This prompts us to address and question the blanket authorizations given to CAFO industries to inflict systematic cruelty on animals through broad right-to-farm laws and far-reaching immunities from the law. Second, should the human right to animal protection be established as a stand-alone right or as an integral part of the human right to privacy and family life, then states would violate their legal duties to protect and respect this right by not establishing the necessary legal framework to review practices that threaten and likely violate it. In other words, the human right to animal protection would apply regardless of sweeping farmers' rights. Together, these developments make clear that the interests of animals and humans are often intertwined and that there are numerous entry-points that could be used more systematically in the future for litigation and advocacy purposes.

V. Conclusion

Across the world, most people cling onto a "happy farm" image, be it the red barn in the US or cows roaming on green pastures in Europe. This image has been produced and sustained through heavy marketing campaigns.⁴⁰⁵ The reality is markedly different. Laws originally designed to govern small family farms now protect corporate giants, many of which are multinationals. By benefitting from farmers' rights (i.e., right-to-farm laws and exemptions from environmental and animal laws), agribusinesses are, in many cases, shielded from regulation. In fact, as we argued, the combination of rampant corporate activity and *de facto* immunity from the law acts as a toxic agent that threatens the environment and our livelihoods.

The host of negative effects of animal agriculture on the immediate environment, workers, and the local community are well-documented. However, little is done academically to explore their global repercussions, particularly on human rights guarantees. Human rights litigation, advocacy, and research have yet to recognize and address this angle. With this contribution, we have attempted to fill this soaring gap. We have shown how intensified animal agriculture threatens and violates the human rights to food, water, a safe environment, land, and animal protection, and we have made apparent the urgency to address these issues. Under international law, states are obligated to respect, protect, and fulfill

⁴⁰⁵ Wilson, *supra* note 32, at 451.

human rights—duties which they violate when they exempt from the law the many activities of animal agriculture that directly cause human suffering and violate or threaten well-established basic rights. While in domestic law, states are *prima facie* at liberty to establish insulations for agriculture, international law (particularly the human rights regime) binds all states and puts a halt to the most sweeping forms of agricultural exceptionalism. This knowledge can and should be used as a strategy for litigation and advocacy to hold states accountable, and further prompt us as a society to seriously question the rationale underlying the many right-to-farm laws and exemptions enjoyed by this type of agriculture.⁴⁰⁶

Through our contribution, we hope to forge a pathway for the many more analyses that are needed at this juncture. In particular, more research is necessary to determine which other human rights are violated or threatened by animal agriculture, such as the right to life, housing, privacy, and family life. Future research should notably also explore the responsibility of agricultural businesses to protect these human rights and how such actors can be held accountable for violations.⁴⁰⁷

As time passes, finding alternatives to CAFOs will become a matter of practical necessity due to the biophysical limits of land, water, and biomass. In the meantime, for the sake of human health and life, animals, and a safe environment, appropriate regulation—including and perhaps especially on the international plane—is essential to anticipate, address, and remedy these violations. International human rights lawyers are uniquely equipped to address these issues and contribute to the further development and reconceptualization of this nexus, acting as catalysts for much-needed change.

⁴⁰⁶ Ruhl, *supra* note 111, at 263; *see also* Alford & Berger Richardson, *supra* note 44, at 136 (“RTFs [right-to-farm laws] have failed to adapt to changing industry standards in agricultural production and to incorporate the level of public accountability required to ensure the continued sustainability of the industries and lands they exist to protect.”).

⁴⁰⁷ *See supra* text accompanying note 24.