
LEGISLATION FOR ANIMAL WELFARE

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ABSTRACT

In any society, the way animals are treated by people reflects a common morality. Society may prohibit certain human behaviours towards animals as is described by criminal or quasi-criminal law and in many cultures, minimum duties of care are also established by law. Responsibilities of humans toward animals vary greatly by society and by the nature of the animal and the human animal relationship. Some animals we kill and eat as food others are cherished as part of the family. In the last three decades the purchase and consumption of food has become a method for the individual to express ideas, identity and moral convictions. The assignment of ideological values to food and food choices has facilitated expression of consumer concern related to some aspects of agriculture, biotechnology, methods of production and animal welfare. Responding to societal concerns is the business of government and intervention may take the form of, direct assistance, education or regulation. Many consumers of meat and meat products are concerned about how animals are treated in production, slaughter and transport. Non-consumers of meat also have a voice in the societal discussion around sustainable agriculture and a healthy planet. Both consumer and non-consumer opinions have the potential to be reflected in and change public policy in well functioning democracies.

Introduction

Democratic governments have increasingly developed mechanisms for consulting with the public and food processing industry in development of laws intended to protect the environment, public health, and assure sustainable livestock production and animal welfare. "Consultation" in developing public policy, is in part a response to a trend for non-profit or special interest groups to challenge government policies. Direct challenge of government and government food policies by public interest groups has been justified by and somewhat encouraged subsequent to the valid public criticism of the British governments handling of the BSE (bovine spongiform encephalopathy) outbreak in the UK. Science as the pre-eminent underpinning support of good public policy has come under challenge from public opinion which often contains a component of fear or moral outrage.

Science, in its intended form, is a directed linear process designed as an objective search for truth; public opinion on the other hand is by nature subjective and temporary. Media has been instrumental in feeding and is a beneficiary of public concern over perceived food safety risks, "unnatural" farming practices, animal welfare questions and possible environmental dangers of agriculture practices. The expectation for government to respect "moral and ethical" concerns of the public is well established in common law. The articulation of the moral connotations of food purchase, consumption and production and the political positioning and lobbying of those convictions has become a significant growth industry in Europe and to a increasing extent in North America.

If the function of democratic government is to protect its citizens from dangers outside of the control of the individual and as government resources are limited, good government policy (law and enforcement) would be directed at controlling real risks to individual welfare and educating the public against the misuse of resources to control issues that generate fear but are not actually a real risk. Social cause

activist groups (SCAG's) in contrast, have identified that fear and moral outrage can be profit centers for a thriving business model.

This paper will explore current parameters and evolutionary trends in public policy development with an animal welfare focus.

A “Good” Law

Government decisions in the areas of food safety and farming practices are increasingly affected by widely divergent views of the general public (Thiermann 2000). As food consumption and *inter alia* food production practices have taken on moral importance and are no longer the lone purvey of individual choice, there is increasing pressure if not justification in democratic societies for regulatory intervention in livestock production. Regulatory intervention is one expression of the will of the people.

A new law results when society decides it is appropriate to surrender some aspects of individual choice and freedom for the benefit of the whole. In application of the rule of law, the will of the society directed through some arm of government forces certain behaviour in the individual by common consent of the majority. Implicit in law is either the compulsion that thou shall or thou shall not do some thing and is often described either as an outcome (manslaughter) or as a specific behaviour (speeding).

Describing laws, especially what is a “violation” can be exceedingly difficult. For example The 10 Commandments contain 297 words; The Bill of Rights (USA) is stated in 463 words and the Bovine Spongiform Encephalopathy Minimal-Risk Regions and Importation of Commodities; Final Rule and Notice Federal Register: January 4, 2005 (Volume 70, Number 2) contains 107,648 words.

Law may be defined as that institution or set of institutions in a given society that adjudicates conflicting claims and secures compliance in a formal, systematic, and orderly way. Law is one of society's responses to communally held values. The core of a law is the desire to, by proscribing human behaviour, prevent an avoidable human injury whether it is injury of the person, injury of property, or an injury or offence against generally held standards of society.

Five Components of a “Good” Law

1. Prohibited behavior is casually related to a negative outcome (intuitive)
2. The violation is easily & objectively measured
3. The violation is related to a modifiable human behaviour
4. The violation is a concept easily understood by all languages and cultures
5. The violation may be adapted to local circumstances without a change in law.

Example: “it is an offense to exceed the posted speed limit”

Moralization: Step 1 of the Regulatory Process

In some social circles the act of eating has progressed from being a source of nutrition and sensory pleasure to being a social marker, an aesthetic experience, a source of meaning and a metaphor, and often a declaration of moral entity (Rozin 1996). “Moral (Ethical) Vegetarians” claim to be mindful of both short and long-term consequences of individual choice and although personal health is recognized as a partial motivator for a vegan choice there is a much broader commitment to vegetarianism as a way of life (Fox 2000). Moral vegetarians view meat avoidance as a moral imperative and are upset by others who participate in meat consumption in contrast to health or religious motivated vegetarians who are generally neutral to the food choices of other people (Rozin et al., 1997).

Recent study of adolescent vegetarianism identified a largely female phenomenon characterised by meat avoidance, weight loss behaviours and a high concern with body appearance (Worsley & Skrzypiec 1997; 1998). Teenage vegetarians are more likely to be Caucasian, from a higher socio-economic stratum, practice various weight control strategies and also have an increased concern for; the environment, animal welfare, and gender equality compared to non-vegetarian peers (Perry et al., 2001; Janda & Trocchia 2001). Vegetarianism among teenage women is different from traditional western culture vegetarianism, which has primarily a nutritional or religious basis. The prevalence of

vegetarianism (those who do not consume red meat) in one South Australia study is 8-10% for teenage women and 1-2% for teenage men (Worsley & Skrzypiec 1998). The prevalence of vegetarian tendencies however was 32-37% for teenage women. Teenage vegetarians believe that meat production is morally wrong for animal welfare reasons and harms the environment.

Moral vegetarianism may be seen as an extreme example of a general trend in public opinion of farming practices. It is based on a mix of animal welfare, human health and environmental quality concerns (Fessler et al., 2003) and is in fact a manifestation of a philosophy of life (Lindeman & Sirelius 2001, Fox 2000). This gender related, anti-meat focus should be of concern to red meat producers as women may have a disproportionate future influence in food purchasing patterns for families, as is currently the case.

Moralization is a process that works at both individual and cultural levels and involves the acquisition of moral qualities by objects or activities that previously were morally neutral. Moralization is the process where a preference is converted into a value (Rozin et al., 1997). When behaviour becomes moralized the individual will seek multiple justifications for the relevant conviction. In the anti-factory-farm movement a combination of justification arguments including the destruction of the family farm, environmental concerns, animal welfare concerns and revulsion at “un-natural” husbandry practices are evoked in rationalizing and articulating an anti-intensive farming world view (Rowan et al., 1999).

Moralization is a gradual conversion of individual preference into societal values. A critical difference between preferences and values is that values are much more likely to be transmitted within the family environment and values are subject to institutional and legal support (Rosin et al., 1997).

Bill C-22

In September 1998 the Department of Justice issued a consultation document Crimes Against Animals (Anon 1998) resulting from an extensive national consultation on the issue of cruelty to animals and associated domestic violence in Canada. Recommendations from this initiative were used to draft BILL C-17, in 1999 which also included amendments to the Firearms Act. Perhaps this was not coincidental as ownership of firearms is a recently moralized issue in Canadian society.

The Bill (C-17) did not pass that session and was reintroduced after the 2000 election as Bill C-15. This bill also failed to pass. The cruelty to animals portions of the bill were split off from changes to Firearms Act and re-introduced as the omnibus Bill C-15(b) in 2002. This bill passed the House of Commons but failed the Senate.

Essentially the same bill was re-introduced as Bill C-10b (2003) and died in the Senate, November 2003 with the call of an election. On March 9th, 2004 the Senate gave 1st reading to Bill C-22, now called An Act to amend the Criminal Code (Cruelty to Animals). The proposed act will repeal sections 444 to 447 of the Criminal code and replace them with Part V after Section 182. This is relocation of Animal Cruelty sections from the Property Section of the Criminal Code to Criminal Code Part V Sexual Offences, Public Morals, and Disorderly Conduct. The Cruelty to Animals sections (444-447) of the *Criminal Code of Canada* were originally written in 1892 over one hundred years ago and have not been significantly altered since that inception. Major changes, if Bill C-22 intent is passed include:

- moves animals out of the property section of the Code and into a new section created just for animal cruelty offences
- allows crimes of killing, harming or neglecting any species of animal to be charged as an indictable offence or punished by summary conviction. In the current *Code*, only crimes against cattle are considered an indictable offence carrying a maximum prison term of 5 years. Crimes against all other animals are currently punishable on the less serious offence of summary conviction, which carries a maximum prison term of 6 months.
- allows summary conviction offences for crimes of killing or harming animals to be punished by up to 18 months. The maximum sentence in the *Criminal Code* for summary conviction offences is normally six months.

- allows up to a lifetime prohibition on future animal ownership and a minimum of five year prohibition for second or subsequent offences
- allows judges to order anyone convicted of cruelty to animals to pay restitution (for instance veterinary bills and shelter costs) to the animal welfare organization that cared for the animal(s)
- makes it an offence to brutally or viciously kill an animal
- makes fighting of all animals an offence, while the current Criminal Code only extends protection to cock fighting

Producer groups have expressed concern that the Bill will be used by Animal Rights Action groups to bring prosecution against normal farm practices. The Justice Canada – Aid to Interpretation of Bill C-17 (Cruelty to Animals), April 2000, reads: the Bill. *"will not alter or criminalize any activity which is otherwise regulated or authorized by federal and provincial legislation or applicable codes of practice, such as normal agricultural practices, hunting, fishing, trapping, ritual slaughter, animal research or food production."* The Canadian Veterinary Medical Association has been a consistent strong supporter of the Bill as has the Canadian Association of Humane Societies. The 4 Farm Animal Groups (Saskatchewan Farm Animal Council, Alberta Farm Animal Care, Manitoba Farm Animal Council, Ontario Farm Animal Council) all made suggestions to improve the Bill, now incorporated to protect the rights of farmers. In general, there is no significant Agricultural based opposition to the passing of this bill and many livestock production groups actively support the provisions in the current bill.

It is remarkable that a well consulted and publicly supported Bill crafted by the Liberals, failed to pass during two complete terms of Liberal Majority Government and will probably be re-introduced next session. This example demonstrates just how contentious a process it is to establish legal standards in the areas of societal moral conviction where there are widely divergent views. Individuals with strong personal conviction may become frustrated with the political process under such reality.

The Social Cause Activist Group (SCAG) and Demosclerosis

The number of interest groups engaging in political lobbying has increased dramatically since 1970. It is estimated that the number of interest groups doubled in the United States from 1955 to 1970; doubled again from 1970 to 1990 and reached 20,000 identified interest groups in 1995 (Rauch 1999). Such groups are often given to expressions of moral outrage over single often new-value issues (Schweikhardt & Browne 2001). The motivation for membership in such groups is often not collective material benefit but an individual expressive reward realized by solidaristic interaction with like minded or prestigious people within the group.

In the recent past, social cause activist groups (SCAG) have emerged which no longer rely on traditional - legislative means to achieve their political ends. Instead of lobbying primarily for better laws or better enforcement of laws they have focused on the marketing chain and affecting consumer choice or generating fear in the manufacturer that consumer choice may be affected. The increasing effectiveness of SCAG food directed campaigns in part result from 3 converging forces in food production in North America; congestion in legislative channels, rising affluence of the consumer allows for preference for products with specific attributes and the concentration of the consumer food markets make targeting far easier (Schweikhardt & Browne 2001).

As an example; in 1999 Greenpeace sent an innocuous fax to Gerber with the simple request for information related to whether the company had taken steps to avoid the use of genetically modified (GM) ingredients in baby food. Within days Gerber announced it would limit the use of GM ingredients in baby food. This in one aspect was an astonishing announcement considering Gerber is owned by Novartis a major developer of GM seeds (Schweikhardt & Browne 2001). Greenpeace was able to accomplish in hours what one could only estimate would take years for the government regulatory process to accomplish if there was a scientific or human health basis for regulating GM content of food.

Similarly in part due to Greenpeace anti-GM potato campaign, McCain's announced in November 1999 that it would not purchase GM potatoes. The GM potatoes in question would have avoided the great Irish potato famine had they been available in 1845. Harrison McCain defended the decision by indicating; "We are in the business of giving our customers what they want, not what we think they should have" (Gray 2000).

Social cause activist groups are usually organized as non-profit organizations which derive financial support from the voluntary contributions of members. As memberships to the group must be sold to raise funds, then marketing of the group message (product) is most important. In the development and maintenance of these interest groups, as funds are raised they must be spent to maintain "non-profit" status and this requires a continuous series of campaigns (Figure 1). A successful SCAG campaign has two components; firstly, it actually must accomplish at least some of the goals identified in the campaign which was originally promised; secondly, the campaign product must provide the SCAG with considerable increase in profile and/or increase income from voluntary contributions.

People for the Ethical treatment of Animals (PeTA) is a non-profit SCAG that has an excellent template for success (Table 1) with 2002 annual contributions at slightly under 24 million (PeTA 2002) and a proven track record for achieving results.

Table 1. The lessons for corporations to be taken from examining PeTA's career to date include the following five-step process (Mealey 2002)

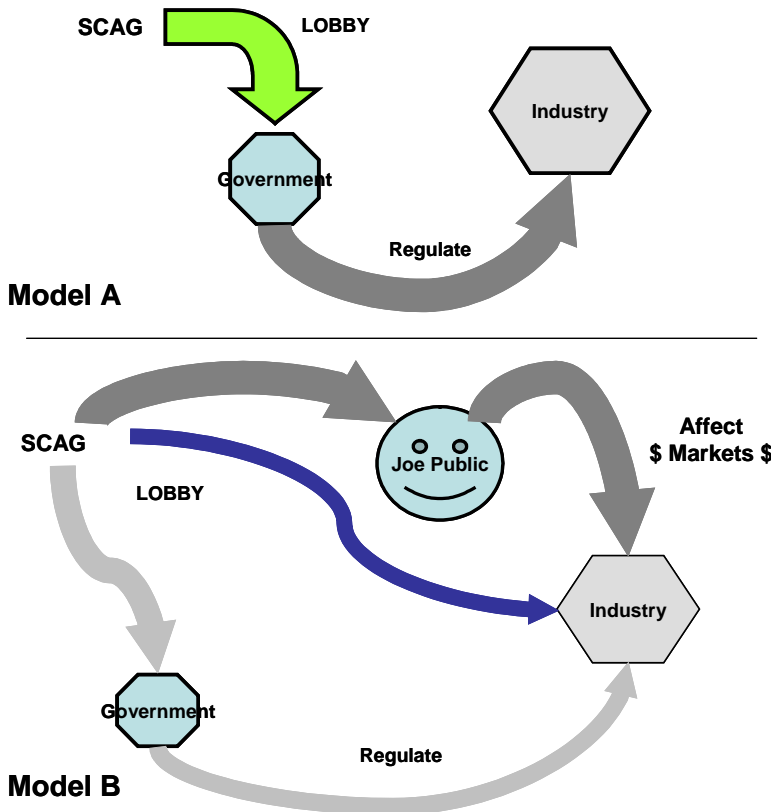
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1. Campaign must have unambiguous and achievable objectives
 2. Utilize a range of tactics, and never underestimate the Internet
 3. Segment your target audience into defined targets
 - "Cruelty to Go" (Target: house-spouse, weakness guilt for purchase of fast food)
 - "Meat Stinks" (Target: Vegan leaning Teens)
 - "Don't be a Milk Sucker" (Target: Young Teens message milk causes acne)
 - "McUnhappy Meals" (Target: Direct to children <10 years old)
 4. Organize campaigning to maximize the domino effect (minimum cage size for laying hens in the McDonalds supply chain triggered slightly larger minimum cage size in the Burger King supply chain)
 5. Keep the pressure constant
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Demosclerosis is a term coined in the United States to describe in increasing inefficiency within government to clearly identify the public good and protect that public good in policy development (Rauch 1994, 1999). If as often suggested, an astute democratically elected administration identifies which way the mob is going and then positions itself as the leader; it has become increasingly difficult to clearly identify the consensus of the electorate on many issues of social conscience. In the operation of government, so many conflicting consumer and public interests groups vie for political consideration that effective decision making is prevented.

An example of a successful SCAG environmental campaign is the "Ronald McToxic Campaign" originating with the Citizens Clearinghouse for Hazardous Waste (CCHW) in the early 1980's (Svoboda 1995a, 1995b). The campaign targeted a single goal, that of forcing McDonalds to eliminate the use of polystyrene packaging within the fast food chain. By 1989 school children, the backbone of McDonald's customer base had been recruited as part of the "Kids Against Polystyrene" movement and Burger King had switched to paperboard containers. A more holistic goal or campaign target such as decreasing the overall disposable packaging is not in the best interest of the SCAG. A topic such as "minimizing packaging waste" does not meet the standard of an unambiguous and achievable objective in the business model for a successful SCAG campaign (PeTA Step 1 of 5, Table1).

The outcome of the campaign can be viewed as a success. McDonald’s Corporation completely reviewed its environmental strategy and was able to initiate remarkable decrease in packaging used primarily by source reduction. In the 1970’s an average meal of Big Mac, fries and a shake required 46 grams of packaging, in 1995 it required 25 grams, a 46% reduction (Svoboda 1995a). The CCHW went on to become a very solvent SCAG with a 1990 budget of \$689,908.00 (Svoboda 1995a) and changing its name to Center for Health, Environment and Justice reflecting a new mandate to deliver a broader line of products (<http://www.chej.org/>).

For food safety reasons, fast food must be packaged and held in a manner that will keep food warm and sanitary. As it turns out, the actual polystyrene clamshell debate is irrelevant on an environmental basis. In comparative environmental cost analyses, which are quite complex, comparing polystyrene which is a recyclable petrochemical product with non-recyclable wax paperboard which contributes to deforestation, the polystyrene is probably a slight overall environmental advantage (Svoboda 1995a). Due to concern for the environment, in North America specifically CFC’s and ozone depletion, McDonald’s limits use polystyrene packaging. Due to concern for the environment in the United Kingdom with an emphasis on concern for deforestation, McDonald’s has used polystyrene in preference to wax paperboard packaging. The environmental concern argument can be used to support either anti-paperboard (save the trees) or anti-polystyrene (save the ozone) political agenda. McDonalds UK has recently piloted a new clamshell material made form limestone and starch which is fully bio-degradable and responds to both arguments (EarthShell, <http://www.earthshell.com/>).



A similar SCAG single issue animal welfare example is provided by the “Monkey Wars”, the campaign to regulate primate research facilities in the USA (Blum 1995). Early on in the debate scientists confused the public campaign with an interest in improving the welfare of primates used in medical research. It became clear that improving primate welfare was not to be the focus of the debate. The debate would be focused on regulating the minimal cage size for animals. “Improving the welfare of animals” is too fuzzy a premise to base an effective SCAG campaign around. It is not an unambiguous and achievable objective. The focus on regulating minimal cage size does meet the specificity criteria and had the added benefit that retooling a facility for new standard cage size was about the most expensive capital investment a research facility could imagine. The goal of regulated minimal cage size was achieved, and many facilities abandoned primate research for financial reasons as the cost of re-caging was just too high. It is

Figure 1. Organizational models for Social Cause Activist Group (SCAG) targeting of campaign message. Model A is the traditional Greenpeace type environmental protection campaign which predominated in the 1970’s and was directed toward government and regulators to improve environmental protection regulations. Current SCAG activities are better described by Model B where the message is simultaneously directed to governments, the general public and directly to the Industry where there is a perceived vulnerability such as the Gerber company and baby food (see text). Other examples of this approach are the polystyrene clamshell controversy well described by Svoboda and the regulation of primate research facilities in “The Monkey Wars” (Blum 1995).

undetermined whether the general welfare of primates used in Medical research in the United States has actually improved subsequent to the regulatory changes (Blum 1995).

A current active campaign in livestock production is one to eliminate the use of sow gestation stalls by regulatory prohibition in Australia (<http://www.animal-lib.org.au/docs/sowstall.shtml>), and Manitoba (Quit Stalling, <http://www.quitstalling.ca/>). It is possible that this unambiguous and achievable objective could be reached and the actual overall welfare of sows in pork production not be improved. Assessing the welfare of gestating sows is a multifactor issue plagued by considerable uncertainty as the scientific assessment of many potential alternate systems is lacking (Bracke 2002a, 2002b). Regulatory actions affecting structural standards with high capital investment such as housing can be predicted to have severe financial implications for the producer (Penny & Guise 2000). Social Cause Activists groups develop campaigns and identify single issues that have a high probability of developing into a successful fund raising initiative (Figure 2).

International Trade, Ethical Thinking, Law, Animal Welfare and Consumer Choice

The World Trade Organization ("WTO") was established on January 1, 1995 by the Marrakesh Agreement creating an international organization to supervise international trade policy. As of December 2000, the WTO had 141 member governments. The WTO is located in Geneva and led by a Director-General. Unlike some other international agencies (such as the International Monetary Fund), the WTO is a consensus-based institution driven by the member governments themselves, rather than by the Director-General or the staff of the Secretariat. Thus, in some ways, the WTO is directed not only in Geneva, but also in each of the national capitals from Tirana to Harare.

The economic model (dogma) behind the WTO Agreement on Agriculture is open markets in food will benefit the poor, and increase world agricultural productivity. This assertion is very difficult to test using scientific principals. Rigorous scientific or experimental testing of most economic theories is difficult.

At the second special session of the WTO Committee on Agriculture in June 2000, the European Union (EU) submitted a proposal on Animal Welfare and Trade in Agriculture calling for the issue of animal welfare standards to be addressed. The EU Commission is pursuing this controversial proposal from a two-fold motivation; concerns expressed by EU consumers pertaining to the production methods used to rear their food and EU producers regarding the effect on their international competitiveness of regulations enforcing costly animal welfare standards within member countries. The proposal, to consider animal welfare in method of production as a viable international trade issue has not received widespread support among WTO members.

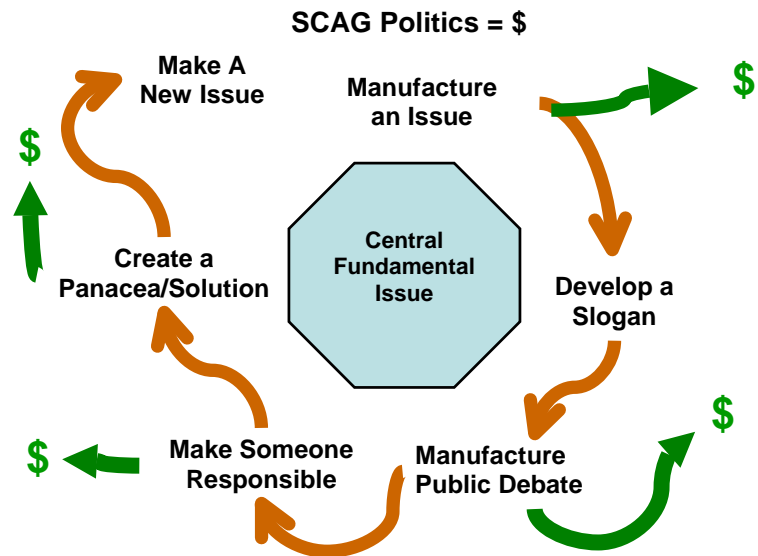


Figure 2. Operational model for Social Cause Activist Group (SCAG) targeting of campaign message for fund raising and enhancing visibility. The central issue is chosen for simplicity of messaging. Campaigns must also have a target such as an influential player in the food industry (eg. Gerber, McDonald's). The primary lesson from the PeTA success story is a campaign must have unambiguous and achievable objectives. The campaign will usually focus on one small aspect of an overall production system which has been targeted. The central fundamental issue, must be easy to understand for the target audience to be able to believe they have an honest and valid opinion on the issue. The issues most likely to be capitalized are those that can be portrayed as, unnatural, horrendous or brutal and the result of human greed or lack of caring (dehumanizing). Each step in the iteration of a campaign provides the opportunity for the SCAG to generate profile and income for its operations (\$ in figure). Often these campaigns do result in changes in practices of the system targeted. Future targets in livestock production will be the issues which can be made to fit the PeTA five-step process (Mealey 2002).

The WTO Committee on Agriculture has delegated all decisions on standards for food safety to the *Codex Alimentarius* Commission. Principals of justified trade restriction inherent in the Activities of the *Codex Alimentarius* include the existence of at least an imaginary risk to human health of some food or food process. When considering human health risk in relation to animal welfare and methods of production, it is difficult or impossible to establish the link between the product (food) and the injured persons. In fact, many of the most vocal farm animal welfare lobby groups are largely made up of non-consumers of meat, and are protected from direct product source injury.

Satisfying European consumers' desire to know about foreign animal welfare standards will require the labeling of imports. Labeling of imports for animal welfare purposes is not consistent with World Trade Organization (WTO) obligations, which are currently limited to issues intrinsic to the safety of the commodity traded (Hobbes et al., 2002).

The Office International des Epizooties (the OIE) has been recognized by the World Trade Organization since 1994 as the international organization for animal health and serves the parallel function of the *Codex Alimentarius* Commission only in relation to zoo-sanitary standards for trade in live animals and animal products. Due to the essential relationship between animal health and animal welfare, the representatives of its 164 Member Countries asked the OIE to take the lead role in developing international animal welfare standards.

The Director General of the OIE convened an Ad hoc Group in April 2002, bringing together the best experts in the field from a diverse range of backgrounds and cultures. The International Committee of the OIE unanimously adopted the recommendations of the Ad hoc Group on animal welfare during its 70th General Session (May 2002). A permanent Working Group on Animal Welfare with the same membership was then established which held its first meeting in October 2002. The initial international OIE "Global Conference on Animal Welfare" held in Paris, 23-25 February 2004, invitation only, attracted more than 450 participants from 70 countries (OIE 2004).

The WTO, through the OIE working group on animal welfare, is positioning itself to facilitate animal welfare as a potential trade issue.

The Precautionary Principal

The Precautionary Principal is one regulatory manifestation to the increasing effectiveness of SCAG lobbying efforts. The European use of the precautionary principle has its origins in German and Swedish policymaking. It became part of the European regulatory repertoire in the 1980s following significant lobbying on behalf of Germany. At this time it was a welcomed tool, seen by many Commission policy makers as a way toward ecological modernization allowing for tougher environmental protection regulations and forcing industry to become more innovative and creative (Lofstedt 2003). The meaning and method of application of the precautionary principal has not remained stable over time. At the inception of the precautionary principal, there were two closely related versions:

Version 1: "Uncertainty does not justify inaction. In its most basic form, the precautionary principle is a principle that permits regulation in the absence of complete evidence about the particular risk scenario".

Or Version 2. "Uncertainty justifies action" (Wiener & Rogers 2002, p.320-321).

These two versions of the precautionary principle were virtually abandoned in the mid 1990s following the rise of the regulatory scandals (the archetypal example being the UK government handling of the BSE crisis), cronyism, sensational media reporting, aggressive SCAG public information campaigns and the like, leading to public distrust of authority (particular on the EU level). At that time, policy makers within the Commission increasingly began to adopt the Swedish version of the precautionary principle that of reversed burden of proof and a new interpretation (Version 3) (Lofstedt 2003):

Version 3: "Uncertainty requires shifting the burden and standard of proof." This version of the precautionary principle is the most far reaching. It holds that uncertain risk requires forbidding the potentially risky activity until the proponent of the activity demonstrates that it poses no (or acceptable) risk (Wiener & Rogers 2002 p.320-321).

Examples of the reversed burden of proof argumentation in EU law abound. One of the most quoted ones comes from the EU Chemical White Paper.

"Responsibility to generate knowledge about chemicals should be placed on industry. Industry should also ensure that only chemicals that are safe for intended purposes are produced. The Commission proposes to shift responsibility to enterprises, for generating and assessing data and assessing the risks of the use of substances. The enterprises should also provide adequate information to downstream users" (EC 2001. p.8).

The precautionary principle specifically applies to risk, that is; there must be a potential for human injury for the precaution to be applied. However; the principal was couched in the assumption that people have the right to know as much as possible about risks they are taking on, in exchange for what benefits, and to make choices accordingly. In liberal democratic societies, one must consider the consumer competent and the consumers' right to know provides powerful philosophical and moral support for the principal. Even in animal welfare questions where the risk of injury is gone the feeling of a right to know may be retained. Although originally designed to control risk, the more severe interpretations of the precautionary principal provided a tool that could be used to select for preference alone as has been the case with the EU continued ban on beef from countries using hormone based ear implants (FAS 2003).

With food and other consumer products, such precautionary choices are often played out in the marketplace. A major factor in the controversy over genetically engineered food is the consumer belief that benefits of these products (which accrue more to producers than to consumers) do not outweigh the potential risk of harm to themselves or the environment. Unfortunately the Version 3 concept of the precautionary principal has been adopted by many of the general public and social cause activist groups. In relation to "safe-food" political campaigns, precaution means "zero-risk" and any possible risk no matter how implausible is sufficient cause to invoke the principal. The risk assessment used to justify the EU trade action against hormone use in beef production (EC 1999) is a current example where independent review by British agricultural could find no scientific credibility (Brown 2000, VPC 2000, Anon 1999).

The precautionary principal started out as a near-scientific method and evolved into a political tool subject to magical thought processes. The principal as currently applied provides a legislative logic for the conversion of theoretical risks into regulatory restrictions, however, animal welfare is not a direct human health concern, at least in the traditional pathogen-disease transmission model and the principal of precaution can not be easily invoked.

As currently constituted, the WTO is unable to adequately address the animal welfare issue and can not deal with consumer groups demands for protection on ethical grounds. The WTO is committed to the principal of competitive advantage; the principal that countries should produce what they are good at and trade their excess for products that other countries are better at producing. Proponents of free trade strongly believed that if it were possible to actually achieve this goal, the "free trade Nirvana", consumers would continuously benefit from a greater selection of low cost food products which were continuously increasing in quality. The WTO does not allow self imposed cost increases associated with social regulations to be a justification for introducing trade barriers (Hobbs et al., 2002). It appears that if the EU wishes to achieve its goals pertaining to the ethical issues surrounding animal welfare, it must tackle the issue head-on and raise the broad issue of ethical concerns directly as a basis for trade restrictions. It has already suggested that the sanitary and sanitary-phytosanitary agreement be reopened to take account of consumer preferences in the context of genetically modified food (Kerr 1999). It appears that there is a long process to be followed and significant time will pass prior to animal welfare becoming integral to international trade in animals and animal products (Hobbs et al., 2002).

It appears that enforceable humane standards (laws) will be very slow to be integrated into trade law. In general, Method of Production Standards is not currently considered a basis for trade restrictions.

In the Meantime

Many discussions on animal welfare regulation have focused on the lack of objective science to clearly demonstrate that one method of production is superior to another method. The focus on the science basis for animal welfare standards may in fact be missing the yet unresolved point. Regulation is not based on science but on a need to protect human welfare. Science is one of the major tools used to measure the potential for human injury if free enterprise were to run amok. The major question to be answered in the next few years is;

are people significantly injured by the way animals are raised to provide food for human consumption?

If the answer to that question is yes, people are injured by the presence of production systems that they consider inhumane, and the magnitude of that injury due to the presence of those systems is a non-trivial injury, then governments will be compelled to draft regulatory frameworks that protect the public from that harm.

Well funded and well organized SCAGs can produce effective and convincing rhetoric. There is evidence that the general public will believe a “negative-spin” story originating with a special interest group over an accurate and balanced story from an unbiased source (Hayes et al., 2002). As in all social movements there is a range of proponents within the animal welfare community from the law abiding to those committed to violent direct action. In the near future those who strongly believe that there are serious moral concerns related to animal welfare will be frustrated working through the legislative channels. Anti-intensive livestock farming has had some success with initiating regulatory intervention in the area of environmental protection, where there is some possible link to human injury. This success is unlikely to be repeated in the area of pure animal welfare. One only has to look to the recent extreme slow movement of Bill C-22 the proposed amendment to Criminal Code cruelty of animals’ provisions, for an example of how the legislative process is inadequate or at best extremely slow to address rational concerned debate on the issue of animal welfare.

Bio-Terrorism

If an individual (or SCAG) truly believes for example that sows are better dead than in gestation stalls and chickens are better dead than in cage-layer confinement then the logical course of direct action is clear. Any social cause activist group that claims in it’s literature a desire to “To inflict economic damage to those who profit from the misery and exploitation of animals” (ALF 2004) should not be treated as trivial considering the previous range of targets (ALF 2002). Bio-terrorism and the threat of purposeful introduction of foreign animal disease is a real risk for our livestock industries.

Conclusion

There are a variety of possible policy options that could be pursued to deal with the farm animal welfare issue. All policy decisions are derived from moralization of the issue at hand; that is the electorate care about the government position on the issue.

In 1995, Bennett outlined three policy options to achieve a balance between the production of livestock products and farm animal welfare that would represent the wants of society (Bennett, 1997a):

1. Use market mechanisms along with government intervention to supply information primarily via a registered method of production label program, to verify animal welfare and alternatives to standard production products that would allow people to make informed choices about what they consume. The CFIA has recently initiated a consultative process intended to develop a verifiable method of production labeling scheme in Canada (CFIA 2005). Others have argued

that the Consumer is in fact unable to make a free choice at the checkout counter when the decision in individual purchase is confounded by simultaneous competing concerns (Bennett 1995, 1996). The WTO has clearly indicated that this sort of labeling is not supported in international trade negotiations.

2. Government could regulate the production of livestock products through legislation or codes of practice to ensure that the wants of citizens who are concerned with animal well-being are considered. Regulation has at least two regressive costs for society. Firstly, the cost of licensing a large farm is the same as a small farm and cost of new programs works against survival of small operations. Secondly; if food process increase incrementally due to new regulations, the future cost of food represents a greater proportion of income for poor people than for the wealthy.
3. Government could tax producers who cause the poor welfare and/or subsidize those producing goods that are thought to result in good animal welfare. (Bennett, 1997a). For example, if a tax or subsidy were applied to egg production so that free range eggs were of equal or lower price than standard production eggs, fewer “cage eggs” might be sold or produced (Bennett, 1997a).

Ultimately, Bennett (1997b) argued that legislation combined with subsidy payments as incentives would be the best policy approach. This author is working from the European model which has a long history of government support to animal agriculture.

Some predict In the future, market forces may play an increasing role as demonstrated by the Freedom Food success in the UK (Appleby & Hughes, 1997). Supermarkets and large single desk buyers such as McDonalds can influence how farm animals are treated. One UK chain has adopted the RSPCA's “Freedom Food” label and markets standard production and free range eggs at the same price despite the decreased profit to the store and producer (Appleby & Hughes, 1997). In Canada the development and market share of cost focused retailers such as Wal*Mart in the past five years would argue against the potential impact of method of production labeling programs on the majority of consumer choice decisions.

In a democratic society, the public expects to have its opinion count. The public in considering the complex processes in agriculture and food processing are likely to approach political questions posed, using significantly different parameters that current regulatory structures are prepared to include. Considering societal trends; it may be prudent if decision makers in livestock production methods were to take into consideration or at minimum acknowledge, factors other than science in a long term vision of sustainable and ethically supportable agricultural production systems. Over time, consumers will probably accept genetically modified products and food irradiation as critical scientific assessment has been made and is possible in these areas. The same consumers likely will conclude that some forms of livestock production are unnecessary or not reflective of societal values and will support regulatory intervention to address those concerns. As regulatory bodies currently claim a sound science base for decision making, more discussion is needed on how society will make decisions in the face of scientific uncertainty in food production or in the case of animal welfare, in the face of moral conviction. In highly contentious issues there will be some science on both sides of the argument and the final policy decision will be based on ethics (Weaver and Morris, 2004).

If the statement made by the late Harrison McCain in relation to GM potatoes “*We are in the business of giving our customers what they want....*” is representative of food processing industries, it is unlikely that significant science or ethically based leadership in animal welfare or similar issues in food production will originate in that quadrant.

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