



# 'The Compassionate Stock-keeper' and other Virtuous Ideals

*Values and Definitions in the Animal Welfare Legislations of  
the United Kingdom, Spain and Argentina*

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## **ABSTRACT**

This report aims at identifying, analyzing and comparing both explicit and implicit values and definitions found within the animal welfare laws of the UK, Spain and Argentina. In the course of doing this, the animal welfare legislations of these countries are summarized and compared to EU legislation. While the legislation of Spain is nearly identical to that of the EU, the Argentinean is comparable to EU legislation and the one of the UK differs in certain regards.

Regarding values, there are two main themes found in all three legislations. The first of these is the ethical concern to reduce the suffering of animals used for human ends. This ethical view was historically inspired by proponents of utilitarianism on the one hand and by new physiological and anatomical discoveries on the other. The other theme regarding ethical values, concerns the morale and character of people working with animals. This is a view that to a large extent can be identified as virtue ethics. In combination with a revalued Biblical view of man's relation to the rest of creation, it may explain the very foundation of laws aimed at protecting animals as restrictions on the supposed inherent rights of humans to use other animals as means for our own ends.

The definition of animal welfare found in the three legislations differs in some regards and is similar in others. British legislation is largely based on a view where the welfare needs of animals are divided into five so called 'freedoms'. These are freedoms from undesirable states such as hunger, pain etc. As this definition of animal welfare has proved very influential, it has had a great impact on EU legislation and in turn on the definition of animal welfare in Spanish national legislation. Argentinean legislation, however, contains a somewhat different view of animal welfare where 'coping' is mentioned and where the needs of animals are divided into two subgroups, the need not to suffer from hunger or thirst and the need to live in a fitting environment.

# 1. INTRODUCTION

Our values, may they be ethical or other, influence our everyday actions. If one, for instance, believes non-human animals to be worthy of care and protection, this is going to be reflected in one's action towards other animals. In the same way, laws reflect the thoughts of the people and the era during they were founded. People will want to propose bills which may change society or the conduct of people to better reflect their values and ideas. Opinions on the role of humanity, religious views, moral theories and tradition, together, play a significant role in influencing the constitution of laws. Animal welfare legislations are no exception to this rule, and will, explicitly or implicitly, reflect their founders' views and values regarding the moral status of other animals, definitions of animal welfare and our duties towards non-human animals. They will as well reflect values regarding trade, and consumption-traditions.

As tempting as it may seem to regard the question of animal welfare, both the legislative and the conceptual issue, as purely empirical, it is of great importance to acknowledge the essential role of values. Or as Fraser et al. puts it:

‘[T]hese disagreements [on the definition of animal welfare] stem from value-laden presuppositions about what is important for the quality of life of animals. In such cases, science may provide relevant empirical information, but science cannot turn such disagreement into purely empirical matters by adopting a particular conception of animal welfare to the exclusion of others.’ (Fraser et al. 1997)

Thus, to better understand the intention of a law or legislation, one needs to identify the values and ideas from which it owes its existence. Intentionally or not, values do play a significant role in the course of defining animal welfare and in the founding of laws aimed at protecting animals. So, what values can be found in the animal welfare laws of two influential European countries like the UK and Spain? And in what ways, and more importantly *why*, do these values differ from one another? What about the values inherent in a significant exporter like Argentina? These are the main questions dealt with in this report.

## 1.1 Problem

The aim of this report is to briefly summarize the animal welfare legislations of the UK, Spain and Argentina in order to analyze and compare the ethical values and definitions of animal welfare found in the legislations of these countries. These values might be explicitly or implicitly expressed. There might also be other relevant *types* of value than the moral one. Examples of these other kinds of value are functional values, i.e. values regarding the goodness of the functioning of an object, aesthetical values, which regard the beauty or aesthetical appeal of something, absolute values, which are those things that are regarded as universally good and the distinction between instrumental and final values, which are the things that are good or bad as means and ends respectively. More on the subject of *value theory* in section 1.3.

Due to prioritizing, the legislations regarded will mainly be the ones concerning so called 'farm animals', i.e. animals commercially used for meat, egg, milk, fur and skin production.

Thus, animal welfare legislation particularly addressing companion animals, animals used in scientific research or animals used in sports are not within the reach of this report. In the case where the different regions of a country have different sets of animal welfare legislation (as is the case with Spain), the laws considered will be the ones common for all regions, alternatively the laws belonging to the most influential region.

The term ‘animal welfare’ here refers both to the laws and legislation aimed at protecting the interests of animals, as well as concepts about the good and/or healthy animal life.

## 1.2 Structure

This report is divided into four main sections. The discussed issue is introduced along with a briefing on the methods used to identify and analyze values in legislations of animal welfare in section 1. Along with some background information on the development of these legislations, the different legislations concerning animal welfare of the UK, Spain and Argentina are presented in section 2. In section 3 an analysis regarding the values and definitions of animal welfare found, and the reason for them, is made, accompanied by a comparison between the different countries. In the end, a conclusion regarding the identified values and definitions, with a few final remarks, is given in section 4.

## 1.3 Material and method

The materials used for this report are mainly the EconWelfare publications ‘Animal welfare initiatives in Europe’ and ‘Overview of animal welfare standards and initiatives in selected EU and third countries’, Mike Radford’s book ‘Animal Welfare Law in Britain, Regulations and Responsibility’, ‘The Elements of Moral Philosophy’ by James Rachels, as well as the actual animal welfare legislations of the UK, Spain and Argentina. Other books, papers and sources used, are all listed in ‘References’.

The methods used for identifying and analyzing ethical values in the animal welfare laws of the UK, Spain and Argentina in this report are *argument analysis* and *value theory* as well as basic knowledge of *normative ethics*. Following is a brief introduction to argument analysis, value theory and normative ethics.

### Argument analysis

Argument analysis is a tool for understanding and valuing an argument and is composed of two steps, first the identification of the components of the argument and secondly the evaluation of the goodness of the argument. To identify the different components of the argumentation one needs to single out the conclusions, the premises and any hidden premises. The conclusion is the statement supposedly supported for by the premises in the

argument. The premises, thus, are the reasons put forward to support the conclusion (Feldman, 1999). Hidden, or implied, premises are implicit reasons or grounds in support of either other premises or the conclusion.

Following is a short argument and a descriptive analysis of the same:  
"Consumers demand higher standards of animal protection and it is incumbent upon policy-makers and legislators to respond accordingly" (Horgan and Gavinelli, 2006).

The conclusion of the argument above is found by looking for the primary claim made. This appears to be about the duty of policy-makers to respond to consumer demand, so:  
C: Policy-makers should work for higher standards of animal protection.

The premise is found by finding the main ground or reason for the conclusion,

P1: Consumers demand higher standards of animal protection.

Apart from the main premise, one can also see another reason that supports the first premise and which, in this case, binds the premise to the conclusion.

P2: It is the duty of policy-makers to respond to the demands of consumers.

The second step of argument analysis is the evaluation of the argument, which is done by determining to what extent the premises provide support for the conclusion. This is done to decide how good the argument is. For an argument to be good it has to meet a number of criteria (Feldman, 1999). The first criteria is that the argument has to have true premises. So for the argument above to be good, P1 and P2 need to be true. The truth of P1, being an *empirical* claim, is determined empirically. So to examine whether P1 is true one would need to conduct a poll or some other kind of review, or check whether one has already been conducted, regarding the view of consumers concerning the standards of animal protection. P2 may be interpreted as a claim regarding the legal and formal obligations of policy makers. To determine whether P2 is true in this sense, one needs to have a look at the documents regulating the commission of the intended policy-makers. However, P2 is not necessarily a claim about factual truth. It may as well be a *normative* claim, and as such it is a statement about what is ethically right or wrong, good or bad. Thus, to determine the truth of P2 one cannot simply turn to documents or empirical studies. Instead, there is a need for ethical reasoning concerning the supposed duty of policy-makers towards consumers. The conclusion of such reasoning, among many things, depends on the ethical view adopted by the one conducting the analysis. If one, for example, has a preference for virtue ethics one might think P2 to be true because one views responsiveness to consumer demands a trait of a virtuous policy-maker.

The second criteria for an argument to be good is validity or strength, i.e. that the conclusion follows logically from the premises. Example:

*All policy-makers are people.*

*All people belong to the species Homo Sapiens.*

*So all policy-makers belong to the species Homo Sapiens.*

The argument above is valid, and as such it is a good argument. However, not all good arguments have to be valid. In some cases it is enough if the argument is strong. An example of this is:

*To this day, no domestic fowl has migrated in Winter.*

*Winter is approaching.*

*So no domestic fowl will be migrating.*



Even though the argument is invalid, it appears to be good. Although no domestic fowl has yet set out on a journey to the South in winter, it does not follow logically that chicken will never embark on such an endeavor. However invalid, the un-likelihood of such an event seems strong enough to support the conclusion.

The third criterion for a good argument is that its premises need to be relevant and plausible to the conclusion. This, to ensure that a premise, even if true, is also relevant in relation to the conclusion. The following argument highlights the need for this:

*Horses are ungulates, so they are worthy of protection.*

The conclusion here seems to be that horses are worthy of protection, while the premise is that horses are ungulates. However true, horses do walk on their hooves; this does not pose a ground for the conclusion. It is simply not relevant that horses are worthy of protection *because* they are ungulates. Walking on the outermost phalange does not appear to be a good reason why a being should be protected. A much more relevant premise would e.g. be to put forward that horses are sentient, as sentience is a necessary condition for the ability to suffer.

The last criterion for an argument to be good is that it must not be circular. An example of a circular argument is:

*Fish are not human, so therefore fish are not human. Or,  
Fish are not tetrapods, and because non- tetrapods are not morally significant, fish are not morally significant.*

The premise of the first statement is both true and relevant, and the argument is valid or strong. However, because the premise and the conclusion claim the same thing, the argument is circular and the premise does not add anything to the argument, and hence is not a good argument. In the second statement, the first premise is true, and given that it is relevant and that the second premise is also both true and relevant (although this appears questionable), there are no independent grounds for the conclusion. However, there needs to be independent reasons for an argument to be good, otherwise it simply assumes the initial point. I.e. there would need to be a further premise in order to ensure the second one as true.

Apart from the criteria above, an important task of argument analysis is to detect hidden values. These may e.g. appear as statements regarding factual truth rather than ethical or other kinds of values. The following sentence poses as an example of a statement that actually contains ethical values disguised as factual statements:

*Human beings have always hunted and killed other animals for food and clothes.  
Therefore, such acts can't be wrong.*

The statement above concludes that it can't be wrong to kill other animals for clothes and food. As a pro-argument for this conclusion, the argument implies that the time during which humanity has spent on a certain activity, on its own, poses as a reason for the continuance of the mentioned activity. A hidden premise here is thus, that activities associated with a long period of time in human history ought to be considered as morally permissible. Therefore, the argument not only claims hunting and killing animals to be morally permissible, it also rests on an ethical view which evaluates acts in virtue of a seemingly irrelevant quality, namely the time during which something has been done. Otherwise, the same line of thought may be used to support other activities, generally

regarded as objectionable, like slavery, gender inequality and child abuse. A rule of thumb; one may not deduce an 'ought' from an 'is', i.e. value judgments can't be directly drawn from facts.

### Value theory

Value theory is, here, referred to as the area of moral philosophy concerned with questions about value and goodness (Schroeder, 2008). It encompasses ethical values as well as a variety of other types of goodness and is thus a helpful instrument when intending to analyze any texts containing value judgments. Value judgments are a kind of claims that differ from claims about factual truth. They are often expressed in terms of *good, better, best* or *bad, worse, worst* or similarly. Some examples:

*This breed does not make good laying hens.*

*Horses are beautiful animals.*

*Rooting is good for pigs.*

*A world where people are nice to other animals is a better world.*

The examples above show four value claims that, somewhat differently, express the value of something. However, these claims use the same terminology, and one can thus not make a useful analysis without a further component. To be able to make interesting observations of these claims one also needs to determine what *kind* of value they address, since things can be good or bad in a variety of ways (Brülde, 2007).

The first sentence is a value claim about the egg-laying ability of a certain breed of poultry. As such, it values the breed in a functional sense by claiming it to have low *functional value* with regards to laying eggs. The second sentence claims something about the aesthetical appeal of horses, and is thus speaking of the *aesthetical value* of this species. The third sentence makes a claim about a certain relationship of value, namely the value of rooting *for* pigs. As such, it is expressing a type of value called *value for*. The last sentence claims something to be better in a general, or universal, sense and is thus a non-relational value. However, this *absolute value* could also be viewed as the things that are good or bad from the point of view of the universe.

Apart from the types of value accounted for, there appears to be at least five more ways in which something can be said to be good or bad. These are: 1) *medical value*, i.e. the goodness of an organ or physiological process, 2) *competence value*, i.e. the goodness of an individual's knowledge and ability, 3) *moral value*, i.e. the goodness of a person's character, intentions or acts, 4) *hedonic value* i.e. the goodness of a taste, a sound or any other thing that may give pleasure or discomfort and 5) *epistemic value*, i.e. the goodness of a scientific theory, an explanation or observation (Brülde, 2007). Of these, all appear to be relevant when identifying and analyzing values and definitions in laws of animal welfare.

However, the most central value types when considering animal welfare and concepts of animal welfare are *value for*, *medical value* and *functional value*. This, as the issue of animal welfare, and the common definitions of the same, seem to revolve around well-being (value for) and health (medical value and functional value). More on the issue of defining animal welfare in section 3.3. Furthermore, value for, is a type of value where the

distinction between *instrumental* and *final* value is of great importance. Although most people would agree that being able to root is good for pigs, it is not obvious whether this is something that is good in itself (of final value) for the pig, or if it is merely a means (an instrument) for attaining some other good. The things that are of final value constitute the well-being of an animal, while the things that are of instrumental value function as means for those constituents (Brülde, 2003).

### Normative ethics

Normative ethics is the part of ethics dealing with 'normative ethical theories'. These are theories that generalize norms to answer the question 'how should one act, morally speaking?'. In the course of identifying ethical values in animal welfare laws it may also be possible to discern certain moral ideas or theories. To better be able in plotting these with the right theory it might thus pose helpful to have basic knowledge in normative ethics.

Normative ethical theories can be divided into three main groups. This, depending on whether they claim that what is right or wrong depends on the action's adherence to a set of rules (deontological theories), claim that what is right or wrong depends on the outcome of the action (consequentialist theories) or if they claim that the essential issue really is whether the agent performing the actions has a good character or not (virtue ethics), (Rachels, 2007).

Deontological ethical theories thus encompass ideas on right and wrong based on duties or rights. An action is right if it respects the given rules and wrong if it breaches any of them. Different deontological theories draw these rules in different ways. There are natural rights theories which claim that humans (and in some cases other animals) have naturally given and absolute rights, contractualist theories which argue that the rights should be the ones agreed to in a real, implicit or rational setting and there is also Kantianism which deduce the rules, or rather obligations, from humanity's rational capacity (Rachels, 2007, pp.117-129).

Consequentialist ethical theories, on the other hand, argue that the outcome or result of an action decides whether it is right or wrong. Different outcomes will be found good or bad depending on what one considers as valuable. For example, a hedonist thinks that actions that maximize the overall pleasure are right, while a preferentialist argues that an action has to maximize the overall preference satisfaction to be morally acceptable (ibid. pp.100-116).

When it comes to virtue ethics, the central issue is not how one should act, but rather what kind of person one ought to be. A virtuous person is, in part, characterized by being able to make the right decision when in face of a morally significant situation. Thus, one should strive to be virtuous as this is a prerequisite to be able to make the right actions (ibid. pp.173-190).

## 2. BACKGROUND

To identify and analyze explicit and implicit values and definitions of animal welfare in a text of law one, naturally, needs to identify and analyze the conclusions, premises and possible assumed or implied premises in the laws and legislations themselves but preferably also in works and documents which lead to the founding of the legislations.

Apart from identifying and analyzing values and definitions, the animal welfare legislations of the UK, Spain and Argentina will be summarized and compared to EU regulation.

### 2.1 The UK

#### History

The UK was the first country to pass a law on animal welfare. The law was called 'An Act to prevent the cruel and improper Treatment of Cattle' or 'Martin's Act' for short. In 1822 the act made it an offence to wantonly and cruelly abuse, mistreat or beat any horse and cattle.<sup>1</sup> The legislation was the result of decades of attempts to introduce laws to prohibit bull-baiting and other types of cruelty to animals. The passing of the act was followed by the founding of the SPCA, the Society for the Prevention of Cruelty to Animals, in 1824, which had great success in carrying on the cause of animal welfare by, among other things, lobbying Parliament for more extensive animal welfare legislations. Joseph Pease, a member of the SPCA's committee, took on the cause for a more substantial version of Martin's act by adding 'torture' to the list of prohibited acts and by including bulls, dogs and other domestic animals. The act was passed in 1835<sup>2</sup> and increased the protection of animals in three additional ways; by prohibiting animal fighting and baiting throughout the whole country, by making it a duty for everyone caring for an animal to provide it with sufficient food and by stating that all cattle and horses kept at the knackers' yard (a place where animal carcasses are made into products not intended for human consumption, e.g. glue) should be killed within three days of arrival and in the meantime should be provided with sufficient food.<sup>3</sup>

#### National legislation

Since the passing of these first legislations, the animal welfare legislation of the UK has come to consist of laws, regulations and orders. The main legislation regulating the responsibility of ensuring the welfare of animals in the UK is the 'Animal Welfare Act 2006' which states that animals shall be kept in a way that ensures the meeting of their needs. These needs are defined from a certain, five component definition of animal welfare called the Five Freedoms of Animal Welfare, accounted for below. The welfare of farmed animals is additionally protected by the secondary legislations 'The Welfare of Farmed Animals (The UK) Regulations 2007' and 'The Welfare of Animals at Markets Order

1990'. Apart from these, DEFRA (the Department for Environmental, Food and Rural Affairs) produces non-legislative advice, recommendations and codes of practice, e.g. the 'welfare codes' which give advice and recommendations regarding the welfare of animals during production, transport and destruction of the various species and breeds of animals used for economic purposes.

### Differences to EU legislation

The national animal welfare legislation of the UK differs in several ways from EU legislation. The following summarization of differences is based on the EconWelfare report 'Overview of animal welfare standards and initiatives in selected EU and third countries'. On a veterinary medicinal level the national legislation differs from EU-legislation by generally not allowing the use of beta-agonists. However, certain compounds are allowed under prescription. This while EU legislation permits it only for medical purposes while prohibiting the use of these compounds for growth-promotion. These restrictive measures are due to cases of human intoxication following the consumption of meat and liver of treated cattle, as well as dangerous side-effects for the animals themselves (Kuiper, H.A. et. al, 1998).

Regarding the welfare of cattle, the UK has some regulations concerning dairy cattle. At EU level the relevant directive, regulating minimum standards for the protection of calves, is Council Directive 2008/119/EC of 18 December 2008, Official Journal L 010, 15/01/2009 P. 0007 – 0013. The UK has some additional requirements stating that dairy cows in lactation or calving cows housed indoors must at all times have access to a bedded and well-drained lying area, and that calving pens must be big enough so that a person may attend the cows.

Regarding the welfare of calves kept for rearing and fattening, UK legislation states that a single pen for a calf weighing less than 60 kg must have a length of at least 1.2 m and a breadth of at least 1 m. The measurements for calves weighing less than 90 kg are 1.4 X 1.1 m. These minimum differ from EU legislation which state the minimum width measures at 0.9 m +/- 10% or 0.80 times the height of the calf measured at the withers (the ridge between the shoulder blades). The width of individual pens must be at least equal to the height of the calf measured at the withers, while the length must be at least equal to the body length of the calf measured from the nose to the caudal part of the pin bone, multiplied by 1.1. Regarding space requirements when calves are kept in groups, EU and UK legislation state the same requirements up to 150 kg. After that, EU legislation requires 1.7 m<sup>2</sup> for calves weighing up to 220 kg and 1.8 m<sup>2</sup> for calves weighing more than 220 kg. This, while UK legislation requires 2 m<sup>2</sup> for calves weighing from 150 kg to 200 kg, and 3 m<sup>2</sup> for calves weighing more than 200 kg.

When it comes to the legislation of the welfare of pigs, there is one EU directive: Council Directive 91/630/EEC of 19 November 1991 laying down minimum standards for the protection of pigs Official Journal L 340 , 11/12/1991 p. 0033 – 0038. The directive concerns pigs of all ages and sexes (including castrates). UK legislation differs from the EU directive in regulating heat stress regarding accommodation. Furthermore, in the UK, sick, injured or aggressive individuals must be kept individually separated. Differently to EU directive, which stipulates that sows and gilts shall be kept in groups during a period

starting from 4 weeks after weaning to 1 week before farrowing, sows and gilts in the UK shall be kept in groups after weaning. Considering the welfare of weaners and rearing pigs, UK legislation differs in having a different approach to space requirements. In the UK, space requirements are regulated in relation to the size of the pigs, i.e. the internal area must not be any less than the square of length of pig, and no internal side less than 75% of the length of the pig. This, while EU directive defines space requirements in relation to weight.

Regarding the welfare of chickens, the Council Directive on broiler (meat chicken) husbandry has not yet been transposed to national legislation. The UK welfare legislation for laying hens or chickens kept for meat production does not differ from EU regulation.

Differences in regulation regarding the welfare of animals during transport, concerns water for pigs and navigation system. EU regulation states that pigs may be transported for a maximum of 24 hours and must during this time have continuous access to water. In the UK however, water must be provided at appropriate intervals, not continuously, and pigs given opportunity to drink enough at these times. EU regulation also states that means of transport by road must, since 1 January 2009, be equipped with navigation systems, while UK legislation does not require satellite navigation.

UK legislation differs from EU regulation on the welfare of animals at the time of killing or slaughter in two aspects, partly regarding the duration of bleeding and partly due to allowances and provisions. Regarding duration of bleeding, UK legislation states that no further procedure should be carried out before bleeding has ended, i.e. not before the expiry of 90 seconds for chickens, 30 seconds for bovines and 20 seconds for pigs. When it comes to kosher and halal slaughtering without stunning, UK legislation states that this should be done to an animal standing in upright position. This is not required in EU legislation where however one requires the slaughter to take place at a slaughter house and the practice to be done by religious, and not commercial, grounds (Council Regulation (EC), No 1099/2009).

### The Five Freedoms

As mentioned, animal welfare legislation of the UK is centered around, and in many cases, formulated as to aim at the fulfillment of the Five Freedoms of animal welfare:

1. *Freedom from Hunger and Thirst – by ready access to fresh water and a diet to maintain full health and vigour.*
2. *Freedom from Discomfort – by providing an appropriate environment including shelter and a comfortable resting area.*
3. *Freedom from Pain, Injury or Disease – by prevention or rapid diagnosis and treatment.*
4. *Freedom to Express Normal Behaviour – by providing sufficient space, proper facilities and company of the animal's own kind.*
5. *Freedom from Fear and Distress – by ensuring conditions and treatment which avoid mental suffering.* (Farm Animal Welfare Council, 2011)

These 'freedoms' are a way of defining physiological and behavioural needs of animals and the conditions required to meet them. Their influence on British animal welfare law can e.g. be seen in the following quotation:

”(2)For the purposes of this Act, an animal's needs shall be taken to include—

- (a)its need for a suitable environment,
- (b)its need for a suitable diet,
- (c)its need to be able to exhibit normal behaviour patterns,
- (d)any need it has to be housed with, or apart from, other animals, and
- (e)its need to be protected from pain, suffering, injury and disease.” (Animal Welfare Act 2006)

The influence of The Five Freedoms is also seen in the Codes of recommendation or 'welfare codes' produced for each of the species or breeds of animals used for production, here on the welfare of laying hens:

”The welfare of laying hens is considered within a framework, elaborated by the Farm Animal Welfare Council (FAWC), and known as the 'Five Freedoms'. These form a logical basis for the assessment of welfare within any system...”<sup>4</sup> The reason for this strong influence can be found in the shaping of the Five Freedoms themselves. They constitute a concept of animal welfare formulated by John Webster and presented in the Brambell Report in December 1965. The report was the result of the work of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems, and originally stated that farm animals should be able “to stand up, lie down, turn around, groom themselves and stretch their limbs,”. However, the reason the committee was set up at all was due to Ruth Harrison's book 'Animal Machines' from 1964, which brought up the issues of intensive animal farming. Harrison claimed that “*the animals do not live before they die, they only exist*” (Radford, p.169, 2001) and so argued that the current legislations were insufficient in meeting the needs of animals in the new era of intensive animal farming. As a consequence of the Brambell Report, the Farm Animal Welfare Advisory Committee was set up, and later disbanded when the British Government established the Farm Animal Welfare Council in 1979. The council, in turn, has developed the concept of the Five Freedoms to its present form (FAWC, 2011).

## 2.2 Spain

### History

Concern for animal welfare in Spain dates back to the late 19<sup>th</sup> century. In 1883 a certain order was given to teachers which commanded them to teach children respect and goodwill for animals.<sup>5</sup>

The different autonomous communities (Comunidades Autónomas) of Spain have since then had differing sets of legislation regarding animal welfare. For instance, bull fighting has been prohibited on the Canary Islands since 1991<sup>6</sup> and will be banned in Catalonia from January 2012<sup>7</sup>, while still being legal in a number of other autonomous communities. Until 2007 the only common national legislation regarding animal welfare or animal protection uniting the autonomous communities was article 632 of the penal code (Código

Penal). Because of its ambiguous approach it, however, did not provide much common ground, stating: 'those who cruelly mistreat domestic animals or any others in spectacles not legally authorized...'.<sup>8</sup>

### National legislation

In 2007, however, a new animal welfare law was passed. The 'Spanish Animal Welfare Act 32/2007' now provides a common denominator under which the autonomous communities of Spain may excel their power (Giménez-Candela, 2008). The law consists of a preliminary title along with title I-III, each containing articles covering different key aspects of the welfare of vertebrate animals held for economic purposes, i.e. for meat, egg, milk, skin, fur and other agricultural products. The law does not apply to wild animals, animals used for competitions, sports or cultural happenings, as these are addressed by other regulations.

The preliminary title contains article 1-3 and states the objectives of the law, which are to establish a foundation for a system of animal welfare, along with offenses and penalties, and to ensure compliance with the rules regulating the protection of animals during production, testing transport and destruction. The title also regulates the power to impose penalties, and establishes the procedures for laboratory animals within its scope. Apart from this, the preliminary title sets up the General Administration of the State and its function to protect animals exported from or imported into Spain, from a country within or without the EU.

Above these, the general provisions, Title I contains article 4-9, which covers key aspects on the welfare of animals during production, transport and destruction. It also covers such activities that are subjected to official authorization or which have to be notified to competent authority.

Title II contains regulations regarding inspection and sanctions, and is divided into two chapters. Chapter I, which is constituted of articles 10-12, regulates inspector programs and the control of state staff inspectors and obligations of inspections. Chapter II, which is constituted by articles 13-22, covers violations and their sanctions. It regulates the different levels of infringements ranging from minor, serious to very serious infringements of the rules. The title also sets out the maximum and minimum penalty.

Title III contains two additional provisions. The first provision regulated the welfare of domestic animals and pets, while the second additional provision sets out the fees of the services and management permits of the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES).



## Differences to EU legislation

In short, this act, and hence the national animal welfare legislation of Spain, does not really differ from EU rules as these have been transposed into Spanish law without undergoing major changes.<sup>9</sup>

## The Great Apes

However, the protection and welfare of some non-human animals is not to be found in the mentioned act, or any other law regulating animal welfare for that matter. In May 2006 the Spanish Socialist Workers' Party and the Confederation of the Greens introduced a bill proposing the ascription of some human rights to the great apes (comprising of gorillas, orangutans, chimpanzees and bonobos). The bill was passed on June 25 in 2008 and has since declared great apes the right to life, liberty and the right to not be tortured, thus including a prohibition against 'harmful experiments' (Catan, 2008).

## **2.3. Argentina**

### History

In 1902 the 'Sarmiento Society for the Protection of Animals' was founded, the name being a tribute to a former president Domingo Faustino Sarmiento, and his support for the first animal protection 'decreto' in Argentina. The 'Ley Nacional de Protección de Animales' was passed on the 25 of July 1891 and was in short called 'Ley Sarmiento' or Sarmiento's Law. The Sarmiento Society for the Protection of Animals was constituted of citizens who wanted to tackle the animal welfare issues they observed. Like in the UK, their main focus was the everyday mistreatment of animals in the city. They were in particular concerned with the situation of draft horses (Estol, 2006). On the 27 of October in 1954, the first general animal protection law was passed. The 'Ley 14.346 de Protección al Animal' is a penal law.

Today, Argentina is a significant livestock trading partner for the EU. Animal welfare in Argentina is regulated through legislation, both for non-organic and organic production. Media campaigns, as well as animal welfare scandals, and groups defending the interests of animals have been important factors for the development of the country's animal welfare legislation. Apart from this, pressure from trading partners has also played a significant role, something that also explains why most animal friendly products are for export (Kilchsperger and Schmid, 2010).

### National legislation

The animal welfare legislation of Argentina comprises of one law and three resolutions. The law 'Ley 14.346' consists of four articles. The first, states that one who mistreats or is cruel to animals can be sentenced to prison for 15 days to one year. The second and third act, specify the kind of actions that are considered to be mistreating of, and cruelty towards, animals. The fourth article requests one to contact the executive branch of government.<sup>11</sup>

The three resolutions are 'Resolución Senasa 97/1999' (SENASA is the national institution concerned with food safety) which gives recommendations regarding the transport of animals, 'Resolución 253/2002' which states the order and establishment of the National Advisory Commission of Animal Welfare (Comisión Nacional Asesora de Bienestar Animal) and 'Resolución 259/2004' which states the commission and guidelines for a coordination of the different departments concerned with animal welfare and animal health.<sup>12</sup>

### Differences to EU legislation

Argentina (along with New Zealand), is considered as being 'comparable' to EU legislation according to the EconWelfare report 'Overview of animal welfare standards and initiatives in selected EU and third countries' (2010, p.10).

### 3. ANALYSIS AND COMPARISON

Values, both ethical and other, and the view of animal welfare found within the animal welfare legislations of the UK, Spain and Argentina give valuable insight into the thoughts and ideas that formed the laws, secondary legislations and non-legislative advice and codes in these countries. This section will identify and discuss some of the central values, ideas and arguments in the animal welfare legislations. The analysis will also compare and point out similarities and differences, along with proposed explanations, of the values and definitions found between the UK, Spain and Argentina. Because there is far more material available concerning the animal welfare legislation of the UK, the values found in the British documents will serve as the basis of the analysis. The section is divided into three parts, each dealing with a different type of value, definition or issue expressed in legislative and non-legislative documents of animal welfare.

#### 3.1 Can they suffer?

A central line of thought in the British, as well as the Spanish, animal welfare legislations is that the types of animals which ought to be protected are the ones capable of suffering. This stems from the idea that the infliction of suffering is something one ought to minimize when keeping and handling animals. For example, 'The Animal Welfare Act 2006' of the UK begins with a specification of 'Animals to which the Act applies' by stating these to be vertebrates. This, most probably due to the fact that the possession of a nervous system that enables sentience appears to be a central characteristic of animals belonging to the Sub-phylum Vertebrata and the Phylum Chordate (Panksepp, 1998). Similar in formulation, the second article of the Spanish legislation defines the beings to which the legislation applies as the following: 'Animal: all animals (including fish, reptiles and amphibians) kept for production of food, wool, fur or other agricultural ends'<sup>13</sup>, i.e. implying the understood inclusion of mammals and birds, and thus encompassing all the biological classes belonging to Vertebrata.

To regard suffering as a main focus in ethical reasoning is a hedonistic utilitarian view, evaluating suffering as intrinsically undesirable and thus pointing it out as a main concern. Utilitarianism is a consequentialist ethical theory that was, for the first time, systematically accounted for in the end of the 18<sup>th</sup> century (Driver, 2009). Its best known proponent was Jeremy Bentham, who claimed that 'Pleasures... and the avoidance of pains' should be 'the *ends* which the legislator has in view.' (Bentham, 1789;1970) and asserted 'the question is not, Can they *reason*? Nor, Can they *talk*? But, Can they *suffer*?' (ibid.) In the same era '[a]stronomers such as Brahe, Kepler, Hooke, and Newton established that the earth was not, after all, the centre of the universe, and the discovery by geologists of plants and animals which had lived and become extinct prior to man's existence further undermined the theory [of man's moral supremacy]' (Radford, p.19, 2001). These new ideas and discoveries, accompanied with an increasing awareness of the anatomical and physiological similarities between humans and animals, initiated a change in people's minds regarding both man's place in creation as well as his duty towards other animals (Radford, pp.19-27, 2001).

But even though suffering appears to be a main concern in current legislations of animal welfare, it competes with other interests. For instance, the fourth provision of the British 'Animal Welfare Act 2006' states that:

'(1) A person commits an offence if—

(a) an act of his, or a failure of his to act, causes an animal to suffer,'

However, the same provision ends with the following line, stating that for the act to be an offence

(d) 'the suffering is *unnecessary* (italics mine).'

I.e. suffering in itself is not sufficient for an act to be regarded as an offence; the suffering inflicted also has to be *unnecessary*. The same reasoning is found in the Spanish regulation addressing destruction and slaughter 'C.- Normativa sobre la protección de los animales en el momento de su sacrificio'; 'The regulation in force regarding the protection of animals at the moment of destruction has the object of adopting minimum rules to ensure the avoidance of any pain or *unnecessary suffering* (italics mine)...', and the Argentinean legislation 'Ley 14.346' stating that 'To hurt or run over animals intentionally, causing them torture or *unnecessary suffering* (italics mine)...'.

This appears to be a restriction of the utilitarian view. A pure hedonistic formulation would have stated that any act resulting in net suffering alone is bad. However, the formulation implies there to be other, equally or more important, factors to consider than the suffering of other animals. To determine what other things, apart from this, that have to be taken into account, one needs to understand the meaning of 'unnecessary' used here. Because, depending on the intended definition, different conclusions may be drawn.

The notion of 'unnecessary suffering' is the final of four criteria to determine whether an act might be regarded as an offence against the 'Animal Welfare Act 2006'. The British provision contains a number of criteria to help to determine whether inflicted suffering is necessary or not:

(3) The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include—

(a) whether the suffering could reasonably have been avoided or reduced;

(b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment;

(c) whether the conduct which caused the suffering was for a legitimate purpose, such as—

(i) the purpose of benefiting the animal, or

(ii) the purpose of protecting a person, property or another animal;

(d) whether the suffering was proportionate to the purpose of the conduct concerned;

(e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

However, these do not encompass all, or the most interesting possible definitions. Thus, the following is my proposal for a more extensive list of possible interpretations of 'unnecessary suffering':

1. 'Unnecessary suffering' equaling 'suffering at all', i.e. that any suffering, regardless of its source or degree, is bad and any act causing it should therefore be regarded as wrong. This definition, however being purely hedonistic (but not necessarily utilitarian), is not a very

probable interpretation. It would be redundant to add 'unnecessary' or to add the fourth criteria of unnecessary suffering in the British provision if what one really meant was that an act causing suffering, independent of its source or its consequences, was wrong.

2. 'Unnecessary suffering' as 'suffering caused by bad character or bad intentions' (similar to criteria 'e' above), i.e. that an act is wrong, not solely based on if it causes suffering, but if the character of the person or the intention of the act that caused the suffering was cruel. That is, a cruel character result in cruel actions where the inflicted suffering, per se, must be regarded as unnecessary. This 'virtue oriented' interpretation gives that cruelty is the infliction of unnecessary suffering, and appears to be closer to the intended meaning of the notion. Especially as cruelty is a recurrent theme in the legislation and codes of practice, as well as being a recurrent theme in the history of animal welfare. Moreover, this definition is also in line with the proposed 'fusion' of the utilitarian and virtue ethical view that presumably characterizes the legislation of all three countries. More on 'cruelty' and the combined ethical view in part 3.2.

3. 'Unnecessary suffering' as any suffering apart from suffering that, in some way, is in the interest of the animal (see criteria 'ci'). This could e.g. mean suffering inflicted as part of medical care. This is thus an interpretation of so called *necessary* suffering, and seems to be in line with the intended meaning of the British legislation, seeing that the provision uses the following wording: "(c)whether the conduct which caused the suffering was for a legitimate purpose, such as— (i)the purpose of benefiting the animal, or...". The same line of thought is also found in the Argentinean legislation which states that it is an act of cruelty to perform surgery without anesthetics 'except in the case of a properly verified emergency' (see 'Ley 14.346').

4. 'Unnecessary suffering' meaning 'suffering exceeding a certain degree', i.e. that the intensity or durability of suffering determines if it is unnecessary or not. This could, for instance, mean that any action leading to suffering above certain strength or duration to be regarded as having caused unnecessary suffering. This interpretation is not very likely, considering that none of the criteria actually mentioned in provision 4 of the British legislation addresses the issue of intensity or durability. Also, these explicit criteria appear to be concerned with whether the suffering inflicted was due to 'conduct' that is in accordance with legislation or codes of practice, the moral character of the person in question or whether the suffering was unavoidable or not. Nowhere is the issue of degree mentioned as a criterion for unnecessary suffering. However, one needs to take notice that suffering, as such, may be distinguished from discomfort in general. Suffering may be referred to as a state that differs from momentary pain and discomfort with regard to the strength and permanence of the said experience. In this sense all three legislation might imply that suffering differs from momentary, or mild, pain and discomfort.

5. 'Unnecessary suffering' meaning that *necessary* suffering is the suffering that can't be avoided when fulfilling human interests. For example, suffering ought to be avoided in so far as this does not interfere with production. This is a definition that appears to be quite in line with the fourth criteria given in the British provision: "(d)whether the suffering was proportionate to the purpose of the conduct concerned;" and in the Spanish description of the regulation of destruction and slaughter, 'and at the same time ensuring the reasonable development of the production and realization of the interior market of animals and animal products...' <sup>14</sup> But it is also an interpretation of the term that successfully helps to explain the legislations and the views and values on which they are founded. As will be clearer,

one basis of the welfare legislations of these three countries is the justification of man's dominion over other animals.

6. The last possible definition of unnecessary suffering is the combination of proposal 3 and 5, i.e. the interpretation that necessary suffering is the suffering needed to produce the highest hedonic net result/best consequences (see criteria 'cii' and 'd'). Or put differently, that the suffering of animals can be justified if it is necessary in a 'utilitarian sense'. However, utilitarian, this definition of unnecessary suffering does not appear to be widespread in the domains of production animals (this as opposed to animals used in medical experiments). While often an argument for animal testing, the industrial production and killing of animals for consumption is seldom expressed as permissible by traditional hedonistic utilitarian measures (however, there are proponents of such a view, e.g. see Tännsjö, 2001). This, therefore does not seem as a very probable interpretation of the term.

So, even though there are strong hedonistic values claiming net suffering to be undesirable, this standpoint appears to be combined with other regards. While definition 2 may be defined as a consequentialist interpretation of unnecessary suffering (at least with regards to the interests of the animal), interpretation 3 and 5 are not utilitarian. Defining necessary suffering as suffering caused by bad intentions (proposal 3) is rather a virtue ethical way of looking at things. This, while defining the same term as suffering that is hard to avoid when using animals for economical purposes, is a definition that may be considered as consequentialist but that is still too restricted to one kind of outcome on the one hand and concerned with a rather restricted group of beings, on the other, too be considered as purely utilitarian. Rather, it could be interpreted as a line of thought placing human interests above those of other animals. These two latter definitions, regarding cruelty and the interests of man, will be further discussed in the following section.

### **3.2 The Compassionate Stock-keeper**

Humanity's relationship with the rest of creation had traditionally been viewed from the point of view that God has given us 'dominion over the fish in the sea, and over the fowl of the air, and over every living thing that moveth upon the earth'. (Genesis 1: 26-28) However, an alternate interpretation of this dominion was, among others, put forward by the 17<sup>th</sup> century English lawyer Sir Matthew Hale: 'abhorred those sports that consist in torturing animals and, if any noxious creatures must be destroyed, it has been my practice to do this with the least torture or cruelty, ever remembering that, although God has given us dominion over His creatures, yet it is under a law of justice, prudence and moderation, otherwise we should become tyrants and not lords'.<sup>15</sup>

I.e. man's dominion was, by some, being reconsidered to encompass a duty of considering the suffering of other animals. Humans ought to be just and compassionate 'lords' rather than cruel 'tyrants' (Radford, 2001; Linzey, Preece, Röcklinsberg, 2001). This virtue ethical ideal is predominant in the legislation and welfare codes of Britain. For instance, the very first section of the 'Code of Recommendations', or the 'Welfare Codes' developed by FAWC, is 'Stockmanship' or 'Stockmanship and Staffing', stressing that 'the most significant single influence on the welfare of any flock (or 'of pigs', 'of stock' etc) is the flock-keeper' or 'the shepherd', 'the stock-keeper' etc. The Welfare Codes also state that "A

good flock-keeper will have a compassionate and humane attitude”.<sup>16</sup> Also, the FAWC states the following on its webpage regarding animal welfare:

Stockmanship – The Key to Welfare

Stockmanship, plus the training and supervision necessary to achieve required standards, are key factors in the handling and care of livestock. A management system may be acceptable in principle but without competent, diligent stockmanship, the welfare of animals cannot be safeguarded adequately. FAWC lays great stress on the need for better awareness of welfare needs, for better training and supervision. (21-02-2012)

The stressing of right minded and competent personnel is not as pronounced in the Spanish or Argentinean legislation and non-legislative documents. For example, the non-legislative document ‘Manual de buenas practicas en producción bovina’ (Manual of good practices in bovine production, 2011) of Argentina, states that ‘all personnel entrusted with managing stock will need to have experience and/or be capable of identifying the factors causing animal stress.’ However, this is also the only place where the subject is addressed. In a similar fashion, the Spanish legislation states that the personnel working on farms must be informed in matters of animal welfare<sup>17</sup>, but does not address the issue any further.

As shown, the ideal of the virtuous animal-keeper is not as distinct in the latter legislations. However, the laws and recommendations of these countries seem to be based upon the same idea; to minimize the suffering of animals and to maintain a ‘humane’ production of animal products. In a historical sense, the view of man as a virtuous lord appears to have been combined with insights on the similarities between humans and other animals, along with the strengthened concern for suffering. The ethical grounds for the animal welfare laws of the UK, Spain and Argentina are therefore actually a fusion of two ethical theories; the utilitarian idea of equality concerning pleasure and suffering, molded with the virtue ethical view of man as a compassionate and just ruler of the natural world. This two-sided view of how to ensure animal welfare is particularly distinct in the composition of the Argentinean animal welfare law. The law is divided into two lists of criteria of prohibited acts, the first addressing acts of cruelty and the other acts of maltreatment. The same act is also given the subtitle ‘protecting animals against cruel acts’. Thus, cruelty is the vice of humans working with animals, while suffering is the consequence of maltreatment. The first part is concerned with the *intentions* and the *character* of the people keeping and handling non-human animals<sup>18</sup>. The second part is concerned with the actual *consequences* of this treatment.

This blend of ethical concerns has resulted in a view where intentions and mindsets of humans are considered to be of much weight. It is e.g. fully permissible to keep non-human animals for production, to transport them and to kill them for human ends. At least, it appears, when these ends are considered as being within the scope of a ‘humane’ (see the ‘Code of Recommendations for the Welfare of Livestock’, for example ‘Laying hens’, p.4, 2002), ‘compassionate’ (‘Animal Welfare Act 2006’) character. A probable explanation for this would be that the animal welfare act, along with other animal welfare legislations, don’t exist to ensure other animals basic rights or autonomy, but rather to regulate *human use* of non-human animals. The only non-human animals to be excluded from this rule are the great apes, as their interests are regulated in terms of ‘rights’ in the Spanish legislation. However trivial as this view of animals may seem to some, such a basal premise needs to be highlighted in order to understand some fundamental values on which the British, Spanish and Argentinean legislation of animal welfare are founded.

In the British 'Animal Welfare Act 2006' the fourth (and ninth) provision is concluded with the following statement:

”(4)Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.”

This means that, while unnecessary suffering ought to be avoided, the 'humane' killing of an animal, i.e. destruction without unnecessary suffering, is not within the scope of the act. To end the life of an animal is thus not regarded as an issue itself. The exceptions determining when to regard suffering to be unnecessary or necessary, and the allowance for 'humane' killing, both imply that the animal welfare legislations exist to protect animals in a context where they are still viewed, at least in part, as commodities. This suggests that animal welfare legislations are restrictions to the right of property, or as Mike Radford puts it: *”Legal regulation of the way in which animals are treated therefore continued to be essential in order to offset the otherwise unconstrained property rights of the owner under common law.”* (Radford, 2001, p. 102) It is this view that interferes and thus restricts the hedonistic utilitarian view accounted for in the previous section. Suffering is to be regarded as something one must avoid, but not at any cost. In particular not when this cost includes economic interests, like productivity.

This commodity-centered view of other animals may also tell something of the moral status of non-human animals as viewed in the legislations. Animals don't appear to be considered as having a right to exist in their own right. Rather, their 'rights' seem to include a life free from unnecessary suffering, but not a right to continued life per se. Or as 19<sup>th</sup> century animal protectionist Thomas Erskine thought of it ‘They are created indeed for our use, but not for our abuse’.<sup>19</sup> Hence, the supposed intrinsic value of animals, in virtue of the production centered context of the issue, stands in conflict with their value as means for production (their extrinsic value). An opposition that is expressed in the following extract from the FAWC website ‘They [the Five Freedoms] form a logical and comprehensive framework for analysis of welfare within any system together with the steps and compromises necessary to safeguard and improve welfare *within the proper constraints of an effective livestock industry* (italics mine)’, (FAWC, 2011). The same view is also expressed in the fifth definition of unnecessary suffering accounted for in the previous section. It is not enough that an act causes an animal to suffer for it to be prohibited, the suffering caused also needs to be considered unnecessary. A main type of necessary suffering appears to be considered to be the potential pain and discomfort caused by means of production, transport and destruction. This view of the duties of humans towards other animals, and our right to use them within certain limits, is sometimes referred to as 'animal welfarism' and used, among many others, by Marc Bekoff.<sup>20</sup>

How about suffering caused within ‘improper’ constraints? Historically the first public concerns for animal welfare in the UK as well as in Argentina regarded the use of draft animals and animal fighting and baiting. In the UK the first attempts, as well as successes, at introducing legislation were concerned with stopping the ‘cruel and inhuman’ activities and sports of the lower classes.<sup>21</sup> Bull baiting, animal fighting and the mistreatment of draft animals awoke great concern and was also associated with social vices as ‘it drew together idle and disorderly persons’ and lead to ‘many disorderly and mischievous proceedings’.<sup>22</sup> In a similar fashion the first animal welfare initiative of Argentina, the Sarmiento Society, was first and foremost concerned with the use of draft horses. These types of animal welfare concerns can all be grouped in virtue of their associations with poor people or lower classes. Bull baiting and animal fighting in the UK were the sports of the poor, while



hunting and horse racing were associated with higher and more sophisticated people. In turn, the use of draft horses, and other animals to carry heavy loads was also primarily a means of transport associated with farmers and other lower class people. This division may have contributed to a view where poor and simple people appear to have been associated with bad morale, while gentlemen were thought of as inherently just and compassionate.

However, while concerns were raised for the mistreatment of animals in these lower class activities, voices seem to have been risen to point at the apparent double standards of 'gentlemen'. For instance, William Windham, MP for Norwich, stated that 'The common people may ask with justice... why abolish bull-baiting, and protect hunting and shooting?... when they are not more cruel than our own [sports]?'<sup>23</sup> Windham further argued that if 'we continued to practice and to reserve in great measure to ourselves the sports of hunting, shooting and fishing, we must exhibit ourselves as the most hardened and unblushing hypocrites that ever shocked the feelings of mankind'.<sup>24</sup> Despite questions and statements like these, the animal welfare movement was first and foremost a cause of the higher classes and continued to propose bills that focused on what people in general viewed as 'cruelty', i.e. to 'maliciously to wound or with wanton cruelty to beat or otherwise abuse' animals. (Radford, 2001, p.37) And even though it might as well have been a strategic move (after all, it is easier to win popular sympathy for views commonly shared than to challenge the activities of the powerful and influential), there is no doubt that such a strategy would, in fact, reflect the views and opinions of the time. Furthermore, this idea of animal welfare or animal protection as an issue, at least in part, concerned with the *morale* of people still pertains in legislations and non-legislative documents. As mentioned, one of the articles of the Argentinean legislation is devoted to criteria determining what kind of actions that should be regarded as cruel. This, even though, another article addresses the type of actions to be regarded as maltreatment. Such a distinction implies that there are actions regarded as wrong or unwanted, *regardless* of the actual consequences to the concerned animals. This is again a virtue ethical point of view.

As shown earlier, the legislations of the UK, Spain and Argentina prohibit certain actions on consequential grounds while prohibiting others on reasons associated with character or intent ('willful or wanton cruelty').<sup>25</sup> For instance, killing animals in a 'humane' manner is not prohibited by Argentinean law, while 'killing them solely because of a perverted morale' is viewed as an act of cruelty and is thus illegal (see 'Ley 14.346'). Similarly, the same article states it to be an act of cruelty 'to kill pregnant animals when such state is evident of the animal' but 'except the case of the industries legally established that are founded on the profiteering of newborns'. I.e. some actions are right or wrong in virtue of the intentions of the agent. To kill a pregnant animal for one's own enjoyment is forbidden, while the same action, now placed in a commercial context, is legal. The former is an act of cruelty and the latter the unavoidable consequences of morally accepted activities.

A question that arises is how such a division of how to morally judge actions has erupted in the first place? A possible explanation would be that the division per se, is not wholly a matter of morals. Instead, it appears as if activities thought of as cruel are characterized by being viewed as perverted, simple or in other ways associated with vice, abhorrence or disgrace. In other words, they are activities that have induced a sense of disgust. This, however, not thought of in an ethical meaning but rather in an *aesthetical* sense. If, in part, the view of cruelty (but not the issue of welfare or good treatment of animals) is fuelled by aesthetic judgment this would in turn explain some of the seeming paradoxes of ethical reasoning in issues of animal welfare. For instance, the sports of the higher classes in

Britain were not a target of the early animal welfare movement. The activities of gentlemen were, after all, thought of as sophisticated. In the same way, the existence and effects of aesthetic values are most truly the reason why bull-baiting and animal fighting is prohibited in the UK and Argentina, while bull-fighting is still being allowed and much loved in many of the Spanish autonomous communities. Even though a commonly popular sport, the tradition of bull-fighting is highly associated with appraised aesthetic values such as gracefulness, as well as virtues such as courage. The supposed skillful and courageous acts of the matador just are not comparable to a simple dog fight. Or to a 18:th century British bull-bait for that matter.

### 3.3. Good for Animals

Before analyzing different concepts of animal welfare it is of importance to know the wide variety of definitions used when referring to the term. Semantically, animal welfare is regarded as a question, at least in part, considered with values. This due to the fact that it is an issue dealing with questions about what the *good* and *bad* animal life consists in. However, and as mentioned in the introduction, animal welfare is often presented as a purely empirical matter.

Animal welfare is sometimes used as a synonym for well-being, i.e. what finally lies in the interest of an animal, or health, i.e. what constitutes an animal's health. In other words, well-being is concerned with what is of final value for the animal, i.e. what things are valuable for her as ends rather than as means, while health is, often, a concept concerned with fitness and functioning. But 'animal welfare' may also refer to *practical measures* and *external conditions* that are regarded as favorable to animals. As such, 'animal welfare' is a somewhat imprecise term that may encompass ideas on the constituents of both well-being and health but also the means of ensuring the above. For a helpful description of theories of animal welfare see Nordenfelt, 2006.

Saunders Comprehensive Veterinary Dictionary defines 'animal welfare' as concerning practical measures by stating that welfare is "the avoidance of abuse and exploitation of animals by humans by maintaining appropriate standards of accommodation, feeding and general care, the prevention and treatment of disease and the assurance of freedom from harassment, and unnecessary discomfort and pain" (*Blood and Studdert, 1999, p. 63*). This is a definition that resembles the concept, or *basis* for the evaluation of animal welfare, to which the British animal welfare legislation often refers to, and is centered around, called the 'Five Freedoms of Animal Welfare'. For example, provision 9 of the 'Animal Welfare Act 2006' states that:

- (1) A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.
- (2) For the purposes of this Act, an animal's needs shall be taken to include—
  - (a) its need for a suitable environment,
  - (b) its need for a suitable diet,
  - (c) its need to be able to exhibit normal behaviour patterns,
  - (d) any need it has to be housed with, or apart from, other animals, and
  - (e) its need to be protected from pain, suffering, injury and disease.
- (3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular—

- (a) any lawful purpose for which the animal is kept, and
- (b) any lawful activity undertaken in relation to the animal.
- (4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

Thus, the needs specified in the provision correspond to the 'freedoms' of the welfare concept developed by FAWC (see p. 12 for the Five Freedoms).

The Five Freedoms are also referred to in the 'Welfare Codes', each containing advice on how to, among other things, ensure the meeting of these five needs for each of the nine species or breeds commonly used for production. The following is an extract from the preface of the 'Code for the welfare of meat chickens and breeding chickens':

'The welfare of meat chickens and breeding chickens is considered within a framework, elaborated by the Farm Animal Welfare Council, and known as the 'Five Freedoms'. These form a logical basis for the assessment of welfare within any system...'.<sup>26</sup>

As there is still no consensus for a unified definition of animal welfare, and because the Five Freedoms is by far the most popular concept used, it is of importance to relate this notion to other ideas of welfare. After all, the animal welfare legislation and non-legislative advice and codes of the UK aim at the meeting of these five 'freedoms'. However, this concept has also had an impact on the view of animal welfare in other countries as well. EU recommendations on the husbandry of farm animals states that (here in the case of cattle):

[T]he basic requirements for the health and welfare of livestock consist of good stockmanship, husbandry systems appropriate to the physiological and behavioural needs of the animals, and suitable environmental factors, so that the conditions under which cattle are kept fulfill the need for appropriate nutrition and methods of feeding, freedom of movement, physical comfort, the need to perform normal behaviour in connection with getting up, lying down, resting and sleeping postures, grooming, eating, ruminating, drinking, defecating and urinating, adequate social contact and the need for protection against adverse climatic conditions, injury, infestation and disease or behavioural disorder, as well as other essential needs as may be identified by established experience or scientific knowledge; (The Standing Committee of the European Convention for the Protection of Animals kept for Farming Purposes, Recommendation concerning cattle, 1988)

MARM, the Spanish Ministry for the Environment and Rural Region and Marine Environment refers to these recommendations on its website. The view of animal welfare stated above contains all five of the Freedoms and is a mere transcription of the concept. Regarding the definition of animal welfare in the Argentinean legislation, the connection to the classical five freedoms is not obvious. Presumably because the issue of animal welfare is not as influenced by definitions and ideas of Britain or the EU. Senasa's own introduction to animal welfare/protection defines animal welfare as "a state where the animal as an individual has the capacity to attempt to cope with its environment", thus quoting professor emeritus of animal welfare Donald Broom. The introduction continues stating that 'being to the extent [the ability to cope] in which it satisfies the physiological and behavioural needs of an animal. One must thus ensure the proper housing, the responsible treatment of nutrition, the prevention of disease and euthanize when there is no other solution possible.' This is a different approach to animal welfare than the one represented by the Five Freedoms. In the former concept focus strongly lies on something

called ‘good functioning’ or ‘function value’. Broom’s definition of animal welfare is therefore actually a concept of health rather than welfare (which often *also* incorporates subjective well-being). It addresses the proper functioning of an animal’s body and mind, but not positive affect in its own regard. However, Senasa does refer to the World organization for Animal Health (OIE), intergovernmental organization formerly known as ‘Office International des Epizooties’, and its definition of animal welfare. This definition states that ‘health is a key component of animal welfare’ but also that animal welfare is a state where the animal does not suffer from unpleasant sensations of pain, fear or anxiety. Furthermore, the basic needs of cattle stated in the non-legislative document ‘Manual of good practices in bovine production’ divides the needs of these animals into two major categories. First there is the need to not suffer from hunger or thirst. The second category addresses the need to live in a fitting environment and under conditions that promote comfort in a physical as well as psychological and social sense and without being exposed to stimuli or factors that might induce stress, pain or fear. As such, the definition of animal welfare in Argentinean legislation and non-legislative documents includes most of the ‘freedoms’.

Another popular concept of animal welfare, besides the Five Freedoms, is the Four Principles and 12 criteria of animal welfare, which was developed by the EU-founded project Welfare Quality:

*Four principles and 12 criteria of animal welfare*

<b>Welfare Principles</b>	<b>Welfare Criteria</b>
Good feeding	1 Absence of prolonged hunger
	2 Absence of prolonged thirst
Good housing	3 Comfort around resting
	4 Thermal comfort
	5 Ease of movement
Good health	6 Absence of injuries
	7 Absence of disease
	8 Absence of pain induced by management procedures
Appropriate behaviour	9 Expression of social behaviours
	10 Expression of other behaviours
	11 Good human-animal relationship
	12 Positive emotional state

*(Welfare Quality, 2009)*

Similarly to the Five Freedoms, the Four Principles appear to combine physical health, ‘7 Absence of disease’, as well as subjective experience, ‘12 Positive emotional state’. As such, the Four Principles (as well as the Five Freedoms) is a concept that is wider than well-being and health separately. It unites these issues in one set of needs.

Finally it seems necessary to state that the concept of the Five Freedoms does not appear to be a *theory* of animal welfare, nor a definition, but rather a kind of 'check list' to ensure a certain minimum degree of physical health and mental well-being for animals. This, because the focus of the 'freedoms' is overly negative. They are mainly 'freedoms from' a set of undesirable states, accompanied with direction on how to ensure the avoidance of these. As such, the Five Freedoms propose a concept of animal welfare that includes both

mental and physiological aspects, but does not in a clear way state which states that ought to be considered as instrumental and final values, nor does it define the distinction between welfare, well-being or health.

## 4. CONCLUSION

Conclusively, the animal welfare legislations of the UK, Spain and Argentina contain the same main elements concerning ethical values, but differ in some respects when it comes to differences to EU legislation and in their way of defining animal welfare. The legislation of Spain is nearly identical to that of the EU, the Argentinean is comparable to EU legislation and the one of the UK differs in certain aspects.

Regarding values found, there are two main themes in all three legislations. The first of these is the ethical concern to reduce the suffering of animals used for human ends. This ethical view was historically inspired by proponents of utilitarianism on the one hand and by new insights on the physiological and anatomical similarities to other animals, on the other. The second theme regarding ethical values, concerns the morale and character of people working with animals. This is a view that, to a large extent, can be identified as virtue ethics. In combination with a revalued Biblical view of man's relation to the rest of creation, it may explain the very foundation of laws aimed at protecting animals as primarily being restrictions on the inherent rights of humans to use other animals.

The definition of animal welfare found in the three legislations differs in some regards. British legislation is largely based on a view where the welfare needs of animals are divided into five so called 'freedoms'. These are freedoms from undesirable states such as hunger, pain etc. As this basis for assessment of animal welfare has proved very influential, it has had a great impact on EU regulation and in turn on the definition of animal welfare in Spanish national legislation. Argentinean legislation, however, is not as influenced by the concept of the Five Freedoms and thus contains a somewhat different view of the concept. A view, where 'coping' is mentioned and where the needs of animals are divided into two subgroups. However, both concepts are similar by not clearly addressing two distinctions. One, being the distinction between the concept of animal welfare on the one hand and the concepts of final values (well-being/mental states) and good functioning (physiological health) on the other. The second distinction that is somewhat unclear is the difference between instrumental values (means) and final values (ends), i.e. what is considered to promote final values and what things are considered as final values themselves.

## **5. ACKNOWLEDGEMENT**

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## 6. NOTES

1. The Cruel Treatment of Cattle Act 1822 (3 Geo. IV c. 71), also known as ‘Martin’s Act’.
2. 5 & 6 Will IV, c59; An Act to consolidate and amend the several Laws relating to the cruel and improper Treatment of Animals, and the Mischiefs arising from the driving of Cattle
3. 26 Geo III, c71; An Act for regulating Houses, and other Places, kept for the Purpose of slaughtering Horses
4. Code of Recommendations for the Welfare of Livestock, Laying hens, 2002  
‘<http://archive.defra.gov.uk/foodfarm/farmanimal/welfare/onfarm/documents/layerscode.pdf>’
5. EconWelfare project, Overview of animal welfare standards and initiatives in selected EU and third countries, p.24
6. Gobierno de Canarias, <http://www.gobiernodecanarias.org/boc/1991/062/001.html>
7. See ‘Generalitat de Catalunya (2011-09-03)’ in References.
8. Article 632 of the Spanish Penal Code [http://noticias.juridicas.com/base\\_datos/Penal/lo10-1995.l3t3.html#a632](http://noticias.juridicas.com/base_datos/Penal/lo10-1995.l3t3.html#a632)
9. EconWelfare Project Overview of animal welfare standards and initiatives in selected EU and third countries, p.6
10. See Wikipedia, Gran Simio, 2011
11. See ‘Ley 14.346’ in References.
12. See ‘Bienestar animales de granja’, 2011 in References.
13. See ‘Animal Welfare Act 2006’, 2011 in References.
14. See note 12
15. Quoted in Fairholme, EG and Pain, W, A Century of Work for Animals. The History of the RSPCA 1824-1924 (1924)
16. see note 4, p.6
17. See ‘A.- Normativa sobre el bienestar de los animales en la granja’, 2011 in References.
18. Although ‘intention’, in this sense, might indicate that the Argentinean legislation is rather concerned with an ethics of intentions, it would be rash to conclude such a view. One must bear in mind that legislation as such is traditionally based on an ethical view where focus often lies on ‘mens rea’ (state of mind). An example of this is the distinction made between homicide, manslaughter and causing someone’s death by accident. As such, legislation at its very base assumes that the state of mind, intention or motive of a person is of importance when determining her degree of guilt. Because of this, it appears to be of greater relevance to pay attention to the ethical views concerning animal welfare legislation *apart* from the ones ascending from the built in premiss of mens rea.
19. Parl Debs (Parliamentary Debates) vol 14, cols 554-556
20. Animal Welfarism is the staidpoint that it is morally permissible for humans to use non-human animals, as long as the adverse effects on their welfare are minimized. (Bekoff, 2009)
21. Parliamentary history of England, vol35, cols 209 (2 and 18 april 1800)
22. Ibid.
23. Parliamentary History of England, Vol 35, cols 203, 204, and 206 (25 April 1800)
24. Parl Debs vol 14, col 1040 (13 June 1809)



25. Parl Debs vol 14, col 560

26. See note 4.

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Parl Debs (Parliamentary Debates) vol 14, cols 554-556

Ibid. col 1040

Ibid. col 560

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