



On the Ethics of Ag-Gag Legislation and Undercover Investigations

Jeff Johnson

Assistant Professor of Philosophy
St. Catherine University
Saint Paul, Minnesota

In recent years more and more factory farms have been the subject of undercover investigations. As a result, more and more consumers are becoming aware of what the lives of animals are like in these facilities. In response, the animal agriculture industry has been supporting the introduction of “ag-gag” laws, designed to criminalize these investigations, with the aim of mitigating the damage they do to business. I will begin here by discussing the nature of some recent undercover investigations of factory farms in Minnesota. I will lay out some background information about ag-gag legislation and scrutinize some of the main reasons the industry offers in its support. After noting some preliminary objections to particular nature of the legislation that has been offered, I will offer some reasons for thinking ag-gag legislation is morally objectionable by bringing out the benefits of the investigations it means to criminalize. Not only do undercover investigations appear to help prevent some harms to animals, they also help preserve the autonomy both of consumers and big food companies. Most importantly, though, the availability of the materials that result from these investigations can help in the development of our moral sensibility.

Some Background Undercover Investigations and Ag-Gag Legislation

In each of the past three years, Mercy for Animals has released video

from undercover investigations of farms based in Minnesota.

In an investigation released in November 2011, we saw how hens are treated at Sparboe Farms, then the fourth largest egg producer in the country (O’Keefe 2012). The footage is disturbing, both because of the way the workers abuse the hens and because it exposes practices the industry regards as standard. We saw chicks having the ends of their beaks seared off without any painkillers, we saw hens confined together in battery cages, we saw chicks being suffocated to death in plastic bags. We saw one worker swinging a hen in circles while her feet are trapped in a catching device and we saw other workers stuffing hens head first into their colleagues’ pants pockets.

In an investigation released in July 2012, we saw how sows and piglets are treated at Christensen Farms, which now bills itself as one of the top three pork producers in the country (Christensen Farms 2013). This footage is different from the Sparboe footage in that it focuses only on standard practices in the industry. It is no less disturbing, however. Here we saw sows confined in gestation stalls, cages so small the pigs in them cannot even turn around. We saw fully conscious piglets being slammed against the concrete floor and then being tossed aside to be left to die. And we saw piglets having their tails cut off and their testicles removed without any painkillers. We got another glimpse

of these standard practices in an investigation of Pipestone Systems, a sow confinement facility, released in October 2013.

It is in response to this sort of footage that “ag-gag” laws have been introduced. These are laws designed, in one way or another, to criminalize undercover investigations. The laws have tended to come in three different forms.

Utah’s version of the law, enacted in March of 2012, makes a criminal out of anyone who “without consent from the owner of the agricultural operation, or the owner’s agent, knowingly or intentionally records an image of, or sound from, the agricultural operation by leaving a recording device on the agricultural operation” (Utah State Legislature 2012). Since the primary evidence undercover investigators gather from their investigations is footage from hidden video cameras, this version of the law criminalizes the gathering of evidence necessary for investigators to do their work.

Iowa’s version of the law, also enacted in March of 2012, targets anyone who “obtains access to an agricultural production facility by false pretenses” or who “makes a false statement or representation as part of an application or agreement to be employed at an agricultural production facility, if the person knows the statement to be false, and makes the statement with an intent to commit an act not authorized by the owner of the agricultural production facility, knowing that the act is not authorized” (Iowa Legislature 2012). The practical implication of this is that it makes it illegal for investigators to get a job in an agricultural facility without

disclosing that they work for an animal advocacy group.

Missouri’s version of the law, enacted in August of 2012, requires workers who record what they take to be animal abuse or neglect to “submit such videotape or digital recording to a law enforcement agency within twenty-four hours of the recording” (Missouri General Assembly 2012). In this case, any undercover investigators would violate the law if they remained undercover to gather more evidence after they’ve witnessed the first instance of what they understand to be animal abuse or neglect.

There was an ag-gag bill introduced in Minnesota in 2011 that was similar to the bill passed in Utah, but it failed to make it to committee. In view of Minnesota’s place in pork and egg production, there is every reason to think that it is only a matter of time before another bill is introduced.

Practical Impacts of Undercover Investigations

Before we begin to assess the ethical implications of these kinds of laws, we will briefly consider some of the practical impacts of the undercover investigations they mean to criminalize. These impacts fall into three general areas.

First, these kinds of investigations have helped bring criminal animal abuse charges against and have led to the termination of those caught abusing animals. In 2012, for example, an investigation of Wyoming Premium Farms led to the conviction of five workers caught kicking and swinging live piglets and punching and kicking sows (HSUS 2013). A 2012 investigation of Bettencourt Dairies in Idaho resulted in the termination of five workers caught abusing animals. Three

On the Ethics of Ag-Gag Legislation and Undercover Investigations

of those workers were eventually charged with misdemeanor cruelty to animals (CNN 2012). A 2011 investigation of Butterball resulted in four animal cruelty convictions (MeatPoultry.com 2013). And Sparboe Farms fired four workers depicted in Mercy for Animals' undercover investigation (Star Tribune 2011).

Second, these investigations have helped encourage moves by the food industry to drop producers whose workers have been found engaging in animal abuse and to demand that producers phase out standard practices depicted in the investigations. As a result of the Sparboe investigation, for example, Target dropped Sparboe Farms as an egg supplier (Star Tribune 2011) and both Target (HSUS 2012) and General Mills (HSUS 2013b) have announced that their pork producers must outline plans for phasing out the use of the gestation stalls depicted, for example, in Mercy for Animals' Christensen Farms and Pipestone Systems investigations. Moves by these companies are part of a bigger trend. Companies like Sysco, Sodexo, and Costco are all requiring their suppliers to phase out gestation stalls. And it seems the industry is finally heeding the call — large pork producers like Hormel, Smithfield, and Cargill have announced plans for the phasing out gestation stalls (HSUS 2014).

Third, researchers have found that media attention given to animal welfare issues in animal agriculture has been found to have “significant, negative effects on US meat demand,” particularly on the demand for pork and poultry (Tonsor and Olynk 2010). In addition to national coverage, undercover investigations in Minnesota are routinely featured in the local paper

(see, for example, Star Tribune 2011, 2012, 2013) and on the local news (see, for example, KMSB-TV 2014). So these investigations play a role in media attention that gives rise to these negative effects.

Industry Response to Undercover Investigations

It is not surprising that the animal agriculture industry finds these undercover investigations objectionable. The industry worries that the footage released of undercover investigations casts producers in a false light. This worry arises in at least two different ways.

When it comes to the depiction of overt animal abuse — punching and kicking animals, for example — the industry worries that in the released footage there is at least an implicit suggestion that the behavior of who they call “bad actors,” those caught on tape abusing animals, is representative of the industry as a whole. In an interview with NPR, Dave Stuthers, an Iowa hog farmer, stated:

We have a problem with a lot of undercover videos that go into livestock production facilities... looking for things that might be out of ordinary and, I think many times, fabricating things that are not happening on regular basis. (NPR 2012)

When it comes to depictions of standard farming practices (practices, for example, like tail docking, debeaking, disbudding, confinement, and so on), the industry worries that the released footage makes these practices out to be cruel when they are in fact endorsed by those the industry calls “animal care

experts”. Here’s more from Struthers’ NPR interview:

Struthers says one of his friend's farms was secretly filmed. The resulting video showed practices like castration and tail docking and tried to make it look inhumane, he says. But those practices are not secret, Struthers emphasizes, they're legal — and standard in the industry. (Ibid.)

In a piece in the *New York Times*, Kelli Ludlum, director of Congressional Relations for the Farm Bureau, is cited as articulating the worry Struthers has by helping herself to an analogy:

The videos may seem troubling to someone unfamiliar with farming, said Kelli Ludlum, the group’s director of Congressional relations, but they can be like seeing open-heart surgery for the first time. ‘They could be performing a perfect procedure, but you would consider it abhorrent that they were cutting a person open,’ she said. (Oppel 2013)

The suggestion here seems to be that while standard farming practices like castration, tail docking, confinement, and so on may seem troublesome to the untrained eye, in fact, so the story goes, these procedures are to be thought of as being acceptable in the way we might think of surgery to be acceptable. The idea that these practices are troublesome grows out of ignorance and lack of proper training.

Another argument offered by the industry in favor of the quick reporting versions of ag-gag laws is designed to appeal to the very motivations that might have us concerned about the plight of animals in the first place. In an interview

on Democracy Now, Emily Meredith (communications director for the Animal Agriculture Alliance) offers a version of this argument:

If you truly care about animal welfare, you’re not going to wait even a minute to report animal abuse. You’re going to see it, you’re going to stop it, and you’re going to say something. And I think that’s very important to note. This footage is taken for weeks or months. (Democracy Now 2013)

The intended effect of such an argument is to raise questions about the motivations of investigators and to evince a concern for animals on the part of producers.

Preliminary Considerations of Ag-Gag Laws and Industry Response to Undercover Investigations

My sense is that it is fairly easy to see through the industry’s objections to undercover investigations. Seeing how animals are treated on factory farms may well keep people from buying their products. And this is a serious concern for those in business.

While it is certainly true that documented incidences of overt animal abuse do not justify the claim that overt animal abuse is systemic, these abuses evidently happen. The fact that prosecutions and terminations have resulted from these aspects of such investigations is relevant, then, to how we take them.

Perhaps the most disturbing aspect of these videos is their depiction of what have become common practices on farms. Keeping a cat or a dog for months on end in something like a gestation crate or cutting their tails off

On the Ethics of Ag-Gag Legislation and Undercover Investigations

without any painkillers would result in animal cruelty charges. Because of common farming exemptions written into law in most states, these practices are understood to be perfectly acceptable when they are done to farm animals. That tension alone demands some serious reflection. The industry appeals to the endorsement of “animal care experts” as a way to make us feel at ease with these practices. But an inspection of the judgment of these organizations reveals what we should understand by the industry’s notion of “animal care”.

To take a case, the American Veterinary Medical Association tells us gestation stalls help ensure sows get the right amount of food and prevent aggression that arises when sows are raised in groups (AVMA 2014a). These considerations make it appear as though AVMA has the interests of the animals in mind. Mike Hemann, a swine nutritionist for Purina Animal Nutrition LLC reports, however, that the amount of feed sows get is tied to both their short term and long term productivity (WATTAgNet 2012). And it turns out that aggression in group housing systems subsides after only a day or so and that after a week sows form stable social groups (Li 2014). Why would the AVMA see the prevention of such short lived aggression as warranting extreme confinement? Research shows that aggression between sows also poses a threat to the producers’ bottom line. When you introduce sows into groups after they have been artificially inseminated there is a risk that some embryos will not implant (Li and Johnson 2012). The benefits the AVMA sees in gestation stalls seem to have mostly to do with increased productivity, which has more to do with the interests

of the producers than with the interests of the sows.

The analogy to surgery often offered by the industry as a way to insulate what they do from scrutiny is problematic in my view mainly because the circumstances that surround surgeries are substantially different from those that surround standard practices on farms. One main difference has to do with the administration of pain killers in the context of surgery and their notable absence on farms. Another subtler difference has to do with the aims of the procedures in question. Part of what we accept the things surgeons do is because they have the interests of the patients in mind. In the case of the procedures employed on farms, it’s not so much the interests of the animals that guide them but the interests of the producers. This is a distinction that makes an enormous difference in how we might respond.

Apart from the industry’s defense of these laws, there are problems with the nature of each of the different versions of the laws. The ACLU, for example, sees constitutional issues with versions of the laws that punish capturing photos or videos and with failing to disclose on a job application on the grounds that they “punish speech without proof of harm” (ACLU 2013). And even while undercover videos may indeed harm the industry in the way of decreased sales, as the ACLU points out, it is not the photos, videos, or failure to disclose that causes the harm. Rather it is the behavior of the producers captured in those photos or videos.

The third version of these laws — the version that requires mandatory reporting of animal abuse after only a short period of time — makes it impossible for investigators to gather evidence of systemic abuse. This is just

the sort of abuse that has led to prosecutions in the past.

Ethical Considerations of Undercover Investigations

A consideration of the practical impacts of undercover investigations gives rise to a number of familiar ethical considerations that can be raised in support of undercover investigations and in opposition to ag-gag legislation. I will consider each in turn before finishing with a discussion of what I see as another important ethical consideration that speaks against these laws.

It seems clear that overt abuses – beating, shocking, and dragging animals, for example – constitute harms to those animals. To the extent that prosecutions and terminations that result from undercover investigations help to reduce the number of overt abuses animals suffer in being made into meat, either directly by removing from the industry some of the individuals responsible for them or by raising the stakes for those who would engage in such abuse, they seem to be a benefit to animals. Whatever harms come to the farms where such abuse is exposed do not seem to warrant much attention, since those harms flow from behaviors of individuals on the farms. In effect, they brought those harms on themselves.

Things are a bit more complex when it comes to the documentation of standard practices on factory farms. In the case where consumers and big food companies turn away from farms who confine sows to gestation stalls, for example, they are turning away from farms who are doing nothing out of the ordinary and, importantly, nothing that warrants prosecution. Nevertheless, as Bernard Rollin observes, any benefits to productivity producers have enjoyed by confining sows to gestations stalls are

fairly clearly outweighed by welfare issues that result. Sows are naturally inquisitive and intelligent beings who spend a considerable amount of time moving around. When they are confined in gestation stalls they do not get any exercise and they grow terribly bored from lack of stimulation (Rollin 1995, 75-78).

The decision by big food companies and consumers alike to move away from supporting this standard practice holds out hope of benefitting sows who come to find themselves in production. So here too, in focusing on the common practice of confining sows to gestation stalls, undercover investigations play a role in beginning the process of making things a little better for animals.

While some farms may lose business simply following procedures standard in the industry, this does not seem relevant to serious ethical reflection on the issue. Anyone who understands the market sees that customers are not obliged to support whatever practices businesses make use of to produce their goods. Rather businesses need to be responsive to the demands of consumers.

That consumers and food companies such as Target and General Mills are moved to make different purchasing decisions in light of what they find out about the treatment of animals on farms gives us powerful reason to think that undercover investigations help to preserve the autonomy of those who buy animal products. The case is made stronger when we consider that polls indicate 97% of Americans believe that animals deserve to be protected from harm and 64% support passing strict laws to do with the treatment of farm animals

On the Ethics of Ag-Gag Legislation and Undercover Investigations

(Gallup 2008). We even find that a 2012 ASPCA poll suggests that 71% of Americans support undercover investigations and that 64% of Americans oppose ag-gag legislation (ASPCA 2012).

Given the public interest in the ways farm animals are treated, undercover investigations seem especially important in an environment where there are routine and deliberate attempts to keep what goes on in factory farms from the public eye, whether by presenting pastoral images on packaging or granting consumers access to these facilities only by way of sanitized, industry-produced narratives, images, and videos (for a very recent example of this, see the film *Farmland*).

To take a couple of cases, companies like Sparboe Farms and Christensen Farms (two of the factory farms recently exposed in Minnesota by undercover investigations) cast themselves as “family farms” and they claim to treat their animals humanely (See Sparboe 2014 and Christensen Farms 2014). At a minimum, it seems reasonable to think people ought to be able to see what exactly these companies understand by those claims in a way that is unimpeded by their spin.

Andrew Linzey and Priscilla Cohn sketch an argument for the view that consumers have a right to know what happens to animals on factory farms (Linzey and Cohn 2013). If we eat animals, they argue we have an interest in knowing how those animals who are made into food are treated. While they don't develop this consideration in much detail, we might think that this arises out of a concern about whether the ways those animals are treated squares with our values. This concern becomes especially pressing when a great deal of

effort is exerted by the industry to shape perceptions of animal agriculture in a way that misrepresents what happens on industrial farms. A material interest arises when we consider that public money is used to subsidize animal agriculture. If money we provide as taxpayers is being used to help support industrial animal agriculture, should be able to access information about the practices they undertake with our financial support. It's in view of these considerations that Linzey and Cohn argue that the public has a right to know what happens to these animals. Ag-gag laws, they suggest, infringe on this right.

There is another ethical consideration I would like to raise, though it is, I will admit, less familiar than considerations to do with weighing benefits and harms or thinking about issues of restrictions on autonomy or violations of rights.

We might find ourselves rejecting the picture of ethical considerations which makes them out to be principally focused on weighing up harms and benefits, of assessing impacts on autonomy, of fussing over issues of fairness. We need not think that these considerations are not important at all or that they do not have any place in thinking about ethics. We may think merely that their importance has traditionally been overemphasized. We may think, along with Iris Murdoch and (later) John Cook, that ethics has much to do with the development of one's moral sensibility, with change and progress, with setting the stage for what we might characterize as a shift in one's moral vision (Cook 1999, 127-129; Murdoch 1971, 16-28).

Cook identifies a number of tendencies of thought that may get in the way of the development of our moral

sensibility (Cook 1999, 117-118). When we are faced with the business of assessing some practice we are engaged in, we may be morally obtuse or naive, unable to imagine or unwilling to engage in the kind of reflection that might suggest there are serious questions to be raised about common practices. We may be willfully ignorant, refusing to take the time required to find out troublesome facts or, once we have found them out, we may keep ourselves from thinking hard about them. We may engage in self-deception, imagining things cannot be as bad for others as we have been told or led to suspect they may be. And we may be gullible, too willing to accept the say-so of people who defend the status quo against those who mean to raise moral issues with it.

The special challenge that comes along with engaging in serious ethical reflection, for Cook and Murdoch, has to do with identifying ways in which our moral sensibility may be hindered. Cook writes:

[M]orality is essentially concerned with ... the self-serving ways in which we see ourselves and others, the dishonest ways we may talk about such matters, and the struggle one must undertake in order to break through to an honest perception of things (Cook 1999, 129).

The material that results from undercover investigations can be seen as a help in the development of our moral sensibility. When you are told that sows live out their lives in gestation stalls or that piglets have their tails and testicles cut off without any pain-killers, it can be tempting to imagine that the animals do not mind it too much, that it cannot be *too* bad. It is another thing altogether, though, to see into the lives of these

animals and to hear animals respond as they are subjected to these practices. In giving us unvarnished presentations of the lives of animals on factory farms, undercover investigations help by assisting our imaginations and by inviting us to be critical of the narratives surrounding standard practices in the industry. They keep us from remaining ignorant by confronting us with what we have others do to animals on our behalf. They check our attempts at self-deception, by making real for us the contrast between the industry's claims that they treat animals humanely the way that treatment manifests itself in the lives of animals in these facilities. These undercover investigations can slow us down in our willingness to accept conventional views about animals raised for food.

Conclusion

I have discussed the nature of some recent undercover investigations of factory farms in Minnesota. I have offered background information about ag-gag legislation and scrutinized some of the main reasons the industry offers in its support. I noted some preliminary objections to particular nature of the legislation that has been offered and I offered some reasons for thinking ag-gag legislation is morally objectionable by bringing out the benefits of the investigations it means to criminalize. Not only do undercover investigations appear to help prevent some harms to animals, they also help preserve the autonomy both of consumers and big food companies. Most importantly, though, the availability of the materials that result from these investigations can help in the development of our moral sensibility.

On the Ethics of Ag-Gag Legislation and Undercover Investigations

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Jeff Johnson

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Jeff Johnson is an Assistant Professor of Philosophy at St. Catherine University in Saint Paul, Minnesota. He regularly teaches courses on food ethics and on the ethics of eating animals.