

Law and Animal-Welfare Legislation — Deep-Dive

Purpose. The master paper names Ag-Gag laws and the CMA case; this text works through the *legal* side systematically. The guiding question: what status does the animal have in law — and how does that status relate to scientifically established sentience? The answer is a **fundamental tension**: animals are legally mostly *things/property*, yet increasingly recognised as *sentient beings*. Between these two poles the whole of animal-welfare law moves — as a compromise that permits use and regulates only the *manner* of use (“welfare”, not rights).

1. The fundamental tension: thing or sentient being?

In classical civil law animals are things. Reforms have softened this: Germany stated in 1990 (§ 90a BGB) “animals are not things” — yet continues to treat them *legally like* things unless otherwise specified. This half-step is typical: the law recognises sentience symbolically but retains the property and use framework. Animal-welfare law is therefore structurally **welfare law**, not **rights law** — it asks “how may they be used”, not “may they be used”.

2. EU primary law: sentience in the treaty

Article 13 TFEU (with the Treaty of Lisbon, signed 2007, in force 2009) explicitly recognises animals as “**sentient beings**” and obliges the Union and Member States, in agriculture, fisheries, transport and research policy, to “pay full regard to the welfare requirements of animals”. **Assessment**: a constitutionally strong symbol, but with qualifications — Article 13 requires *regard*, not abstention, and explicitly exempts religious rites, cultural traditions and regional heritage. The gap between recognition (sentience) and effect (use remains permitted) is built into primary law itself.

3. EU secondary law: the concrete standards

The EU has more animal-welfare secondary law than most legal orders: the general farm-animal directive 98/58/EC; the **ban on conventional battery cages** (Directive 1999/74/EC, effective from 2012 — only “enriched” cages since); restrictions on **sow stalls** (2008/120/EC); slaughter and transport regulations. **Assessment**: real, effective improvements — and at the same time proof of the limit: these are *husbandry* standards within the industrial logic, not a questioning of use. Moreover a documented gap yawns between norm and enforcement (inspection density, exemptions, third-country imports).

4. Direct democracy: “End the Cage Age”

The European Citizens’ Initiative “**End the Cage Age**” was the **sixth successful ECI** ever, carried by over **1.4 million** signatures. On **30 June 2021** the EU Commission committed to present, by the end of 2023, a legislative proposal to **phase out cage farming**; Parliament supported a possible phase-out by 2027. **Honest coda**: the promised legislative proposal was substantially delayed and largely failed to materialise — a case study in the limits of participatory instruments against industry lobbying (cf. 0090-C4). Citizen participation *works* — but incompletely and against resistance.

5. Germany: state objective and “reasonable cause”

Germany added **animal protection as a state objective in Art. 20a of the Basic Law** in 2002 (“The state protects ... the animals”) — one of the few constitutional anchorings worldwide. The **Animal Welfare Act** prohibits in § 1 causing an animal pain “without reasonable cause” — where “reasonable cause” keeps the use framework open. § 11b bans **torture breeding** (a finding structurally analogous to FORSCH-0057). **Assessment:** strong symbolism, but the decisive switch lies in the interpretation of “reasonable cause”, which regularly lets industrial use through.

6. USA: the great exemptions

US law is revealing through its *gaps*. The **Animal Welfare Act (1966)** explicitly **excludes farm animals raised for food** as well as birds, rats and mice used in research. The **Humane Methods of Slaughter Act** exempts **poultry** (numerically the largest group of slaughtered land animals). **Ag-Gag laws** in several states criminalise undercover recordings on farms — *Animal Legal Defense Fund v. Otter*, 44 F.Supp.3d 1009 (D. Idaho 2014) declared Idaho’s Ag-Gag law unconstitutional (First Amendment). **Assessment:** the law protects least where the most happens — industrial animal production is largely defined out of core protection.

7. Structural reading

Animal-welfare law codifies the property and use status and regulates only its *exercise*. This is not accidental but the legal mirror of the political economy (Layers 8/12): those who economically need the use also help shape its legal limits (lobbying, cf. 0090-C4). Reform therefore proceeds incrementally — sentience recognition, cage bans, torture-breeding bans — without touching the use framework itself. The “rights gap” (Regan, cf. 0090-E6) remains legally open.

8. Honest limits — no legal nihilism

What is **not** claimed here: that animal-welfare law is ineffective. Sentience recognition (Art. 13 TFEU), cage and torture-breeding bans, the German state objective and successful citizens’ initiatives are **real progress**; the trajectory points upward over decades. Likewise the law partly protects **subsistence and indigenous food sovereignty** explicitly (exemptions for traditions, self-provisioning) — so the bundle’s firm caveat has a legal counterpart too. The finding is precise: the law **recognises sentience and regulates use ever more strictly — but does not abolish it**; the decisive line runs between welfare and rights.

9. Synthesis

First: the legal status of the animal oscillates between thing and sentient being; the whole of animal-welfare law is the institutionalised compromise between them (welfare, not rights).

Second: there is real, documented progress (Art. 13 TFEU, cage bans, Basic Law Art. 20a) and functioning but limited participation (End the Cage Age) — alongside large gaps (US exemptions, enforcement deficits, delayed EU legislation).

Third — the structural point: law follows political economy. It regulates the *manner* of use because use itself is economically secured. Thus the legal strand connects to ethics (0090-E6: rights gap), the lobbying analysis (0090-C4) and the marxist synthesis (Layer 12): the primary addressee is not the individual keeper but the legal-economic structure that normalises use.

Track: FORSCHUNG · ORCID 0009-0003-9799-6747 · forschung@tschueller.com · CC BY 4.0
As of: 2026-06-16 · Deep-dive on Layers 8/11; Art. 13 TFEU and the End-the-Cage-Age finding
web-verified, remaining legal sources established.