

SYMPOSIUM ON GLOBAL ANIMAL LAW (PART I)

(CERTIFIED) HUMANE VIOLENCE? ANIMAL WELFARE LABELS, THE AMBIVALENCE OF HUMANIZING THE INHUMANE, AND WHAT INTERNATIONAL HUMANITARIAN LAW HAS TO DO WITH IT

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The Industrialization and Humanization of Animal Production

The contemporary human-animal relationship is highly ambivalent. It is characterized by both the exacerbating exploitative use of animals and a progressing moral concern for the life, dignity, and welfare of animals. With regard to the agricultural use of animals (which is the quantitatively most significant area of animal use and accounts for more than sixty billion land animals slaughtered globally each year), these two poles stand in particular contrast. On the one hand, agriculture has been increasingly industrialized and intensified over the course of the Twentieth Century. The modern system of industrialized animal production (or the “[animal-industrial complex](#)”¹) is marked by a high degree of rationalization, automatization, efficiency, mass production, and profitability, and has turned animals into mere production units—biomachines that convert feed into meat, milk, and eggs. On the other hand, the transformation of agriculture to industrialized animal production has raised grave ethical concerns, and societal discomfort at the systemic disregard for the welfare of farmed animals has grown. Most people cringe at the sight of footage showing the horrifying conditions prevailing in factory farms and slaughterhouses, and the vast majority of society subscribes to the basic moral principle that inflicting *unnecessary pain and suffering* on animals is wrong (a dictum also underlying the nearly universal prohibition of animal cruelty and which is so ingrained it could be considered a “rule of civilization,” as noted by the [dissent](#) in a Canadian appeal decision regarding an elephant in a city-run zoo).²

While the growing moral concern for animals has not stopped or reversed the process of industrialization of animal production, the juxtaposition of these two antithetical forces generates a strong dialectical tension. One way of reconciling or harmonizing these two conflicting impetuses is the idea of *humanizing* animal production. This idea informs, for one, farmed animal welfare regulation which sets minimum standards to be respected in agricultural practices. The idea of humanizing animal production is embodied even more clearly in humane (animal welfare) labels that react to consumers’ demands for higher welfare standards beyond that which is minimally required by law.

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¹ See BARBARA NOSKE, [HUMANS AND OTHER ANIMALS: BEYOND THE BOUNDARIES OF ANTHROPOLOGY](#) 22 (1989).

² See [Reece v. Edmonton](#), 2011 ABCA 238 (Can., Alta., Ct. App.) (Fraser, J., dissenting), para. 56.

The latter phenomenon is the starting point of this essay.³ Critics typically view humane labels as instances of “humane-washing.” While this critique is important, I believe it falls short. As will be shown, the contradiction and limitations inherent to humane labeling merely exemplify a deeper ambivalence that characterizes animal welfare law (AWL) in general: the aporia of humanizing an innately inhumane institution. To my knowledge, there is only one other area of law that is confronted with a similar ambivalence: international humanitarian law (IHL). Learning from the law of war, it will be argued, may offer valuable insights for the advancement of animal welfare law.

Humane Labeling and Humane-Washing

The term “humane labeling” covers a panoply of government or private animal welfare labels on animal-based food products (e.g., “[Certified Humane](#),”⁴ “[Animal Welfare Approved](#),”⁵ “Cage Free,” “Free Range,” or “[USDA Process Verified](#)”)^{6,7} that signal to consumers that such products were produced in compliance with high welfare standards and that the animals involved in the production process were treated humanely. The underlying notion of “humane production”—as paradigmatically expressed by the [Animal Welfare Institute](#)⁸—is the idea that each phase of a farmed animal’s life (breeding, raising, transport, and slaughter) “offers the opportunity for cruelty or compassion,” and that for “each aspect of industrial production, alternative methods that are both humane and economical are possible.” The overall goal, as for example stated by [Humane Farm Animal Care](#) which administers the “Certified Humane Raised and Handled” label, is “to [improve] the lives of farm animals in food production from birth through slaughter” and to establish “kinder and more responsible farm animal practices.”⁹ Humane labels also cater to a growing niche-market of ethical consumers willing to pay higher prices for animal friendly products, and are thus believed to be a win-win-win situation for producers, consumers, and animals.

While the idea of improving the lives of farmed animals is laudable and it seems trivially true that anything is better than nothing, critics contend that humane labeling at best entails marginal rather than substantial improvements in farmed animal welfare. [Many humane labels](#)¹⁰ are notoriously vague, unregulated, and unenforced, with no meaningful content or oversight and welfare standards that do not (significantly) go beyond reiterations of the legally required minimum or reflections of standard agricultural practices.¹¹ According to critics, humane labels are thus misleading and primarily amount to a marketing strategy, or as [Marc Bekoff](#) puts it, “feel-good scams” that enable consumers to buy a clean conscience.¹²

³ This essay does not deal with the issue of the compatibility of animal welfare label with international trade law. For this, see, e.g., Thomas G. Kelch, *The WTO Tuna Labeling Decision and Animal Law*, 8 J. ANIMAL & NAT. RESOURCE L. 121 (2012); on animal welfare and the General Agreement on Tariffs and Trade, Katie Sykes, *Sealing Animal Welfare into the GATT Exceptions: The International Dimension of Animal Welfare in WTO Disputes*, 13 WORLD TRADE REV. 471 (2014).

⁴ See [CERTIFIEDHUMANE.ORG](#).

⁵ See [ANIMALWELFAREAPPROVED.US](#).

⁶ See [Process Verified Program](#), UNITED STATES DEPARTMENT OF AGRICULTURE.

⁷ For an overview of the broad spectrum of humane labels, see [A Consumer’s Guide to Food Labels and Animal Welfare](#), THE ANIMAL WELFARE INSTITUTE.

⁸ See [Farm Animals](#), ANIMAL WELFARE INSTITUTE.

⁹ See [Our Mission](#), CERTIFIED HUMANE.

¹⁰ See [Understanding Labels and Loopholes](#), HUMANE FACTS.

¹¹ For example, in a report titled “Humanewashed”, the Animal Welfare Institute concluded that the animal welfare programs certified by the USDA Process Verified Program as “humane” were not materially different from conventional production methods. See Rachel Matthews, [Humanewashed: USDA Process Verified Program Misleads Consumers About Animal Welfare Marketing Claims](#) (2012).

¹² Mark Bekoff, *Stairways to Heaven, Temples of Doom, and Humane-Washing*, PSYCHOLOGY TODAY (Nov. 17, 2016).

This line of criticism is best captured by the term “humane-washing.”¹³ Like [greenwashing](#)¹⁴ or [pinkwashing](#),¹⁵ humane-washing is a type of whitewashing, which is a metaphor for communications that gloss over or obscure unpleasant, negatively connoted facts. Based on common definitions of greenwashing,¹⁶ humane-washing can be defined as the dissemination of false or deceptive information by companies so as to promote the perception that its products are animal-friendly, or as “symbolic information emanating from within an organization without substantive actions,” measurable as the [discrepancy](#) between *saying* (“humane talk”) and *being* humane (“humane walk”).¹⁷ This, then, is the core of the criticism of humane-washing: that what is presented by humane labels as humane is in fact not humane.

The Inherent Contradiction and Limitations of Humanizing Animal Production

While I principally agree with the criticism of humane-washing, I believe that it does not go quite far enough. The issue is not just that what is presented as humane is *in fact* not humane, but that it *cannot* be. Put differently, it is not just that humane labels promise something which they factually do not deliver—it is that they envisage something that is actually impossible. As will be shown in this section, the problem thus runs deeper than humane-washing. The contradiction of calling inhumane farming practices “humane” is not merely an intentionally deceptive marketing strategy,¹⁸ but lies in the very nature of the project of humanizing animal production.

In absolute terms, animal production is inherently inhumane and can, eo ipso, not be (fully) humanized. According to the dictionary, to [“humanize”](#)¹⁹ is “to make [humane](#),”²⁰ which means “marked by compassion, sympathy, or consideration” for animals. By contrast, even “humane production” regularly involves severe forms of violence against animals, such as confinement, tail docking, dehorning, castration and debeaking without anesthesia, forced impregnation of milk cows and the separation from their calves, and the mass maceration or gassing of male chicks. Minimally, every kind of (economically sound) animal production will inevitably culminate in the ultimate act of violence: the involuntary and premature death of an animal by the cutting of major blood vessels. The U.S. [“Humane Methods of Slaughter Act”](#) gives a glimpse at what “humane slaughter” looks like: it means to be “rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and

¹³ Or “hogwashing,” which James LaVeck describes as “the practice of generating the public appearance of having compassion for animals while continuing to kill millions of them for profit.” See James LaVeck, [Compassion for Sale? Doublethink Meets Doublefeel as Happy Meat Comes of Age](#), SATYA (Sept. 2006).

¹⁴ [About Greenwashing](#), GREENWASHING INDEX.

¹⁵ Sarah Schulman, [Israel and “Pinkwashing”](#), N.Y. TIMES (Nov. 22, 2011).

¹⁶ See Karen Becker-Olsen & Sean Potucek, Greenwashing, in [ENCYCLOPEDIA OF CORPORATE SOCIAL RESPONSIBILITY](#) 1318, 1318 (Samuel O. Idowu et al. eds., 2013).

¹⁷ Kent Walker & Fang Wan, [The Harm of Symbolic Actions and Green-Washing: Corporate Actions and Communications on Environmental Performance and Their Financial Implications](#), 109 J. BUS. ETHICS 227, 231 (2012).

¹⁸ This discrepancy naturally produces the kind of doublespeak that also resonates in the criticism of humane-washing. For example, in an early critique James LaVeck traces how industry stakeholders (in collaboration with professionalized animal organizations) have appropriated, redefined, eroded, and commodified the key language of the animal advocacy movement—compassion and humaneness—and channeled it into a new “happy meat” discourse. What has emerged is a “brave new world” in which “a mechanized system designed to move animals quickly and efficiently, to take their lives, to drain their blood, and to cut them into pieces on a scale never before imagined, is proudly described as a ‘stairway to heaven’ by a slaughterhouse designer.” See LaVeck, [supra note 13](#) (referring to Temple Grandin, who has named her “humane” slaughterhouse ramp and restraining systems “stairways to heaven,” see Errol Morris, [First Person: Stairway to Heaven](#).

¹⁹ [Humanize](#), MERRIAM WEBSTER DICTIONARY.

²⁰ [Humane](#), MERRIAM WEBSTER DICTIONARY.

effective, before being shackled, hoisted, thrown, cast, or cut”²¹ (the reality is more grim, as many animals are slaughtered in a state of consciousness due to improper stunning). Arguably, these routine acts of violence can hardly be considered “humane” in any actual sense of the word, especially considering that they are unnecessary (a plant-based diet is perfectly [healthy](#) at least in Western-industrialized societies).²² The only way “humane” can be negotiated with regard to animal production is *in relative terms*. In this sense, humanization is merely an approximation, meaning “more humane” compared to preexisting “[worst-case scenarios](#)” that are even more inhumane.²³ Within the limits of this relative standard, then, the (slightly) less inhumane becomes “humane,” a (slightly) less horrible life becomes a “good life,” and a (slightly) less miserable animal becomes a “happy animal,” or “happy meat.”

Now, the same holds true for animal welfare regulation more generally. [Elsewhere](#), I have argued that contemporary AWL is structurally constituted by the ambivalence of *humanizing the inhumane*.²⁴ In view of its historical formation, AWL has emerged as a secondary function of and as reaction to the preexisting institution of animal use and the moral issues it raises. Its normative purpose is not to do away with the institution as such, but rather to humanize it in relative terms (i.e., make it *more* humane, or *less* inhumane) by regulating the modalities of permissible violence against animals and mitigating to some extent the [suffering caused](#).²⁵ In doing so, animal welfare regulation perpetuates a somewhat paradoxical and reactive dynamism of imperfectly humanizing while facilitating and reinforcing the very institution that inevitably exerts violence against animals and makes them vulnerable and in need of protection in the first place.

Animal Welfare Law and International Humanitarian Law

To my knowledge, there is only one other body of law that operates with such a deeply ambivalent dynamic: IHL. While comparing AWL and IHL might seem far-fetched, there exist significant parallels between these two legal regimes, which I will briefly highlight in this section. With a view to future research, I believe these parallels merit closer attention, and exploring them may provide a fruitful new outlook on the conception, nature, and limits of animal welfare law.

To start with, IHL, like AWL, is marked by the inherent contradiction of humanizing an innately inhumane and violent institution: war and other armed conflict. As noted by [Theodor Meron](#), in order to “genuinely humanize humanitarian law, it would be necessary to put an end to all kinds of armed conflict. But wars have been part of the human condition ... and regrettably they are likely to remain so.”²⁶ In recognizing the (unfortunate) reality of war, the purpose of IHL is not the (manifestly utopian) absolute elimination of the calamities of war by prohibiting warfare as such, but its rendering more humane, however imperfectly, by reducing the human suffering caused in its course. Like AWL, IHL is constituted by a [dialectical tension](#) between two diametrically opposed forces—military necessity versus humanitarian considerations (AWL: economic and other necessities versus humane

²¹ [Humane Methods of Slaughter Act](#), Pub. L. No. 85-765, 72 Stat. 862 (1958).

²² Vesanto Melina et al., [Position of the Academy of Nutrition and Dietetics: Vegetarian Diets](#), 116 J. ACAD. NUTRITION & DIETETICS (2016).

²³ See MARC BEKOFF & JESSICA PIERCE, [THE ANIMALS’ AGENDA: FREEDOM, COMPASSION, AND COEXISTENCE IN THE HUMAN AGE](#) 50–51 (2017).

²⁴ See SASKIA STUCKI, [GRUNDRECHTE FÜR TIERE](#) 140–149 (2016).

²⁵ This reactive dynamism of mitigation rather than prevention was noted by the Israeli High Court of Justice in a case concerning foie gras production. Commenting on the “problematic language” of the relevant regulation, the court remarked that the stated “purpose of the Regulations is to ‘prevent the geese’s suffering.’ Clearly these regulations do not prevent suffering; at best they minimize, to some extent, the suffering caused.” HCJ 9232/01, [Noah v. Attorney General](#) para. 17 (2003) (Isr.).

²⁶ Theodor Meron, [The Humanization of Humanitarian Law](#), 94 AJIL 239, 240 (2000).

considerations)—and aims at a compromise by “minimizing human suffering without undermining the effectiveness of military operations.”²⁷

Interestingly, both AWL and IHL further operate with the basic principle of “unnecessary suffering.” In the context of IHL, the [basic rule](#) prohibiting the use of means and methods of warfare of a nature to cause superfluous injury or unnecessary suffering intends to lower the cruel effects of weapons on combatants.²⁸ The [ICJ](#) has defined unnecessary suffering as “harm greater than that unavoidable to achieve legitimate military objectives,”²⁹ that is, suffering that has no military purpose. Similarly, in the context of AWL, the term “[unnecessary suffering](#)” is applied to inflictions of wanton and gratuitous suffering that “goes beyond what is necessary for ‘appropriate’ exploitation” and that serves no legitimate (e.g., economic) purpose.³⁰

Ironically, while IHL serves the compelling goal of humanizing armed conflict, it also enhances its acceptability, has an affirming and legitimizing effect, and may thus even prolong the residual violence entailed by the institution of war as such.³¹ A similar point is made in the context of AWL, which, as critics contend, legitimizes and reinforces exploitative animal use by making it more socially acceptable. (The legitimacy of the institution as such is logically implicit, given that if it were considered illegal and profoundly illegitimate, the law would prohibit rather than simply regulate the institution, as for example in the case of slavery). Overall, IHL, much like AWL, thus embodies the ambivalence of humanizing, while simultaneously facilitating and consolidating, the very institution that is the cause of the violence and suffering it aims to mitigate.

From a “Jus In Bello” to a “Jus Contra Bellum” for Animals

While the idea of a parallel between the structure, function, and effects of AWL and IHL is novel and will need further reflection, it allows for some thought-provoking insights that have remained largely unremarked upon so far.

First of all, it suggests that the institutional and systemic practice of violence shaping our current human-animal relationship could be framed as constituting a “[war against animals](#).”³² Secondly, and accordingly, AWL may be best understood as a kind of “*jus in bello*” that governs and *regulates* violent activities within this war on animals. Thirdly, while AWL serves an important, yet contradictory, limited, and even legitimizing humanizing function by alleviating suffering as long as the reality of war factually persists, such a “*jus in bello*” can neither justify the war as such nor does it suffice.

Drawing from Aeyal Gross, this calls for a shift from a “merely factual” to a “normative” approach,³³ one that does not merely posit the war on animals as an (ugly) fact, but acknowledges its normative dimension. This expanded perspective should address questions not just specifically relating to the appropriate conduct *in war*, but more fundamentally relating to the legitimacy *of the war as such*. Most crucially, what is needed first and foremost, and what is lacking so far in the case of animals, is for the “*jus in bello*” to be complemented by a higher-priority set of norms that work to *prevent* a state of war in the first place—as it were, a kind of “*jus contra bellum*” for animals.

²⁷ See YORAM DINSTEIN, [THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT](#) 8–9 (3d ed. 2016).

²⁸ [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict \(Protocol I\)](#) art. 35(2), June 8, 1977, 1125 UNTS 3.

²⁹ [Legality of the Threat or Use of Nuclear Weapons](#), Advisory Opinion, 1996 ICJ REP. 226, 257 (July 8).

³⁰ GARY L. FRANCIONE, [ANIMALS, PROPERTY, AND THE LAW](#) 146 (1995); on the notion of “unnecessary suffering” in AWL, *id.*, at 17, 142.

³¹ See Meron, [supra note 26](#), at 241; on the limits and legitimizing effects of IHL in the context of occupation, see Aeyal Gross, [THE WRITING ON THE WALL: RETHINKING THE INTERNATIONAL LAW OF OCCUPATION](#) (2017).

³² This is indeed proposed by DINESH JOSEPH WADIWEL, [THE WAR AGAINST ANIMALS](#) (2015).

³³ Cf. Gross, [supra note 31](#), at 3–4 (calling for a distinction between “*jus in occupation*” and “*jus ad occupation*”).