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The Domestic Chicken as Legal Fiction: Cruelty for Profit

Beauty always takes place in the particular. — Elaine Scarry

Cruelty, on the other hand, prefers abstraction. — Jonathan Safran Foer

All animals are equal, but some animals are more equal than others. — George Orwell

Introduction. In his well-known foreword “Nomos and Narrative,” legal scholar and activist Robert M. Cover states, “We inhabit a *nomos* — a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void” (4). Occasionally, when the balance of right and wrong, lawful and unlawful, is in question, legal fictions are used to provide a scaffolding to notions that cannot support themselves. These legal fictions provide an explanation when, as Cover states, “every narrative is insistent in its demand for its prescriptive point, its moral” (5). The notion of chickens as food has become ingrained as a mundanity in our current normative universe, but this mundanity has not come about without pointed effort and intention. It was created and maintained for a particular goal: profit.

As more and more of the cruelty behind chicken agriculture becomes visible to the public, questions of cruelty arise that demand investigation of the legislation supporting this widespread operation. By examining closely, it becomes apparent that chicken agriculture is held together by legal fictions implicit in the laws that keep it going. While these fictions have not been explicitly or commonly addressed in court, they exist within the implicit claims certain laws make regarding chicken intelligence, sentience, and volition. When I speak of legal fictions, I am referring to these implicit fictions made within the language of the law.

To begin an investigation on the legal fictions surrounding the domestic chicken, it may be helpful to evoke precedent of how legal fictions have been used in the past to similarly gain profit through the legitimization of cruelty. One of the most notorious of these fictions is the three-fifths compromise. The three-fifths compromise is often portrayed as a scheme of race — and it was, but only partially. More so, this compromise was set to establish the wealth and representation of each state. The clause states:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their

respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

In 1863, when the Fourteenth Amendment was reconstructed to supersede the three-fifths compromise, certain beliefs about black individuals that enabled the three-fifths ratio were in the process of being dismantled as well. Implicit in the three-fifths ratio is the belief that black individuals are inferior to white individuals because of their different skin color. Many similar beliefs of inferiority were used to justify the slave trade in America. However, the end result of these false beliefs was not merely racism, it was profit. The economy of the American South revolved around slaves — so much so that a newspaper editor from Georgia wrote that “Negro slavery is the South and the South is negro slavery” (cited in Faust). The fight to keep slavery in America could be said to have been more about economics than it was about race.

These false beliefs that enabled the three-fifths compromise, however, were legal fictions contrived to justify unjust actions. The notion that black individuals were inferior to white individuals in intelligence or capabilities gave justification for counting them as only three-fifths of their white countrymen. Because blacks were legally considered three-fifths of a person, they required fewer taxes for slave owners to keep around (“The Three-Fifth Compromise”). While this justification was built on fictions, it was successfully used to enable profit during the enactment of the three-fifths compromise and for many years after. Following the Fourteenth Amendment continued years of persecution, lower pay for black individuals, and racism that still remains today. However, in 1863, once the legal fictions of blacks as inferior to whites were legally recognized as invalid, the three-fifths compromise could no longer be justified and these legal fictions lost all bearing, providing a space for more just legislations to be made.

What makes a legal fiction valid, however, has less to do with its truthfulness than with how the legal fiction is being used. Legal fictions are the act of “believing or assuming something not true is true,” and they are used to avoid “issues where a new situation comes up against the law” (“What Is Legal Fiction?”). When Congress passed a direct tax on slaves, “the first genuine direct taxes in American history,” the three-fifths compromise helped ease the economic strain this new tax had on slave owners (“The Three-Fifth Compromise”). In L. L. Fuller’s well-known account of legal fictions in the December 1930 *Illinois Law Review*, he states that legal fictions differ from lies “by the fact that [they are] not intended to deceive” (367). He states that a fiction is “adopted by

its author with knowledge of its falsity.” Fuller acknowledges that this does not mean that an author disbelieves his or her fiction, but that there is an element of disbelief or “partial untruth” in it (368). In other words, there is reason for the author to believe it; the author has something to gain from the fiction being seen as truth. Legal fictions are rendered invalid, however, when the “partial untruth” is revealed to be immoral or unjust. In Sidney T. Miller’s *The Reasons for Some Legal Fictions*, he notes that rules governing legal fictions state that “no legal fiction shall be allowed to work an injury” (625). The Fourteenth Amendment recognized the injustice in the three-fifths ratio and claimed protections and privileges for all individuals.

Legal fictions continue to exist in many spheres today. Some commonly used fictions include corporations as persons and adopted parents. While certain functions of legal fictions may be essential to the legal process, there are many ways in which legal fictions have been and are currently misused for commercial gain. One sphere that is dense with legal fictions is animal agriculture. Many of the legal fictions in animal agriculture are used, similarly to the use of the three-fifths ratio, to gain profit. In an industry wherein manufacturing costs and market demand are high,¹ the balance between animal welfare and efficient slaughter often favors the latter. To support the need for quick and efficient slaughter, legal fictions have been used, in part, to curb punishment of lawbreakers and to maintain traditional practices within the industry that help ensure profit² not unlike how the three-fifths compromise used the legal fiction of black individuals as inferior to white individuals to justify a decrease in the tax on slaves.

Many animal rights activists are unsatisfied with current legislation used to justify what they perceive as criminal behavior (more often: *cruelty*) performed for profit. The widespread and ongoing protests of animal rights activists give reason to examine the laws surrounding animal agriculture to better understand if and how they solicit legal fictions to enable cruelty for profit. My argument suggests that the legal fictions used within animal agriculture in the United States of America (and potentially elsewhere), specifically those relating to chickens, are currently used to “work an injury,” which should render these fictions invalid within the law. It should be noted that I do not intend to examine every law surrounding animal agriculture; rather, I aim to create a theoretical framework for which these laws can be understood and examined—through which individuals and organizations can address further legislative needs as pertaining to all aspects of animal agriculture. In order to more thoroughly investigate this topic, and because the entirety of animal agriculture law could not be accurately represented in the span of this article, I have narrowed my findings to those related to chickens—an iconic animal in animal agriculture — and, more particularly, chicken legislation within

the United States.³ Because the United States is currently one of the largest chicken producing countries in the world, an examination of the federal and state laws surrounding chicken agriculture can provide a model for possible legal fictions found in chicken agriculture worldwide.⁴

Chickens in Law and Life. The notion of chickens as a source of food has become part of what Cover calls the “normative universe” — society’s cultural narratives of what are legal, rational, and commonplace (4). But the notion of chickens as food hasn’t always been the predominant mentality toward chickens. “In just over a century chickens have been transformed from birds revered for their bravery, fortitude and devotion to parenthood, to the least respected and most manipulated beings on the planet.... In modern societies these birds have become de-natured, de-personalized and even de-animalized” (Potts 139). Chickens have occupied a space in human culture throughout history. However, the variance of chickens’ social ranking in human culture is vast: “Chickens have been worshipped as the representatives of deities, and persecuted as the conduits of evil” (55). Many cultures hold stories, superstitions, traditions, and activities based around what is now the domestic chicken. Among these, and perhaps among the earliest of these, is the relationship between the chicken and the creation of the world. Myths of the chicken egg as an incubated universe or as a creator come in various forms, from Egypt’s Thoth to China’s P’an Ku. The philosophical question, “Which came first, the chicken or the egg?” has been a popular debate since Aristotle’s day. These and other myths place the chicken on a pedestal of life and divinity. Such placement “gave chickens immunity from being eaten” (67). The popular tradition of coloring eggs has been done for “thousands of years and in myriad cultures,” to represent life, the inevitable, happiness, and rebirth (60). These traditions were largely based on the availability and timing of eggs. In ancient Europe, early representations of Easter included chicken eggs because springtime was the few months of the year when eggs were abundant (58). Now eggs are commonly available year-round in most places, occupying their own section of the grocery store. Similarly, what eggs represent has shifted from mythic ideas, such as life and rebirth, to something more mundane and ordinary, namely food.

Though chickens have endured various functions in human society, from religious rituals to cockfighting entertainment,⁵ the widespread shift to the use of chickens as a source of food is largely thanks to twentieth century “development and expansion of industrialized farming and poultry capitalism” (Potts 18). Chickens are iconic in the realm of animal agriculture not only because of their prevalence in human history, but also because of the intense demand for chicken meat. The numbers are striking: “99

percent of all land animals slaughtered are farmed birds,” resulting in over “50 billion chickens killed for meat each year” (Foer, 109; Potts 139).

Before Tyson Foods,⁶ the world’s leading chicken meat provider, and before a series of developments by farmers, geneticists, politicians, and entrepreneurs to procure the ideal chicken, early, and often inaccurate, scientific discoveries of chicken intellect and emotion helped pave the way for justification of the ongoing and widespread slaughter that would ensue (Potts 149). It was once more commonly known that chickens possessed astounding learning capabilities. “The Brelands’ chicken shows in the 1950s in the USA were highly popular, demonstrating that chickens could be trained to perform complex and reliable behaviors” (Hazel et al.). However, well-known biases among chicken experts, such as “small-brain fallacy” and the oversimplification of instinct, misled the mainstream narrative of chicken intelligence and emotional behavior and provided the perfect climate for legal fictions to be implemented (Potts 31-35).

Because this false information has for so long supported the use of legal fictions, acknowledging current findings of chicken intelligence, sentience, and volition⁷ is essential to unmask the legal fictions used to justify chicken treatment within animal agriculture. In her paper “Thinking Chickens: A Review of Cognition, Emotion, and Behavior in the Domestic Chicken,” Lori Marino argues: “Unlike many other birds, chickens are categorized as a commodity, devoid of authenticity as a real animal with an evolutionary history and phylogenetic context. Thus, arguably, perceptions of chickens shape their use as commodities which, in turn, then reinforces those original perceptions.” It has been shown that “more positive attitudes to animals may include a greater consideration of their welfare” (Hazel et al.). Furthermore, a recent study showed a positive shift in perception of chickens when individuals were asked to interact with them through training the chickens to perform various tricks. Participants who completed the study filled out a survey wherein they agreed that chickens “are intelligent, and have different personalities” and have “the ability to experience affective states” (Hazel et al.). While chicken intelligence, sentience, and volition has been known for decades, it has been largely ignored in legislation — or rather, masked — to grant chicken abusers legislative power. The need for legal fictions in animal agriculture is best explained by C. K. Ogden in *Bentham’s Theory of Fictions*: “A fiction of law may be defined as a willful falsehood, having for its object the stealing of legislative power, by and for hands which durst not, or could not, openly claim it; and, but for the delusion thus produced, could not exercise it” (qtd. in Moglen). The use of legal fictions ensures that legislation is unable to fully prosecute the animal agriculture industry. It

provides a loophole through which abusive farm managers can gather profit at the expense of animal welfare.

Cruelty in Legislation. To begin my examination of legal fictions within chicken agriculture, the act of cruelty must first be examined. By definition, cruelty is an act that presupposes certain attributes of the object being acted upon. First, existence or, more simply, life. And second, sentience or feeling. One cannot be cruel to a nonliving, non-feeling being. It is impossible to be truly cruel to a rug. You can tear, stomp, or neglect a rug, but this is not cruelty in the true sense because the rug is not alive and it cannot feel. The third, and last, presupposition I will address is that cruelty assumes an individual (having volition to act for oneself). While it is possible to enact cruelty upon a group of beings, that cruelty is experienced on an individual basis and cannot be abstracted to assume a collective experience.

Chicken agriculture legislation in the United States assumes the position that chickens are non-existent (or nonliving), unfeeling (or things), and non-volitional (or collective) beings. Legislation assumes these positions by neglecting to establish protective federal and state laws, by enforcing minimal punishments for lawbreakers, and by accepting traditional practices within the industry. My goal is not to examine every instantiation of chicken agriculture law as it relates to legal fictions, but to provide a framework that can be used to interpret these and other animal agriculture laws more generally. The next series of examples are to serve as evidence for my claims and in no way examine the entirety of these practices.⁸ They are meant to serve as a groundwork for further study and examination of animal agriculture legislation at large.

Chickens as Nonliving. The first legal fiction of the domestic chicken shows disregard of the most basic substance of chicken experience, namely existence, or life. The federal government in the United States neglects to acknowledge chicken life by excluding chickens from protective laws meant to prevent animal abuse. The two main federal laws used to protect animals are the Animal Welfare Act and the Humane Methods of Slaughter Act. Although chickens are both animals and are slaughtered, neither of these laws does much to protect chickens from cruelty.

Along with all food animals, chickens are exempt from the Animal Welfare Act (AWA). In fact, in the AWA, chickens are not even considered animals. Under AWA Section 2132: "Definitions", it states that the term *animal* includes any "live or dead dog, cat, monkey (nonhuman primate), guinea pig, hamster, rabbit, or such other warm-blooded animal ... but such term excludes farm animals, such as, but not limited to livestock or

poultry, used or intended for use as food” (“Section 2132: “Definitions”). Chickens’ existence as animals is superseded in this law by chickens’ ability to be used as food. But it is not just their ability to be food — as cats and guinea pigs could also be consumed by humans — but because of chickens’ ability to make a large profit as food. The AWA is designed to protect animals not used to make a commercial profit, such as pets. However, the irony of an “animal welfare” law that doesn’t protect all animals could only be possible with a fiction that suggests chickens are not, by definition, animals.

To account for food animals, the Humane Methods of Slaughter Act (HMSA) ensures that “animals are rendered insensible to pain” before slaughter (“Humane Methods”). However, poultry are specifically exempt from this law as well, and the Secretary of Agriculture is not allowed to “regulate the routine or regular transportation, to slaughter or elsewhere” of poultry either (“Title 7”). Furthermore, Section 646a, “Persons Exempted,” of the Poultry Products Inspection Act (PPIA), specifies no humane treatment of chickens and exempts “any person engaged in the processing of poultry or poultry products for commerce” (“Poultry Products”). To fill the gap left by federal laws and to account for possible mistreatment of chickens during slaughter and otherwise, various independent organizations, such as the Humane Handling Ombudsman and the National Chicken Council, have risen up. However, even these organizations rely on the fiction of chickens as nonliving, as seen in the many caveats they entail.

The Humane Handling Ombudsman, as part of the United States Department of Agriculture’s (USDA) Food Safety and Inspection Service (FSIS), is in charge of verifying that “poultry are handled and slaughtered humanely in accordance with Good Commercial Practices” (“Humane Handling”). Good Commercial Practices (GCP) as enforced by the USDA, center not on the notion of chickens as living, breathing animals, but on the notion of chickens as food. According to the USDA teaching module designed for Inspection Program Personnel (IPP), the section titled “Poultry Good Commercial Practices (GCP) Verification” begins: “There is no humane handling statute requiring humane handling in poultry” (“Humane Handling Verification”). This statement is followed by reasonable guidelines for assessing mistreatment, with the worst offense being chickens dying before slaughter due to mistreatment. This mistreatment renders a noncompliance record because chicken cadavers “are considered adulterated and unfit for human food” (“Humane Handling Verification”). However, if the mistreated chickens “can still be fully bled and [are] not breathing when they enter the scalding” no noncompliance record is made.⁹ According to these IPP instructions from the USDA, whether chicken mistreatment calls for legislative action is

dependent on whether the chicken's life is still usable for food. Chicken's ability to be maimed is almost irrelevant; chicken life is directly tied to the notion of chickens as food and the ability to make a profit.

The National Chicken Council (NCC) aims to provide overarching guidelines to "assure the humane treatment of animals and to promote the production of quality products" throughout the United States. However, not only are these guidelines similarly designed to increase profit with "quality products," but also because chickens are exempt from protective federal legislation, these guidelines serve more as a façade of chicken treatment and can only be enforced if they coincide with state laws ("National Chicken"). So while the NCC appears to support chicken welfare,¹⁰ it holds little bearing within a framework of laws that do not recognize chicken life outside of food and profit. Such widespread exclusion of chickens from protective legislation suggests not a careless error, but a mindful fiction used to enable profit and bypass the penalties of cruelty.

Georgia, Arkansas, and Alabama are among the main producers of chicken meat in the United States.¹¹ Animal cruelty statutes within these states legislate animal cruelty punishments ranging from a misdemeanor to a felony, so long as the cruelty is "unjustifiable" ("States': Georgia"). Aside from this explanation, there is no mention of poultry welfare aside from limiting the pain and suffering of food animals "as much as reasonably possible under the circumstances" ("States': Arkansas"). Cruelty toward chickens is not punished because it is "permitted under the agricultural or animal husbandry laws, customs, or practices of the United States" ("States': Alabama"). These laws regarding the treatment of chickens reflect the nationwide neglect of chickens. Chicken life is not mistakenly overlooked in these statutes, but has been purposefully made into a side note to chickens' ultimate value as profit.

When chickens are not used for commercial profit, when their lives and existence as chickens are more fully recognized, there often exists more protective legislation. In the statutes of California 597.3., *Live Animal Markets*, it states that "no animal will be dismembered, flayed, cut open, or have its skin, scales, feathers, or shell removed while the animal is still alive." Furthermore, it states that "no live animals will be confined, held, or displayed in a manner that results, or is likely to result, in injury, starvation, dehydration, or suffocation" ("States': California"). Not surprisingly, Part b of this law exempts chickens from such mistreatment: (1), "'Animal' means frogs, turtles, and birds sold for the purpose of human consumption, with the exception of poultry" ("States': California").

While many farms provide adequate space for broiler chickens to roam, layer hens are typically confined to “67 square inches of space,” by way of battery cages, which is undoubtedly “cramped and uncomfortable” (Foer 79; Johnson 123). Layer hens “often suffer damage to their skin and feathers from the hard wires of the cage,” as well as “progressive bone disintegration,” “fatty liver syndrome,” and a number of other preventable ailments due to the fact they do not have space to “walk, fly, stretch, dust-bathe, make nests or forage” (Johnson 123-4). Ironically, California’s Statute 599 declares it is illegal to contain chickens “without facilities for supply food, water and temperature control needed to maintain the[ir] health,” insofar as the chickens are not being used to make a commercial profit. Anyone guilty of breaking these laws is guilty of a misdemeanor, unless that individual works for a factory farm, wherein “established hatchery management procedures” are not prohibited (“States’: California”). What is often meant by “established hatchery management procedures” is that “any method of raising farmed animals” is legal “so long as it is commonly practiced within the industry” (Foer 50-51). In other words, this phrase is a euphemism used to mask “horrifying cruelties against, and backward exploitation” of chickens (qtd. in Adams 65).

Because chickens are largely exempt from cruelty laws, which is the case not only in the states mentioned, but in most of the United States (Wisch), it is lawful to kill a chicken without rendering it “insensible to pain before being shackled, hoisted, thrown, cast, or cut” (Hodges). Among the lawful methods of killing chickens is the practice of destroying male layer chicks through “maceration (wherein live, fully conscious, and unanesthetized chicks are inserted into high-speed grinders); exposure to carbon dioxide, argon, or a mixture of the two gases; or by use of a high-speed vacuum system that sucks chicks through a series of pipes to an electrified ‘kill plate’” (“An HSUS Report”). Other tactics include microwaving and smothering (Foer 48; Potts 159). Maceration is claimed to be “the most humane method of extermination because it is the quickest” (Potts 159). In the United States, more than 272 million male chicks are killed every year (159). Although this could be seen as an act of cruelty, it is much faster and economically beneficial to grind or gas roughly half of the newly hatched layer chicks than it is to take the time to render each of them unconscious beforehand. Because the end goal of chicken agriculture is profit, animal welfare needs to be masked, lest it slow down the entire operation. And the only way to do this is by the use of legal fictions.

Exemption from protective federal and state laws that could prevent the slaughter of live chicks and ensure a better living environment for layer hens suggests that chickens

are nonliving and will not feel pain¹² (like other unconscious animals) and that they do not require the basic elements of life, such as food, water, or even air.¹³ The act of redefining chickens as not animals, thus excluding them from animal cruelty statutes, is a legal fiction used to justify mistreatment that allows greater profit. The life chickens possess — their intelligence, sentience, and volition — is superseded in law by their use as a money-making mechanism. A chicken's death is planned meticulously and his or her life is directed with precision to get to that point; life is very literally a means to an end. "Within the realm of factory farming, what we have discovered is life completely denaturalized, life as completely produced and constructed" (Stanescu 69). The constructed nature of a chicken's life suggests that their "life is not living ... life is merely a process, a precursor to death" (70). As such, chickens are often treated as if they are nonliving — because death is the point of their being alive in the first place.

Chickens as Things/Machines. The second legal fiction used to enable profit is a misrepresentation or objectification of chickens as things, namely as machines. This concept dates as far back as Descartes, who mistakenly believed animals to be "automatons or moving machines" (Francione 2). While our current understanding of chicken intelligence, sentience and volition debunks any grounding for this objectification, this hasn't stopped people from using it for commercial gain. Since the 1920s, the misperception of chickens as things has become more apparent and widespread than ever as chickens have been genetically altered for our consumption purposes — to either grow bigger faster (broiler chickens),¹⁴ or to produce more eggs more quickly (layer hens) ("U.S. Chicken Industry History"). These two types of chickens are defined by their mechanistic responsibilities: "broilers" to produce meat as food machines, and "layers" to lay eggs as "reproductive machines" (Francione 11). The name "broiler" hints less than subtly at the common cooking method of broiling, used to prepare chickens to eat. "Layer," on the other hand, is an obvious denotation of a hen's ability to lay eggs. These names also link the various chickens to their method of gaining profit: the sale of meat and eggs.

Another, more discrete, component to this process are broiler breeder chickens, the hens responsible for breeding more broiler chickens. These chickens "are now bred to grow so fast that they can have severe health problems if they are not killed at around six weeks old. But this is before they reach sexual maturity" (Ellis 41). To grow them as quickly as possible is necessary so that farmers can keep up with the high demand for chicken meat. However, the process of growing broiler chickens has become unnatural and systematic: "Their food is restricted. A breeder broiler hen at times is said to be fed 60-80 per cent less than a bird would eat if left to its own devices. Critics say they are

fed in one go” (41). The unnatural way broiler breeder chickens live and are forced to mate creates stress and tension for both the breeder hen and the breeder cockerels. As a result, “the breeder cockerels can have the ends of their beaks removed and their spurs can be cut to stop them damaging the hens” (42). Regardless of these precautions, many hens are still injured during the mating process. Broiler breeder hens are grown unnaturally quickly so they can fulfill the mating process in order to enable a greater profit for the farmer. “They are an integral part of the process that produces the cheap chicken we eat” (42). But in order to continue to produce cheap meat, legal protections must be replaced with legal fictions.

It is not surprising then, that legislative protections vary among the different types of domestic chickens depending on the profitability each chicken provides. Because legal protections are based on profitability, layers and broilers do not receive the same legal protection, even within their own breed (Foer 106). Because layers need to be female to produce eggs, male layers are not needed in the chicken industry. They are so genetically different than broilers that they do not produce adequate meat to be eaten; therefore, male layer chicks are useless, or unprofitable (Ellis 43). Because chickens are seen as machines, male layer chicks are seen as defective, serving no purpose. It is not considered what these chickens would choose to do with their own lives, how they would spend their days if given the option. It is assumed that they are created for a certain purpose, and if they fail to perform accordingly, there is nothing else to do with them but get rid of them or recycle them for fertilizer and pet food. (“Chickens Used for Food”). Similarly, when layer hens lose their reproductive stamina after a year — known in the industry as being “spent” — it is cheaper to kill them and start with new chickens than it is to keep the year-old hens around (McCance 18; Ellis 43). Although most animal cruelty laws prevent the “unjustifiable” killing of animals, chickens used for food can be justifiably killed in order to ensure profit—even if they aren’t being used for food (Animal Cruelty Statutes).

In many ways, the swift and economic production of chickens and eggs is astounding. In his book *Eating Animals*, Jonathan Safran Foer suggests that to see “this little world-into-itself, to see the efficiency and mastery of the machine, and then to understand the birds as extensions of, or cogs in, that machine — not beings, but parts. To see it any other way requires effort” (88). Chickens are most readily seen as cogs in a machine when battery cages are used. Battery cages got their name from the way many of the small cages can be “stacked in layers” like the cells in a battery (McCance 18). But there are also deeper implications of the word “battery” that suggest chickens are a sort of energy-producing mechanism. This applies most strictly to the layer hens who are confined to battery cages and are to produce eggs (which carry the potential energy for

life). This confinement also ensures, much like batteries do, that the needed eggs — or energy — are easily accessible, take up less space, and are packaged usefully (Fitzgerald 29). The crowding of chickens in small cages goes against a chicken’s “pecking order instinct,” thus stressing out the chickens and causing them to “peck each other viciously” (Ellis 43). Because of this and because of the cramped and unsavory conditions rendered by keeping chickens so closely caged, “soon it became routine to add antibiotics ... that kept the creatures alive in otherwise unlivable conditions” (Niman 71).¹⁵ These antibiotics caused chickens to grow rapidly, a “bonus” used for economic advantage (71).

Building on the rapid growth caused by antibiotics, we have genetically manipulated — or “built” in a sense — layers to produce “excessive amounts of eggs,” and broilers to grow 65 percent bigger in 60 percent less time with 57 percent less food (Foer 106-7). The purpose of doing so was to decrease the amount of feed needed to raise the chickens to market size (USPoultryIPE). Less feed equals less money spent on the product and a greater net gain. However, because these procedures are accompanied by various forms of cruelty, legal fictions were necessary for them to continue legally. In this way, chickens are granted the rights of a machine (Foer 108-9). When something malfunctions, such as a Y-chromosome appearing in the DNA, the machine must be fixed—and if it cannot be fixed, it is thrown out or recycled for parts, with no legislation to determine how this should be done. The language used in these cases reflects the perception of chickens as machines; chickens are not “killed” like an animal would be, but “destroyed” or “thrown away” just like a machine would be (Ellis 43). Noreen Mola states, “Language is a powerful tool. The words we choose do more than name or describe things; they assign status and value” (qtd. in Adams 65). The value assigned to chickens through naming — layers, broilers, and battery cages — and through the laws that govern our use of them, is that of profitability.¹⁶

Chickens as a Collective. The last noteworthy legal fiction used in animal agriculture law is that of chickens as a collective, rather than as individuals. One of the main differences between a family dog and the chicken on a dinner plate is how it is seen in respect to other animals like it. The family dog is seen as an individual, separate from any other dog; by contrast, the chicken is seen as part of a collective entity, without any individual characteristics to distinguish it from the next chicken.

Dogs and chickens are similar in their “mental capacities,” but our perception of dogs and chickens separates them as far as family and food (Foer 25-6). “The protective

emphasis” we have for our dogs then, “is not a law of nature; it comes from the stories we tell about nature” (25). We don’t want to view chickens as individuals, because we don’t want to eat *someone*; we would prefer to eat *something*. Studies show that chickens’ “cognitive abilities are in some cases more advanced than those of cats, dogs, and even some primates” (“The Hidden Lives”). Chris Evans, an avian behaviorist, takes the opportunity at conferences to “list some of the perceptual, cognitive and communicative capacities of chickens ... without revealing which species he [is] referring to. His audience invariably assumes he is talking about monkeys” (Potts 52). Our perception of chickens is so connected to the normative universe and the laws that uphold it (and we are so disconnected from chickens), that even the science we have of chicken intelligence, sentience, and volition often goes unnoticed.

Daily habits of individual chickens, such dust-bathing, grooming, spending time developing friendships (chickenkind or inter-species), and so on are removed from chickens’ experience on factory farms. It is widely known among chicken experts that chickens have good memory skills and “complex social hierarchies” (Potts 39; “The Hidden Lives”). Chickens can understand abstract concepts, “memorize more than a hundred other chicken faces and recognize familiar birds after several months of separation,” and can even “anticipate the future” (Potts 39). In a study that taught hens to peck buttons to receive food, varying from a small amount to a larger amount of food, depending on how patient the chicken could be, “ninety per cent of the time hens chose to wait the extra time so that they might obtain more to eat” (Potts 39-40).

Furthermore, chickens work together to “convey specific information” about predators and food, and have “distinct personalities” (Smith and Zielinski; “The Hidden Lives”). The ability chickens have to communicate with one another is “a complex affair, involving visual, vocal, olfactory and tactile senses” (Potts 44). It is generally accepted among avian specialists that chickens “produce at least 30 distinct forms of vocalization, including territorial, location, mating, laying and nesting, submission, distress, alarm and fear, food and contentment calls” (Potts 45). What is known as the “pecking order” was first used to describe the way chickens “enforce leadership by administering a sharp peck of the beak to underlings whenever they get an idea above their station” (Smith and Zielinski). These and other chicken attributes all convey the same message: chickens are individuals. But their treatment in animal agriculture assumes they have no individual desires or attributes aside from our perception of chickens as food and as a means to gain profit (Ellis 43-49).

In this way, chickens are rarely perceived as individuals who are different from one another. Instead, chickens are grouped together based on their profitable qualities. They

are called simply “chicken,” “meat” or “protein.” But such titles do little to express the diversity and complexity of chickens, much like the way Chicken McNuggets “bear no obvious resemblance to chicken anatomy” (Lawler 223). The laws we have surrounding the farming of chickens suggest that every chicken has the same potential: to render profit through the production of food.

Conclusion. The acceptance of the legal fictions of chickens as nonliving, as things, and as a collective presumably exempts chickens from the experience of cruelty. It is impossible to impart cruelty to that which has no life, no feeling, and is not an individual. As such, chickens fall to the same status as a rug. This low status, though obviously incongruent with what we know concerning chicken intelligence, sentience and volition, is completely logical in terms of profit. In situations where chickens are less conducive to profitability (e.g., state fairs), laws ensure more protection from cruelty than in situations where profitability is high (e.g., factory farms). Profitability serves as the justification for cruelty toward chickens on factory farms and purposefully neglects our understanding of chicken intelligence, sentience, and volition. Simply put, legal fictions are used to mask cruelty towards chickens to enable profit. The removal of these legal fictions—of chickens as nonliving, as things, and as a collective—is a necessary step to redefining chickens within the law and granting them welfare rights.¹⁷

The various ethical and moral concerns that are voiced about chickens on factory farms are legally and easily sidestepped by the legal fictions that have been created about chickens. Animal welfare used to be foundational to the sustainability of the farming life. A farmer could not afford to lose even one animal if he or she were to make a living (Rollin 10). However, due to inflation and the intense demand for meat, the foundation of sustainable farming has switched from animal welfare to economic efficiency (Foer 95). Farms have made technological and methodological advancements to accommodate the demand for meat, and new laws accompanied these changes to regulate the treatment of animals in this larger operation and to enable as much profit as possible.

Currently, many laws regarding animal welfare within animal agriculture contain a caveat phrase stating that certain prohibited human-animal interactions do not apply to the farming industry;¹⁸ individuals who commit these crimes are typically only charged with a small fine or a misdemeanor, if these laws are enforced at all (Hodges). While animal welfare was once the more profitable option for farmers, it is now more profitable for farmers to exchange humane treatment for efficiency. However, this

efficiency can only be justified and continued with the support of laws that construct chickens as outside the bounds of cruelty.

When factory farm legislation is guided by euphemistic and inaccurate construction of chickens for the sake of profitability, we allow these organizations to define cruelty (Foer 51). “Cruelty depends on an understanding of cruelty, and the ability to choose against it. Or to choose to ignore it” (53). As such, we must reexamine our understanding of cruelty in regard to the domestic chicken. By doing so, the law can accommodate a new normative universe that includes current science on chicken intellect, sentience, and volition and push aside the legal fictions currently in use that suggest chickens are nonliving, are things, and are a collective. In turn, this will propel legislation to perceive and protect life, rather than ignore it.

Notes

1. The U.S. government is largely responsible for encouraging chicken farming throughout the United States, by initially setting “chicken prices higher than the cost of production in a move to encourage the expansion of chicken farming” and by promoting “vigorous propaganda” in efforts to persuade individuals to keep chickens. This resulted in increased market demand mounted by “a public whose appetite was ever increasing, coaxed along by advertising and public relations” (see Squier 43-44). For more information regarding the role of the United States in the development of chicken agriculture, see Striffler.
2. For a comprehensive and up-to-date compendium of current animal protection laws and penalties, see “Animal Protection Laws of the United States of America and Canada” as compiled by the *Animal Legal Defense Fund*.
3. For a helpful reference of animal cruelty laws in various U.S. states, see “Animal Cruelty Laws State by State” compiled by *Stray Pet Advocacy*.
4. For more chicken industry statistics compiled by the National Chicken Council, see “Broiler Chicken Industry Key Facts 2016.”
5. For more information on chicken history, see Chapter 1: “From T. rex to Transylvanian Naked Necks” of Potts.
6. For more information on Tyson Foods and their role in chicken development, see Part 1: “A New Bird” in Striffler.

7. For more information on the science behind chicken intelligence, sentience, and volition, see Lori Marino's paper "Thinking Chickens: A Review of Cognition, Emotion, and Behavior of the Domestic Chicken" as reported in *Science Daily*, and Wang et al.
8. For a more detailed explanation of common practices (and their cost) within chicken agriculture, see Hamra.
9. If chicken mistreatment is discovered, IPP must meet to "discuss the mistreatment with establishment managers at the next weekly meeting" and work with the District Veterinary Medical Specialist (DVMS) to decide if any further action is required ("Humane Handling Verification").
10. For more information on the National Chicken Council's guidelines for animal welfare, see "Animal Welfare for Broiler Chickens."
11. For recent economic data on poultry and egg production, see the U.S. Poultry & Egg Association webpage, and for more information on the growth and development of state chicken production, see Striffler.
12. For more information on chickens' ability to feel pain, see Grandin and Deesing, and Chapter 5 excerpt, "Perception of Fear and Pain in Animals," from Grandin's *Animals in Translation*. It should be noted, however, that the argument that chickens or other animals do not feel "pain" when they are experiencing fear is irrelevant because causing fear can also be seen as a form of cruelty.
13. For a complete report of 2016 chicken deaths caused by synovitis, bruises, septicaemia and other preventable diseases and ailments, see the USDA's "Poultry Slaughter 2016 Summary."
14. To learn more about the hazards of quick chicken growth, see the ASPCA's paper "A Growing Problem."
15. For further details of the effects of battery cages, see chapter 6: "Meat Chicks and Egg Machines" of Potts.
16. The language used to talk about chickens can give valuable information of chickens' place and value within the normative universe of various time periods. Dating back to

the Shang dynasty (1600-1045 BC), The Chinese Fenghuang chicken was described in Zhou texts as an “omen of political harmony” (Potts 86). This cultural projection was accompanied by prestigious “markings of the graph for *virtue* on its head, *duty* on its wings, *ritual* on its back, *humaneness* on its breast, and *trust* on its stomach” (86-87). If we compare this projection to present day, we find that similar divisions have been made to the chicken, but what they represent differs tremendously. The denotation of chickens as prophetic beings made up of honorable qualities has widely been replaced with portioned cuts of meat: thighs, wings, drumsticks, breast, etc., whose value is purely culinary and, therefore, monetary: boneless, skinless, fried, grilled, boiled, smoked, and so on.

17. For further reading on the public’s perception of animal agriculture cruelty in opposition with legal reform, see Lovvorn.

18. For a list of animal cruelty laws by state and their corresponding fines/punishments, see Clausen.

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