

CAFOs: A Question of Constitutional Rights

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“CAFOs are legal, so I have a right to operate one.” This is a common response of CAFO operators when they can't think of any other way to defend against growing public concerns. It seems logical, on the surface, but it's not necessarily so. It was once legal to own slaves in the U.S., but no one has ever had a “right” to own another person. It was once illegal for women to vote, but women have always had a “right” to participate in the political processes of democracy. Not so long ago it was legal to smoke in airplanes and public buildings, but smokers have never had a “right” to force those around them to breathe second-hand smoke. The fact that something is legal doesn't necessarily give anyone a “right” to do it.

A CAFO operator might respond: “There is nothing about ‘rights’ in the Constitution that says I don't have a right to operate a CAFO - as long as I don't create a *legal nuisance*.” Again, this might seem to be a logical position for CAFO operators to take in defending their “right” to operate. But, it's not necessarily so. The rights of the people of the United States are not limited to those rights explicitly named in the U.S. Constitution. In fact, Amendment 9 in the Bill of Rights of the Constitution states: “*The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*”

In other words, the framers of the Constitution did not attempt to enumerate all of the fundamental rights of U.S. citizens. It clearly states that we have “other” rights, in addition to those named in the constitution, and that these additional rights are to be “retained by the people.” Some of those “other” rights were later encoded in the Constitution, after the initial Bill of Rights, such as the constitutional prohibition of slavery and women's constitutional right to vote. Other unnamed rights have been interpreted by the courts as being covered by specific constitutional rights, such as those covered by the freedoms of speech and religion and the right to privacy. Other un-enumerated rights are so well-established or obvious that they have never been seriously questioned, such as the rights of self-determination and self-defense.

The American Declaration Independence states: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.—That to secure these rights, Governments are instituted among Men.” The legal system and courts routinely treat the right of any person to determine for themselves when their health or well-being is being threatened and to take necessary actions to defend themselves as “self-evident truths” - even though they are not guaranteed in the Constitution. Apparently, the rights of self-determination and self-defense are among those “self-evident” rights not included in the Constitution.

What can be more important to the basic right to *life* than the right to clean air, clean water, and safe food? Stacks of public health research reports clearly link CAFOs to a variety of respiratory illnesses suffered by their neighbors as well as their workers. CAFOs are also frequently linked to the pollution of neighbors' drinking well water. Monitoring by the EPA and State Departments of Natural Resources consistently find agricultural pollutants in streams that exceed safe drinking water standards. The World Health Organization has clearly linked

contamination of animal food products with multiple-drug-resistant biological organisms, such as the deadly MRSA, to the routine use of antibiotics as growth promoters in CAFOs. There is a growing scientific consensus that CAFOs are a clear threat to human health and a potential threat to human life.

Americans also have a constitutional right to *liberty*, which suggests a right of self-determination. We don't have to wait until we are shot or stabbed to resist an armed attack. In situations where a “reasonable person” would feel threatened, people have a right to defend themselves. Despite the fact the evidence is compelling, defenders of industrial agriculture often argue the “scientific consensus” is not yet strong enough for a “reasonable person” to feel their health or life could be threatened by a CAFOs. This is what I call “the tobacco defense.” The tobacco industry argued for decades that there was no “scientific consensus” linking tobacco smoking to public health risks, although their own research indicated otherwise.

The evidence condemning CAFOs as a public health risk is probably stronger today than the evidence against tobacco when smoking was banned in public buildings. For example in 2008, an extensive 2½-year study of industrial farm animal production commissioned by the Pew Charitable Trust, a highly-reputable, non-partisan organization concluded: “*The current industrial farm animal production (IFAP) system often poses unacceptable risks to **public health**, the environment and the welfare of the animals themselves*”ⁱ (Emphasis added). This prestigious commission, including a former U.S. Secretary of Agriculture, stated: “*The negative effects of the IFAP system are too great and the scientific evidence is too strong to ignore. Significant changes must be implemented and must start now.*” Five years later, an assessment of the industry's response to the Pew Report by the Johns Hopkins Bloomberg School of Public Health indicated that few if any positive changes had been made.ⁱⁱ Meanwhile the scientific evidence supporting the initial indictment of CAFOs has continued to grow.

Reliance on basic human decency to protect the rights of neighbors of CAFOs simply has not worked. CAFO operators have been given decades to “clean up their act” voluntarily but have consistently failed to do so. In the late 1990s, the EPA became frustrated with irresponsible management of CAFOs and began preparing to sue CAFO operators for violating the Clean Water Act. In preparation for the case, a 1998 EPA study found 35,000 miles of streams in 22 states and ground water in 17 states that had been polluted by industrial livestock operations.ⁱⁱⁱ But there was a change in the political administration in Washington DC, so no action was taken, and no similar studies have been done since. The CAFO operators were asked to “monitor” their pollution and voluntarily address any problems that might arise. Obviously, they haven't.

As a last defense, CAFO operators claim they are doing a better job of manure management than the traditional independent farmers they displaced. However, the Iowa Department of Natural Resources has documented a three-fold increase in “impairments” of water bodies in Iowa between 2002 and 2012, years when CAFOs were rapidly replacing independent Iowa family hog farms.^{iv} There was another 15% increase in impaired waters since 2012. Voluntary compliance clearly is not working in Iowa and there is no evidence that has or will work elsewhere.

Water pollution is often dismissed by the agricultural establishment as an “environmental issue” - suggesting it is only a concern to “environmentalists.” In fact, water pollution is a public health issue. The public health risks posed by water polluted by livestock manure are essentially the same as those posed by untreated human sewage. For example, a dairy CAFO with 5,000 milk cows generates biological waste equivalent to the human waste from a municipality of at least 100,000 people.^v That's approximately the populations of Janesville, WI and Beloit, WI combined. There are logical reasons for requiring cities the size of Janesville and Beloit to install and manage sophisticated, multi-stage waste treatment systems. Yet it is legal to spread the raw sewage from a 5,000 head dairy CAFOs on fields surrounding people's homes.

Noxious odors are usually the first and probably most frequent concern expressed by neighbors of CAFOs. Proponents claim that while odors from CAFOs may be an occasional nuisance, they are no different from other agricultural operations which, by their nature, emit dust particles and odors into the air. This is simply not true. The anaerobic decomposition process in CAFOs is fundamentally different from the aerobic process on traditional farms. Chemical compounds associated with noxious odors from CAFOs include antibiotic-resistant bacteria, viruses, E. coli, Salmonella, parasites, antibiotics, hormones, nitrate, hydrogen sulfide, ammonia, and more.^{vi} Numerous scientific studies by reputable health institutions have also linked air pollution from CAFOs to a variety of respiratory ailments not only of people working in CAFOs but also of people living nearby. Studies have shown CAFOs to be particularly detrimental to the health of elderly neighbors and children in nearby schools.^{vii}

With respect to the spread of MRSA and other antibiotic resistant infectious bacteria, a comprehensive 2004 U.S. General Accounting Office review of the scientific literature on antibiotic resistance clearly linking antibiotic resistance to livestock feeding reported: “many studies have found that the use of antibiotics in animals poses significant risks for human health.”^{viii} By 2013, a U.S. Center for Disease Control and Prevention report removed any doubt about the potential for transference of antibiotic resistant bacteria from animals to humans: “Scientists around the world have provided strong evidence that antibiotic use in food-producing animals can harm public health... Use of antibiotics in food-producing animals allows antibiotic-resistant bacteria to thrive while susceptible bacteria are suppressed or die. Resistant bacteria can be transmitted from food-producing animals to humans through the food supply.”^{ix} Antibiotic resistant bacteria is a major public health risk and clearly linked to CAFO

I believe people have a basic human right to decide for themselves when their health and life is threatened and to take reasonable measures to defend themselves against such threats. I believe these rights are ensured by the 9th Amendment in the Bill of Rights and are routinely being denied by the operation of many if not most CAFOs. Furthermore, economic expedience is not defensible justification for denying our unalienable rights. Slavery eventually was abolished by a constitutional amendment, at a time when slavery was critical to the U.S. economy. Powerful economic interests have opposed laws such as those regulating where people can and can't smoke tobacco. Still, in the case of CAFOs, economic expediency, meaning the right to make a profit, is the only excuse given for denying people their basic human rights of self-defense, self-determination, and the opportunity to enjoy a desirable quality of life.

Industry denials or dismissal of the growing public health risks associated with CAFOs are no longer credible. Even the means available for at least mitigating public health risk simply are not being used. For example, the waste treatment systems used for municipal sewage could be used by CAFOs, but even less costly systems have consistently been deemed “economically infeasible” by the agricultural establishment. The same is true for technologies that could reduce if not eliminate noxious air pollution and production practices that do not include the routine feeding of antibiotics to promote weight gains of animals in CAFOs. “Economically infeasible” simply means that CAFOs couldn't compete with smaller, livestock farms if they were forced to protect public health. The “privilege” of making money is given higher priority than the “unalienable rights” of the people.

Our elected representatives and government officials obviously have failed to protect the public from the clearly documented public health risks of CAFOs. In Illinois, Peter Goldsmith of the University of Illinois recently completed research examining the public “legitimacy” of CAFOs. He wrote: “as animal production sites grow larger they create more problems and the intense controversy surrounding CAFOs incites strong local public participation.”^x He found people in Illinois who participate in public hearings consistently indicate they have “no confidence” in Illinois laws regulating CAFOs or the government officials who are supposed to enforce CAFO regulations.

In response to growing public opposition, the “industrial agricultural establishment” - including agribusiness corporations, agricultural commodity organizations, and the American Farm Bureau Federation - launched a nationwide, multimillion-dollar propaganda campaign designed to - in their words - “increase confidence and trust in today's agriculture.”^{xi} *Food Dialogues*, just one initiative of the broader campaign, is sponsored by the U.S. Farmers and Ranchers Alliance—an organization whose funders and board members include the American Farm Bureau Federation along with Monsanto and DuPont - both of which have pledged \$500,000 per year to the campaign.

The campaign features the “faces of farming and ranching”—articulate, attractive young farmers, obviously chosen to put the best possible face on the increasingly ugly business of industrial agriculture - of which CAFOs are the epitome. A recent study by Friends of the Earth documents that various “front groups” have been spending more than \$25 million per year to defend industrial agriculture.^{xii} The campaigns have hired some of the nation's top public relations firms to try to clean up the tarnished public image of industrial agriculture. For decades, defenders of industrial agriculture had accused their critics of relying on emotions and misinformation rather than “sound science.” Now that the scientific evidence is mounting against industrial agriculture, public relations experts are advising advocates to emphasize “emotional appeals,” such as “the faces of farmers” - obviously to distract attention from the real “science.”

The campaign suggests that rural people should be willing to sacrifice their unalienable rights to a clean, safe, and healthful environment because industrial agriculture is the foundation of the rural economy. Again, the suggestion is that economics should be given priority over the basic rights of rural people. Regardless, the industrialization of agriculture has had a devastating effect on rural economies. The industrialization of agriculture has replaced independent family farmers with a far smaller number of farm workers, most of whom are paid poorly. Between

1980 and 2008, as CAFOs replaced independent livestock farmers, USDA statistics indicate the number of beef cattle operations fell by 41%, hog farms declined by 90%, and dairy farms fell by 80%.^{xiii} Rural communities have suffered both economically and socially from this loss of traditional farm families.

The 2008 Pew Commission report concluded: “Economically speaking, studies over the past 50 years demonstrate that the encroachments of industrialized agriculture operations upon rural communities result in lower relative incomes for certain segments of the community and greater income inequality and poverty, a less active “Main Street,” decreased retail trade, and fewer stores in the community.”^{xiv} A 2006 study commissioned by the State of North Dakota Attorney General's Office reviewed 56 socioeconomic studies documenting the economic impacts of industrial agriculture in general on rural communities. The studies consistently “found detrimental effects of industrialized farming on many indicators of community quality of life, particularly those involving the social fabric of communities.”^{xv}

The PR campaign also suggests that urban residents should be willing to compromise their rights to safe and healthful foods in order to maintain the supply of food and avoid raising “food prices.” In fact, there is nothing to indicate that industrial agriculture has produced more food that could have been produced with more sustainable methods, only that industrial agriculture has employed far fewer farmers. Any production costs advantages of CAFOs have been more than offset by higher marketing margins and profits elsewhere within the corporate food supply chain of which industrial agriculture is a crucial link.^{xvi} Over the past 20 years, an era of intensive agricultural industrialization, U.S. retail food prices have risen faster than overall inflation rates.^{xvii} More than 30% of U.S farm income today comes from “exports” rather than domestic consumption, 40% of the U.S. corn crop has been going to produce ethanol, not food, and Americans waste nearly half of all food produced.

The corporate propaganda claims that famers have no economically viable alternatives to CAFOs. However, among the most profitable of the new sustainable/local agricultural alternatives are grass-based, free-range, and pastured livestock and poultry - alternatives to CAFOs. These alternatives have become increasingly popular because of growing evidence of important health benefits in grass-fed products compared with products from animals fed in confinement. Pastured and free-range livestock production also allows producers to avoid hormones and antibiotic concerns and to meet the humane standards of production demanded by an increasing number of consumers.

Studies at major agricultural colleges in the U.S. have shown that hogs can be produced in deep-bedded hoop-houses just as efficiently as in CAFOs; they just require better management, which means employing more intelligent, thoughtful, caring hog farmers. Studies at various universities have shown grass-based dairy farms to be more profitable than confinement dairy operations, in fact, among the most profitable of all farming operations. When farmers take the initiative to process and market their own meat, milk, and cheese directly to discriminating consumers, their profits are often multiplied.

Finally, as Americans we are told we must compromise our constitutional rights because America's factory farms are needed to feed the rest of the world. The facts are that the rest of the

world doesn't want or need our agricultural exports or our industrial approach to farming. Small, diversified family farms already provide food for least 70% of the global population and could double or triple yields without resorting to industrial production methods.^{xviii} Numerous global food studies sponsored by the United Nations have exposed the myth that industrial agriculture produces food for the hungry. Recent global studies call for the development of sustainable farming systems, such as permaculture and agroecology.^{xix, xx} The world doesn't need industrial agriculture, and we Americans don't need to sacrifice our health, the future of our rural communities, or our basic human rights in order to “feed the world.”

The Declaration of Independence clearly states that we Americans have an unalienable right to the opportunity for a decent quality of life, to the pursuit of *happiness*, without being forced to flee our homes and our once-decent neighborhoods. There are no compelling public interest - economic or otherwise, domestic or global - that can justify depriving some people of their constitutional rights just so that other people can make more money. Under such circumstances, law suits are inevitable, but law suits are not the ultimate solution. Current nuisance laws, for example, are based on the premise that CAFOs operators have a right to pursue their economic interests unless their neighbors can prove otherwise. Instead, CAFO operators should be required to prove they are not denying the rights of their neighbors' constitutional right to a living environment sufficiently clean and healthful to afford a desirable quality of life.

The Declaration of Independence also states that governments are to be established for the expressed purpose of securing the rights of the people. However, if our government fails to fulfill its responsibility, our Constitution gives “the people” the power to do so. The 9th amendment to the Constitution clearly reserves rights for “the people” in addition to those enumerated in the Constitution. The 10th Amendment to the Constitution states that “The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, *or to the people [emphasis added]*.” We, the people, have the constitutional authority to claim our unalienable right to self-defense and self-determination. We only need to find the means to claim the rights guaranteed by our Constitution.

Both federal and state governments clearly have failed to protect our constitutional rights of self-determination and self-defense in the case of CAFOs. This means it's up to us, “the people,” to find other means of claiming our God-given *constitutional* rights to life, liberty, and the pursuit of happiness.

End Notes:

- ⁱ Pew Commission on Industrial Farm Animal Production: “Putting Meat on The Table: Industrial Farm Animal Production in America,” 2008, http://www.pewtrusts.org/news_room_detail.aspx?id=38438 , full report, <http://www.ncifap.org/> .
- ⁱⁱ Johns Hopkins Center for a Livable Future, “Industrial Food Production in America; Examining the impacts of the Pew Commissions primary recommendations.” http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/pdf/research/clf_reports/CLF-PEW-for%20Web.pdf.
- ⁱⁱⁱ U.S. Department of Agriculture Natural Resources Conservation Service and U.S. Environmental Protection Agency, “Unified National Strategy for Animal Feeding Operations,” draft, September 11, 1998, as quoted in *CAFO: The Tragedy of Industrial Animal Factories*, Myths, Dan Imhoff, editor, http://www.cafothebook.org/thebook_myths_6.htm .
- ^{iv} Iowa Department of Natural Resources, Iowa's Section 303(d) Impaired Water Listings, <http://www.iowadnr.gov/Environment/WaterQuality/WaterMonitoring/ImpairedWaters.aspx>
- ^v Carla Klein, “The Facts about CAFOs and Health Ordinances,” Sierra Club, Ozark Chapter, 2006, <https://missouri2.sierraclub.org/newsletter/facts-about-cafos-and-health-ordinances> .
- ^{vi} United States EPA, *Literature Review of Contaminants in Livestock and Poultry Manure and Implications for Water Quality*. July 2013. <http://water.epa.gov/scitech/cec/upload/Literature-Review-of-Contaminants-in-Livestock-and-Poultry-Manure-and-Implications-for-Water-Quality.pdf> .
- ^{vii} Pew Commission Report on Industrial Animal Agriculture, “Impact of Industrial Farm Animal Production on Rural Communities,” 2008, http://www.ncifap.org/images/212-8_pcifap_ruralcom_finaltc.pdf .
- ^{viii} U.S. Government Accounting Office report to congressional requestors, “ANTIBIOTIC RESISTANCE Federal Agencies Need to Better Focus Efforts to Address Risk to Humans from Antibiotic Use in Animals,” April 2004, <http://www.gao.gov/new.items/d04490.pdf> .
- ^{ix} US Center for Disease Control and Prevention, Antibiotic Resistance Threats in the United States, 2013 Executive Summary, <http://www.cdc.gov/drugresistance/threat-report-2013/pdf/ar-threats-2013-508.pdf#page=6> .
- ^x Karen Hudson, “In the Spotlight: Illinoisans still not protected from livestock factories,” Peoria Journal Star, February 22, 2014. <http://www.pjstar.com/article/20140222/Opinion/140229701> .
- ^{xi} Food Dialogues, “About USFRA,” <http://www.fooddialogues.com> .
- ^{xii} Kari Hamerschlag and Anna Lappé, “Spinning Food,” Friends of the Earth, <http://www.foe.org/projects/food-and-technology/good-food-healthy-planet/spinning-food#sthash.8Xhj3lqt.dpuf> .
- ^{xiii} R-CALF USA. “Comments on Agriculture and Antitrust Enforcement Issues in Our 21st Century Economy.” Comment to U.S. Department of Justice. December 31, 2009. <https://www.yumpu.com/en/document/view/30593081/r-calf-usas-comments-to-the-department-of-justice-regarding-> .
- ^{xiv} Pew Commission Report on Industrial Animal Agriculture, “Impact of Industrial Farm Animal Production on Rural Communities,” 2008?, http://www.ncifap.org/images/212-8_pcifap_ruralcom_finaltc.pdf .
- ^{xv} Curtis Stofferahn, “Industrialized Farming and Its Relationship to Community Well-Being: an Update of the 2000 Report by Linda Labao,” special report prepared for the North Dakota, Office of Attorney General, <http://www.und.edu/org/ndrural/Lobao%20&%20Stofferahn.pdf> .
- ^{xvi} Economic Research Service, United States Department of Agriculture, “Price Spreads from Farm to Consumer,” <http://www.ers.usda.gov/data-products/price-spreads-from-farm-to-consumer.aspx> .
- ^{xvii} Richard Volpe, “Price inflation for food outpacing many other spending categories,” Economic Research Service, USDA. <http://www.ers.usda.gov/amber-waves/2013-august/price-inflation-for-food-outpacing-many-other-spending-categories.aspx#.VMQJKf7F98F> .
- ^{xviii} United Nations Environmental Program, *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication*, 2010, www.unep.org/greeneconomy .
- ^{xix} Fred Kirschenmann, “The challenge of ending hunger,” Leopold Center for Sustainable Agriculture, Leopold letter, winter 2012, <http://www.leopold.iastate.edu/news/leopold-letter/2012/winter/future>.
- ^{xx} Olivier De Schutter, United Nations General Assembly, Human Rights Council, “Report submitted by the Special Rapporteur on the right to food,” 20 December 2010, http://www.srfood.org/images/stories/pdf/officialreports/20110308_a-hrc-16-49_agroecology_en.pdf