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# Role of Joy in Farm Animal Welfare Legislation

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## Abstract

While animal welfare is commonly invoked in legal debates regarding non-human animals kept for food purposes, the concept of animal joy is rarely mentioned in such contexts. This paper analyzes the relationship between welfare and joy in the German animal protection law (GAPL) and in the EU directive 98/58/EC. Based on a review of scientific and philosophical approaches towards animal welfare, joy is argued to be a part of welfare. Nevertheless, joy is ignored in the German and EU legal provisions. While there may be economic disadvantages of legally protecting animal joy, it is argued that overlooking elements of joy cannot be justified from any ethical perspective that claims to take animal welfare into consideration. In order to clarify the aims of the legal provisions, decision-makers need to define the role joy ought to play in welfare legislation.

## Keywords

joy – welfare – animal welfare legislation – EU animal law – German animal law – ethical duties

## Introduction

Animal welfare refers not only to the physical and mental state of non-human animals. As a normative concept, the protection of welfare is also the objective of animal policies and laws and as such, demarcates an entire policy area.

A variety of different concerns may be addressed under the heading of “animal welfare policies,” ranging from the economic efficiency of production, human health, and disease control to different impacts of production systems on animals, including their suffering (Yeates, Röcklinsberg, & Gjerris, 2011). A recent study by Lundmark, Berg, Schmid, Behdadi, and Röcklinsberg (2014) revealed that the connection between the aims of European animal welfare laws and their implementation seems to be unclear.

While many laypeople may intuitively think of the state of welfare as a pleasant subjective state, welfare is not a mere synonym for joy. The objective of this paper is to clarify the relationship between animal welfare and joy in a legal context and to indicate whether this relation is well represented in the legal framework for the protection of farm animals. Two legal texts are analyzed in more detail: the German animal protection law (GAPL) (*Deutsches Tierschutzgesetz*) and the European Union Directive 98/58/EC concerning the protection of animals kept for farming purposes. Both laws are still in use as the legal basis of animal welfare in the respective communities.

## Objective of Farm Animal Welfare Under German and EU Law

### *Germany: Legal Protection of Animal Welfare*

In Article 1 of the German animal protection act as amended on May 18, 2006, the purpose and main provision is defined as follows (*Tierschutzgesetz vom 18. Mai, § 1, 2006*): “Given the responsibility of humans towards animals, it is the purpose of this law to protect the animals’ life and welfare. No one may inflict pain, suffering or damage to an animal without rational grounds.”<sup>1</sup> The implied relation between welfare and suffering (including pain and damage) is of relevance here. The law allows for the infliction of animal suffering as a rationally justified act in line with public animal protection.

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1 The German term for welfare in § 1 is “Wohlbefinden,” a term that could by itself also be translated as “well-being.” However, this translation would not make sense in the legal context. Article 1 protects what is internationally referred to as animal welfare, and there is no other reference to welfare in the law except “Wohlbefinden.” The wording in § 1 even served as a model for the 1976 European Economic Community Convention for the Protection of Animals Kept for Farming Purposes, a precursor for Directive 98/58/EC, which required parties to give effect to the principles of “animal welfare” (von Gall, 2016). Given this clarification, both German terms “Wohlbefinden” and “Wohlergehen” are common to—and often used synonymously in—animal welfare debates.

Article 2 of the act then specifies the conditions for keeping animals in line with § 1. The accommodation of animals has to be “appropriate to their species” (*artgemäß*) and “behaviorally just” (*verhaltensgerecht*). However, § 2 also states that these requirements may be breached in cases where the infliction of suffering is not “avoidable” (Tierschutzgesetz vom 18. Mai 2006, § 2). This exception refers to the “rational grounds” in § 1. The law does not stipulate the extent to which economic grounds such as market competition or profitability of the farming system may be invoked as “unavoidable” or as “rational reasons” (von Gall, 2016).

In § 2a, the Federal Ministry of Food and Agriculture is authorized to issue statutory instruments regulating the protection of animals kept for farming purposes. The content, purpose, and scope of these regulations are specified in § 2a. In this paragraph, the objective of welfare mentioned in § 1 does not appear again. Instead, a more open formulation is used. The provisions laying down the minimum requirements for keeping animals are articulated as ensuring the “protection” of animals. Aspects of animal farming that may be legalized or prohibited via statutory instruments could concern, for instance, the minimum space for movement of animals, the composition of social groups, the facilities of the buildings in which animals are kept, and their exposure to daylight and artificial light.

With a view to § 1 and § 2, minimum requirements defined by the Ministry stipulate on the one hand the avoidance of suffering, while on the other hand invoke “rational grounds” to allow for certain inflicting of suffering when necessary. In the design of expertise for statutory instruments, these two aspects are linked, for instance, in the question of what type of farming is considered as having fulfilled the criteria of being behaviorally just and appropriate to a species. This terminology originates in the classical ethological tradition of Konrad Lorenz and has been transferred into farm animal welfare sciences. However, the concepts do not refer to ideal conditions for animals, but rather to a compromise between the needs of the animals and the practical, technical or economic aspects of animal production. For example, free-range farming of egg-laying hens is often considered as appropriate or more appropriate than keeping them in battery-cages, leaving aside other alternatives.

Agronomists, ethologists and veterinarians have to agree on a compromise: many aspects of animal farming that are seen as unacceptable under the welfare provisions are considered unavoidable from an economic perspective. The parliament is not involved in the decision-making process of minimum requirements. In theory, parliamentarians could pass an amendment to the law on certain specific welfare measures if they believed that the Ministry was not fully implementing the regulations set out in § 2. However, this has not

occurred yet, probably because it would call into question the Ministry's competence to regulate farm animal protection.

*EU Directive 98/58/EC: Harmonizing Animal Welfare Laws*

Council directive 98/58/EC of 20 July 1998 was enacted as part of the reform of EU institutions in 1997 and sets binding minimum requirements for animal farming in all EU Member States. The main aim behind the harmonization of animal welfare measures is to eliminate distortions of competition. Whereas animal welfare has not been a major concern in EU agricultural integration, the Treaty on the Functioning of the European Union, article 13, demands that animal "welfare requirements" need to be considered in EU policies, including farming policies. Directive 98/58/EC not only sets specific, binding standards on keeping animals for farming purposes, such as measures for minimum living space per animal, but also general principles on how the farm animal legal framework has to be adopted by the member states. One is that Member States shall make provision to ensure that owners (caregivers) or keepers take all reasonable steps to ensure the welfare of animals under their care and to ensure that those animals are not caused any unnecessary pain, suffering, or injury.

Two sub-principles can be identified here. One relates to the institutions for protecting animals. If a Member State has adopted a legal institution that regulates animal welfare in line with article 3, other Member States that do not yet possess this institution may copy this approach. The German institutional framework ensuring welfare, via statutory instruments of the Ministry of Food and Agriculture, has not been challenged under EU law and became a role model for other national laws. The introduction of a new legal framework that clearly deviates from the one common in Germany, for instance the introduction of certain animal rights, would have to be legally justified as a better "provision to ensure [...] welfare" in order to comply with article 3. This indicates how Directive 98/58/EC and its precursors paved the way for the harmonized institutional setting of animal welfare policies in EU member states today. Competent authorities of the national governments issue regulations, ordinances, or statutory instruments with relevant specifications based on scientific expertise on animal welfare.

The second principle implicit in the directive is one of content. Article 3 already indicates the direction of how the objective of animal welfare is to be implemented, namely by ensuring "that those animals are not caused any unnecessary pain, suffering or injury." This formulation is nearly identical to § 1 of the German Animal Protection Act. Like in § 1 in the German law, article 3 does not clearly define welfare as the absence of unnecessary pain, suffering, and injury. However, the prohibition against inflicting unnecessary pain, suffering,

and injury both in § 1 of the GAPL and in article 3 of Directive 98/58/EC can be seen as the “legal implementation” or “protection” of animal welfare.

### Animal Joy as a Sub-Aim of Welfare

#### *Animal Welfare as a Scientific and Normative Subject*

According to the World Organisation for Animal Health (OIE) (2015):

[A]nimal welfare means how an animal is coping with the conditions in which it lives. An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behavior, and if it is not suffering from unpleasant states such as pain, fear, and distress.

According to this definition, the welfare of an animal can be either poor or good. However, the simple dichotomy between poor and good is insufficient, especially where such diverse concepts as health, suffering, distress, and innate behavior are involved. If the overall political aim is to protect animal welfare, the question arises as to what level of welfare the state should protect. In the following, we discuss to what extent joy is part of animal welfare and whether the two laws in question protect animal joy.

#### *Welfare and Joy*

The OIE definition, Directive 98/58/EC, and the GAPL do not specify the role of joy within the concept of welfare. In the following, we analyze the most influential scientific and philosophical approaches towards animal welfare in order to discuss the extent to which joy should be considered a sub-category of the state of welfare. The answer is relevant because it might be that welfare and joy are completely different categories and that a political objective of protecting joy would not necessarily be included in the objective of protecting welfare.

Here it should be noted that the mental state of “animal joy,” and its synonym “pleasure,”<sup>2</sup> have gained increasing attention in animal science in recent years. Joy is referred to as a pleasurable state in the realm of an animal’s mental, emotional life. It encompasses material sensations such as food taste, and more complex social ~~emotions and other emotions~~ (Beckoff, 2008; Balcombe,

2 In all languages, there is a rich vocabulary for aspects of joy. In English this includes not only “pleasure,” but also “delight,” “excitement,” “fulfillment,” or “comfort.” We have opted for “joy” mainly because it is the most common opposite of “suffering.”

2009; de Waal, 2011). Behavior patterns of play, sex, social bonding, rewarding for successful strategies, or maintaining homeostasis express joy (Balcombe, 2009). Long prevailing scientific skepticism towards animal joy has gradually been overcome, mainly by the argument from analogy. Given that humans experience joy and that animals of many other species share very similar properties and behavior patterns, there is a scientific consensus that animals probably also experience joy (Beckoff, 2009; de Waal, 2011).

Following de Waal (2011, p. 203), we understand joy as an umbrella term for various pleasant states, including social emotions and pleasurable material sensations. Joy is thus the opposite of suffering, which is, accordingly, an umbrella term for various unpleasant states, including social emotions and material distress. The cognitive component of joy is an active, stimulating excitement and affirmation of a situation, whereas suffering is an active rejection of a situation. This means that joy is more than merely the absence of suffering. Both joy and suffering are to be treated as singular mental states that are entangled in the realm of counteractive motivation. It is worth noting that the entanglement of joy and suffering as opposites implies that the ascription of joy is based on the same principles as the ascription of suffering.

Animal welfare has developed into a scientific discipline. Here we present two paradigms that have crystallized in the area of animal welfare science that are most central to this discussion. The two paradigms are not necessarily mutually exclusive. Rather, they supplement each other such that they have been combined and interrelated in recent years. We have chosen this approach as the most suitable to examine the question of whether there are conceptual boundaries between the concepts of welfare and joy.<sup>3</sup> Two paradigmatic approaches in animal welfare science have been summarized by Yeates et al. (2011) as the “coping paradigm” (Broom, 1991) and the “innate behavior paradigm” (Rollin, 1995).

Broom (1991) defined animal welfare as the capacity of animals to cope with the environment. This approach assumes that whenever an animal is able to cope with the challenges posed by the environment, welfare is secured. On first sight, the orientation towards coping may leave little or no room for joy. Coping is associated with circumventing the worst, not reaching the best possible outcome. However, what counts as coping is also a matter of definition.

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3 At this stage, one could already argue that our approach begs the question. It would ignore the possibility that welfare is neither a synonym for joy nor something completely different, but simply transforms what we call joy in the human context into the animal context. The problem is that such depictions would ultimately deny that animals are capable of joy, and here our assumption differs decisively.

Modern cognitive ethology complements Broom's approach to welfare in that joy has a role to play in coping well with the environment (de Waal, 2011). For instance, the joy of sharing a relationship through social bonding is intertwined with the biological function of family and other forms of cooperation (Beckoff, 2008). Nevertheless, it can be analyzed whether the ethological focus on the biological function of coping tends to blur the interrelation between welfare and joy, paving the way towards a potential disregard of joy in animal welfare conceptions—that is, as mere freedom from suffering.

As indicated by Balcombe (2009, p. 208f), pleasure has been neglected in scientific animal welfare debates compared to suffering. One possible explanation for this neglect lies in the behaviorist definitions of welfare. In contrast to modern cognitive ethology, classical farm animal ethology in the tradition of Konrad Lorenz and Niklas Tinbergen operated on the premise that subjective phenomena could not be grasped in an objective way (Sambraus, 1978, p. 15; Fraser et al., 1997). The main research findings thus constitute measurable data on behavior. The question of the subjective perspective of an animal, including philosophical-theoretical discussions on potential ways of describing such a perspective, is left aside altogether (Rollin 1995, p. 34ff). The philosophical analysis of behaviorism by Krueger and Overgaard (2012) reveals the shortcomings of the coping paradigm in the behaviorist tradition:

The basic tenet of behaviorism is that mental terms and psychological activity can ultimately be given behavioral explanations. This picture clearly obviates the need to appeal to first-personal, introspectively-accessible phenomena when describing mental events, states, and processes.

p. 274

This shortcoming is closely connected to the disregard of joyous aspects in many welfare definitions. An important parameter for identifying non-coping in a behaviorist farm animal welfare approach is abnormal behavior, whereas normal behavior either refers to inborn instincts (the OIE definition refers to “innate behavior”) or to observable behavior patterns that enable a species to survive under the conditions of a certain ecological niche. Abnormal behavior thus becomes associated with suffering, and the abnormality of joy is left out of the analysis. There is no such thing in ethology as abnormally joyous behavior. From an evolutionist point of view, it is relevant whether a species survives in a particular ecological niche. A high degree of suffering is often linked to fatal health risks, whereas a high level of joy is not necessarily relevant for survival. This might explain why suffering is part of many scientific

welfare definitions while joy is not. However, an animal that copes well is certainly in a good position to experience joy.

Rollin (1995) has offered a comprehensive critique of classical animal welfare approaches. Rollin not only rejects agnosticism toward animal mentation but also the neglect of ethics, stressing that the presuppositions of assessing animal welfare are always value-laden and hence not indisputably evident (Rollin, 1995; Fraser et al., 1997). Rollin has also elaborated an independent approach towards animal welfare, asserting that animals have a *telos*, a natural objective in their behavior. According to Rollin, animals who act according to welfare are acting in accord with their *telos*. Hence, welfare is embedded in the “biological natures” of animals, even though this “nature” or “*telos*” might change through breeding (Rollin 1995, p. 172).

For Rollin (1995), welfare is obtained as an expression of species-specific behavior. The problem with Rollin’s approach is that it requires us to distinguish between the embedded nature of an animal seeking welfare and cases where animals learn to adapt to new situations. The latter cases are of relevance for farm animal welfare and can be illustrated by looking at wild animals adapting to the new circumstances of a city life; they do not necessarily face either more or less welfare in their lives compared to their cousins in the wild, although their behavior patterns have changed. Nevertheless, the identification of innate behavior and the possibilities to express themselves is certainly important for assessing whether animals are well.

For example, when pregnant sows have lived all their lives in buildings with hard-cover flooring and are suddenly released to an area with sand and straw, they build nests for their offspring (Stolba & Wood-Gush, 1989). This expression of innate behavior can be disabled or enabled by the human conduct. There is reason to believe that by disabling it, the welfare of the animal is decreased. In this restricted sense, Rollin’s (1995) case for the existence of an animal *telos* is valid: If there is no welfare benefit for disabling sows’ ability to build their nests, we assume that it is in their best interest to do so. This manifestation of innate behavior, however, does not provide any evidence that the sow feels joyous when building a nest. And indeed, there is to date no scientific research on this. However, given that the reason for enabling innate behavior is to relieve suffering, the role of its counterpart—that is, joy—cannot be ruled out: Where suffering is the rejection of a situation, joy is the affirmation. And when biologists determine a behavior to be “innate,” they might often be witnessing a bodily affirmation of a situation by the animal.

Given this clarification, we should note it as problematic when assessing welfare that an animal may learn a new behavior that is better suited to a new

(e.g., confined) environment and that the animal might come to find joy in the expression of this new behavior. This is because Rollin's (1995) approach allows that animals replace one behavioral pattern with another in order to cope with the environment. Here, Rollin leans on Broom's coping paradigm. For example, for wolves to hunt their prey for food, acquisition is hardly the only or the best way of coping. Rather, it is a necessary behavior under natural conditions, which they might abandon for a different one that allows the same or more welfare. For example, the wolves' food is being provided for them by human intervention.

Many dogs express a kind of joyous excitement when expressing hunting behavior. However, this is not inseparably linked to actual hunting. For instance, it can also be expressed as play between species-members. And it is not necessarily in a dog's interest to be forced to hunt for survival. This shows that it is not enough to assess welfare by observing what an animal does normally under conditions set by evolution in the non-human environment. A behavior expressing a telos can take on a new and better adapted form in a new environment without losing its joyous component.

Like the paradigm of coping, the paradigm of species-specific (innate) behavior holds that joy may be part of welfare. The main difference between joy and welfare is that welfare may also be generated when basic needs—especially those necessary to survive—are satisfied, for example, when suffering is avoided. Joy, in contrast, cannot be reduced to freedom from suffering, because it is by definition a positive mental state. The difference is best described by the analogy that a good life is not secured by sufficient health alone.

#### *Negative Duties—A Case for Ignoring Animal Joy?*

As the protection of welfare can include both the avoidance of suffering and the enabling of joy, the question is what is more relevant from an ethical point of view: suffering or joy? To be sure, there are legal cases where the avoidance of suffering is not enough to safeguard a source of joy for an animal. Decision-makers are faced with conflicts here, as would be the case regarding minimum housing conditions of farmed animals.

Article 1 of GAPL and Article 3 of the EU Directive 98/58 bear witness to the fact that it is the duty not to inflict suffering when legally implementing animal welfare. In the Kantian tradition, there is a theoretical distinction between negative duties (as not to do things) and positive duties (as to do things). The negative duty is fulfilled if a person does nothing harmful or wrong to somebody else. Immanuel Kant's practical philosophy is based on the assumption

that negative duties have primacy in cases of conflicts with positive duties.<sup>4</sup> In this tradition, negative duties became associated with human rights in a legal political system. The freedom of an individual is clearly restricted where another individual is threatened with harm. This distinction between negative duties and positive duties has subsequently been transferred into the field of animal ethics, for example, by Wolf (2012) and Korsgaard (2004).

It is not our intention here to provide a full account of the ethics behind animal welfare. We claim only that (a) the welfare of animals is ethically relevant; and (b) that joy is a sub-category of animal welfare. With these two provisos as starting points, we now ask whether the protection of sources of joy should be an explicit part of farm animal welfare legislation. It could be that the legal emphasis on pain and suffering views protection of joy as a positive duty, making it a matter of less ethical urgency than the negative duty of protecting animal from suffering. This view assumes that the distinction between negative and positive duties is of ethical relevance. We reject this assumption. The distinction becomes irrelevant because farmed animals are fully dependent of human care. Within the human responsibility for animals, the care for the avoidance of suffering and presenting opportunities for joyful experiences are inextricably linked.

The will to reduce suffering often comes into direct conflict with enabling essential qualities of a joyous life—for example, when it implies the depletion of the environment to monotone, unchallenging conditions. Boredom as an atypical kind of psychological distress can be a result of efforts to ensure that the animal is healthy and calm, in order to be fattened as quickly as possible (Stolba & Wood-Gush, 1989; Wemelsfelder, 2005). For an animal to overcome boredom in a positive way, his/her ability to live out joy must be assured. In such cases of conflict, there is no clear reason the elimination of sources of harm should necessarily be more ethically urgent than enabling joy. An animal life in the wild should not be idealized, as it entails many risks. However, it can be considered as more rich compared to a life under safe production conditions, essentially because it entails more sources of joy. Hence, for farmed animals, the distinction between more urgent negative duties and less urgent positive duties cannot be applied.

The justification of farm animal welfare measures is not comparable to the justification of human rights in modern human societies, where primacy is on harm avoidance over doing good. That negative duties trump positive duties makes sense in the realm of inviolable rights in human interaction. Human

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4 Kant never made the reason for this very explicit. See also Tugendhat (1994, p. 149, pp. 328-329).

rights only protect citizens from threats to their joyous, successful, or happy life. With the help of family, friends, and other close partners, individuals can achieve a joyous life. The situation of farmed animals is radically different. Most of the time, they do not have human partners capable or willing to enable them to achieve a good life. Moreover, their possibility to help each other is severely restricted, for example, via the control of social and familiar bonds, the control of parental care, restrictions on food, or the restriction of free movement. This is why it cannot be assumed that farmed animals have the possibility to have fulfilling lives if only they are protected from harm. In summary, the distinction between positive and negative duties cannot be used to justify the claim that in order to ensure the welfare of farmed animals, a state or institution has merely to safeguard them from suffering and may ignore the aspect of joy.

### Protecting Animal Joy Under German and EU Law

As mentioned above, early farm animal ethology showed reservations towards the aspect of joy in welfare. Welfare was interpreted mainly as an absence of suffering, and the relevant indicators were taken to be behavior patterns that secured evolutionary survival.<sup>5</sup> This tendency to ignore joy can still be found in the German and EU animal welfare legal framework. Here we analyze the legal provisions that are most relevant for implementing welfare in order to assess whether and how joy can be protected.

#### *Animal Joy and the German Animal Protection Law*

The implementation of farm animal welfare under German law is based mainly on § 2, which requires that animals be kept “according to their needs” and that a person who keeps an animal: “is not allowed to restrict the possibility of movement of an animal appropriate to its species in such a way that it endures pain or avoidable suffering or damage.”

Subsection § 2a authorizes the German Ministry of Food and Agriculture to specify these requirements by statutory instruments. As mentioned above,

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5 An influential German publication promoting this view is Sambraus's (1978) anthology *Nutztierethologie* (farm animal ethology), which was the first comprehensive collection of scientific approaches aimed at informing GAPL, especially the behaviorally just and species-appropriate keeping of animals mentioned in § 2. Referring to § 1 of GAPL, the veterinarian and public official Gunther Wennrich stated an animal is in a state of welfare whenever suffering and disturbed behavior can be ruled out scientifically; see Wennrich (1978, p. 25).

this authorization does not refer to the objective of welfare. The executive branch of the government may issue instruments “insofar as the protection of animals requires this,” but not to pursue the objective of welfare. Areas of content for such instruments are defined in § 2a, paragraph 1: “the possibility of movement or the social needs of the animal, (2) rooms, cages, other boxes and further equipment for keeping as well as the conditions of tethered housing, feeding and drink equipment.”

Let us take an example of how the disregard of joy impacts the legal implementation of the objective of welfare. In most dairy farms, calves are routinely separated from their mothers immediately after birth. The calves are kept isolated from their mothers in pens and are fed by farm workers. This separate feeding facilitates production processes and increases the amount of saleable milk per cow. This example is an obvious intervention in the life of the mother-cow and her calf. Moreover, the intervention blocks a central source of joy, namely the close relationship between mother-cows and calves. It is obvious that the intervention harms both mother and child. However, the responsible department at the Ministry of Food and Agriculture can consider this separation of mother and calf as incompatible with the requirement in § 2 to keep animals under conditions that are “behaviorally just” only if it can be shown that the calves or the mother-cow exhibit an abnormal behavior.

This is a problematic demand, as animals adapt to all kinds of harmful situations in order to survive. A mother-cow is distressed by the sudden loss of her newborn calf, but she will not continue being distressed for long. After a while, she will start eating and resting again, as always. If she manages to remain in good health, it will be difficult to find an indicator that she is suffering, given the orientation of welfare science towards coping as survival. And calves will not cry for their mother for long after they realize that this does not change their situation. From our point of view, the demand of scientific evidence for abnormal behavior and the ensuing impossibility to identify any deprivation of joy as a welfare problem limits the opportunities to protect the welfare of animals.

#### *Animal Joy and the EU Directive*

Article 4 of European Council Directive 98/58/EC requires Member States to ensure that animals are kept in line with “established experience and scientific knowledge” regarding their “physiological and ethological needs,” which are then further specified in the annex. Annex 7 uses nearly the same formulation as the GAPL § 2. Member States are to ensure that “[t]he freedom of movement of an animal, having regard to its species and in accordance with established

experience and scientific knowledge, must not be restricted in such a way as to cause it unnecessary suffering and injury.”

Regular freedom to move is probably the most fundamental prerequisite for experiencing a sense of joy. Joyous forms of behavior linked to exploration, play, foraging, and social bonding are significantly impeded when the life of an animal is restricted to an area only slightly larger than his/her own size. Nevertheless, under EU law, as with the GAPL, it is not joy that is the parameter that determines the appropriate amount of space for the animal, but the absence of suffering. A paradigmatic example for a lack of joy is boredom. Boredom may set in when joyful experiences are impeded. Whereas boredom is not hard to demonstrate using objective measures, it is more difficult to link boredom to suffering. It is only over a prolonged period that boredom will lead to severe, measurable psychological distress (Wemelsfelder, 2005).

Boredom might still be regarded by other experts as necessary in the economic sense, however. The reduction of animal activities reduces the burning of calories and increases the output in terms of production. Likewise, animals may be deprived of space and light in order to keep them calm. To what extent this deprivation is really justifiable is an ethical question. In the wording of the directive, assessments must be made on the basis of “established experience and scientific knowledge.” However, given the variety of different approaches in research on animal welfare, it would be necessary to further specify which scientific approaches and experiences are to be used here and to what extent the effort of animals to withstand the depletion of life quality counts as suffering or successful coping.

Annex 7, paragraph 2, in the directive states: “Where an animal is continuously or regularly tethered or confined, it must be given the space appropriate to its physiological and ethological needs in accordance with established experience and scientific knowledge.” This provision assumes that it is at least possible to continuously tether an animal and still fulfill its ethological needs. As discussed earlier, different approaches towards welfare will affect the evaluation of such a practice. Whereas a need might be considered fulfilled when the behavior in question is in accordance with a behavior that serves the survival of the species, such as giving birth to offspring, this observation may not be sufficient to settle the question of whether the animal has been deprived of sources of joy.

An example here is animal play. An animal who is permanently tethered or confined lacks the chance to play, but he/she still copes with the conditions in the way that he/she survives and gives birth to offspring. Annex 7 does not provide indicators for a “lack of joy.” Given that joy is an integral part of welfare, Articles 3, 4, and the provisions in Annex 7 bypass an essential part of the

question of how to “ensure that the owners or keepers take all reasonable steps to ensure the welfare of animals” (Article 3). The question is quite literally reduced to disputes over suffering.

### *Potential Reasons Behind the Disregard of Joy*

There are a variety of ways to explain the disregard of animal joy in the animal welfare legal framework compared to its counterpart: suffering. One explanation is that many scientific, veterinary animal welfare definitions, such as the OIE definition above, focus on unpleasant states (suffering and distress) and do not explicitly mention joy. Whether some animal scientists have urged policymakers to integrate the protection of pleasant states like joy into the legal framework can only be investigated using a country-by-country analysis.<sup>6</sup> The behaviorist mainstream tradition of animal welfare sciences in the US and in Europe has viewed the study of animal mental states such as thought and emotions as anthropomorphist (Rollin, 1998; de Waal, 2011). Only in the last two decades has animal cognitive science begun to challenge this tradition (Benz-Schwarzburg, 2012; Wild, 2012; Lurz, 2009; de Waal, 2011).

Another potential explanation for the disregard of joy stems from the assumption of ethical primacy of negative over positive duties. As we have argued, this kind of negative preference cannot be justified ethically. Animal welfare legislation is an expression of social and ethical traditions, including religion and culture. However, it is also subject to economic demands. An economic benefit for the disregard of joy may be generated due to factors of competition and need for profitability in the animal production sector. Ensuring joy may be expensive. Production systems may be adequate at preventing animals from heavy suffering and disease and still be competitive and efficient in the economic sense. As long as the animal survives and is not physically ill, economic value is generated. By contrast, enabling animal joy may not necessarily have a comparable economic value.

Given the broad spectrum of what welfare can mean, one may distinguish an external agenda of welfare policies from an internal agenda. The external agenda refers to what is communicated to the public. Here, the aspect of joy certainly plays a role. There is a common intuition that associates joy with welfare, and perpetuating this association can therefore be used to legitimize policies (Borkfelt, Kondrup, Röcklinsberg, Bjørkdahl, & Gjerris, 2015). The internal agenda refers to what level of protection is achieved legally. Here, a focus on animal “welfare” may serve only to ensure the animal’s most basic needs.

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6 For the case of Germany, the introduction of the concept of “Wohlbefinden” in the animal protection law and the neglect of joy in the animal welfare sciences of the 1960s and 1970s has been analyzed in von Gall (2016).

Emphasis on the welfare objective eases the public's anxieties over a lack of animal protection in farming. Everybody likes to hear that the law strives to give animals a joyous life. On the other hand, economic considerations may be satisfied when legal and practical measures are reduced to ensuring the basic health needs of the animals. The political advantage of generating public acceptance and satisfying economic interests by switching between an outer and an inner agenda is, in our view, the likely explanation for the success of the term "welfare" in animal politics and the displacement of joy.

### Conclusion

Animal joy is a sub-category of animal welfare. However, EU and German welfare provisions lack effective terminological means and have not given priority to protect sources of joy for captive animals. Thus, the extent the provisions safeguard opportunities for animal joy remains questionable. This paper has highlighted a problem both from the perspectives of animal welfare science and ethics. From an ethical point of view, keeping animals in captivity is by itself such a major intervention in the animal's life that any claim to non-urgent positive duties towards them is impossible to justify.

In our view, there is no valid ethical justification to politically focus on the avoidance of suffering of confined animals while disregarding the aspect of joy. There might be economic reasons to do so, but the rationale seems hard to justify ethically. This article does not establish ethical duties for enabling farmed animals to have all potential sources of joy. A meta-ethical question here becomes whether and to what extent our political will to enable animal joy should stem from ethical duties alone. Another relevant political motivation could be our sympathetic joy with animals. This can be a new, promising path: to undertake a genuine change of animal politics, while overcoming the belief that animal politics is solely about our release from guilt.

In order to make the aims of welfare legislation transparent, decision-makers should clarify the extent to which the law protects animal joy. Any representation of animal interests must consider assuring joy as a possible ideal on the animal side before beginning to compromise with economic or other practical interests.

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