

Public Participation in Intensive Livestock Production: The Role for Deliberative Institutions

The capabilities approach uses sympathetic imagining, despite its fallibility, to extend and refine our moral judgments in this area. It also uses theoretical insights about dignity to correct, refine, and extend both judgments and imaginings. There is no surefire recipe for doing this right; but we have to begin somewhere, and it is likely that any thoroughgoing and serious moral exercise will do better in this area than the self-serving and half baked thinking that most of us typically do on this topic.

- Martha Nussbaum, "Beyond 'Compassion and Humanity'" (Nussbaum 2007)

Introduction. As Nussbaum indicates, the space for democratic innovation in the domain of 'animal justice' is wide open. This paper assesses the viability of her 'capabilities approach' against other ethical and political policy models, using the problem scenario established in the mid-term paper as a guiding template. Given the inchoate nature of the animal production debate in policy decisions, this work does not lay out a full design replete with legislative and regulatory vehicles to address animal justice in the domain of farm animal production. Rather, I outline the mechanisms and feasibility of a deliberative forum on the ethics of farm animal production, focusing specifically on the ripeness of public deliberation about optimal ethico-political models.

I begin in **section I** with an overview of why market relations continue to obfuscate open discussion among the array of stakeholder parties to animal production. After explaining how market forces prompt policy capture at the expense of public interests, I present a caveat that organizers must note and balance: the legacy of Judeo-Christian thought on the 'average' American citizen's moral calculus regarding animals. Finally, section I concludes with an overview of the ethical difficulties of ignoring animal

interests. This clash of market, religious, and ‘academic’ ethical branches calls for deliberation to sort out the weaker and stronger arguments, the wheat from the chaff.

Section II continues with a proposed design for a deliberative forum to assess the various framework approaches to animal production issues that are introduced in section I: market-based, rights-based (deontological), utilitarian, and capabilities oriented. Such a program will be funded and organized either by a governmental body or by an NGO with sufficiently few ties either to animal advocacy groups or to animal producers. This section will assess the strengths, weaknesses, and feasibility of various member selection, information balancing, and empowerment options.

While section II focuses on the logistics of forum creation and the optimal choice of institutional model, **section III** focuses on the difficulties of presenting the various options fairly; the antagonistic nature of the livestock production and animal rights debate often yields vituperative instead of debate, which in turn results in empirical sloppiness and rhetorical grasping at straws on both sides. I therefore supplement my introduction to the key features of the market and ethical options with an overview both of the pitfalls and social biases of each and of the extent to which deliberative discussions will be captured by information, accountability, or capacity biases. (In other words, anything that will detract from letting ‘the strength of the stronger argument’ carry the day.)

Section IV concludes with a culling of what I perceive to be the most challenging barriers facing the deliberative experiment in farm animal justice: capture by socio-religious values that do may not allow for true deliberation, the lobbying power of opposed stakeholders to block policy progress, and the esoteric nature of the ethical theories being compared (and the resultant likelihood of group capture by members with

information advantages). The challenge is to maintain balance while correcting for group biases. Doing so entails using inputs from external stakeholders carefully to avoid either policy capture by stakeholder biases or policy sabotage by opposed stakeholders.

Section I – The Policy Palette and the Causes of Unstable Preferences: Market, Religion, (Secular) Ethics. This section, an overview of my analyses in the mid-term paper, progresses with three interrelated parts: 1) the market: market forces, information asymmetry, and inchoate preferences; 2) the moral landscape: the selective philosophical legacy of the Judeo-Christian tradition, 3) the ethical landscape: Kant (rights-based), Mill/Singer (utilitarian), Nussbaum (capabilities-based, or ‘Rawlsian revisionist’).

The juxtaposition of free markets and anthropocentric moral values are responsible for the market failures that the ethicists under discussion have both contributed to and laid bare. The choice of policy orientation, however, is complicated by the competing claims of market, religious, and ethical doctrines. Importantly, for the purposes of our deliberative experiment, only the first option and the variants on the third option are included: the secular nature of the U.S. liberal state system disallows any purely religious public policy decisions. This is not to say, of course, that religious values are irrelevant, but that their energies should be channeled either towards the market solution or towards one of the ethical branches available to inform policy decisions.

1) The Market. Although the root causes of information asymmetries in livestock production and consumption trace to industrialization and urbanization—what Marx termed alienation from the forces of production—the concentration of livestock

production into the hands of fewer and fewer large producers¹ has greatly consolidated their lobbying power, and has thus diminished the public's awareness and oversight.

Market mechanisms are a source of existing information asymmetries, but they are also becoming increasingly popular as a means of addressing the farm animal justice issue. U.S. livestock practices are being influenced by voluntary purchasing decisions from retailers with growing purchasing power who are themselves responding to consumer and NGO calls to improve their practices. Cases in point include Chipotle Market Grills' expanding use of humanely raised chicken, pork, and beef (contingent, Chipotle's website states, on the availability of humanely sourced supply—their first major partnership was with Niman Ranch), Wolfgang Puck's Decision to source from more humane suppliers, (Jennings 2007) and Burger King's decision to begin sourcing from humane suppliers of pork and eggs. (Walkup 2007)

There are, however, problems with the voluntarist model. Only the highly visible retailers are likely to participate, and it is hard to compare results across firms operating with in-house animal welfare councils that do not communicate with each other about standards. In such a situation, operational transparency emerges not only as a necessary precondition to, but also as an obstacle to, better practices: by opening themselves up to public scrutiny, 'first mover' producers might invite the very public opprobrium they are trying to address.

¹ Thus, between 1967 and 1997, the number of swine farms plummeted from over a million to 157,000, the top 3% of which produce 60% of U.S. hogs. (Horrihan *et al* 2002) In 2000, operations with 5,000 or more hogs comprise 50% of U.S. production. (Speir *et al* 2002) The poultry and beef industries show similar intensification. See also Lawrence Busch, who writes, "first, within each industry concentration is growing rapidly...tractors...agrochemicals...the seed industry...the food processing industry...Second, vertical coordination and integration are becoming more commonplace. Supermarkets can and do dictate to their suppliers the precise form that fresh produce should take...Third, what was once a first world phenomenon is spreading rapidly in what was the second and what still is the third world." (Busch 2003)

A further problem with the voluntarist model is its too-heavy reliance on ethical consumerism. In economic terms, information asymmetries abound regarding the consuming public's knowledge set about the environmental, social, and animal welfare effects of intensive livestock systems. If consumers surmount the asymmetry preventing full accounting of cost externalities, however, industry-sponsored ecolabels can then attempt to connect consumers to products by internalizing such costs. But given the proliferation of various types of ecolabels addressing a wide and somewhat fragmented range of issues, such a tactic runs the risk of confusing and overwhelming—rather than motivating—the citizen-consumer. (Thompson et al 2007)

2) The Moral Landscape. An issue that this paper does not directly address but which must be kept constantly in mind is the effect that religious sentiments will have on deliberators' views towards humans' treatment of animals. As Nussbaum writes,

even though Jewish and Christian writers studied the Greeks and Romans and incorporated many of their ideas, it is not very surprising that the school of ancient ethical thought that had the greatest influence on their thinking, with respect to the animal question, was Stoicism, of all ancient Greco-Roman views the least sympathetic to the idea that animals might have ethical standing. (Nussbaum 2007, 328)

The subsequent history of the three 'religions of the book', then, has diverged significantly from that of, say, Hinduism, which places greater emphasis on non-human animals and whose followers are more likely to be open to deliberative change.

3) The Ethical Landscape. If the secular and religious normative domains agreed on the appropriate agents and mechanisms of moral and ethical discourse, the deliberative experiment I propose would be unnecessary. Unfortunately, the ethical landscape faces the opposite problem: even within the domain of Western philosophical ethics alone, Kantians prescribe different ethical axioms from utilitarians, whose sum-

aggregative methods of allocating policy preferences are themselves distinct from Nussbaum's newly popular natural behavior-oriented neo-Aristotelian approach.

From this fragmented disciplinary space, then, emerges an innovative role for deliberative fora. This role is all the more apposite considering the title of Nussbaum's most recent book, *Frontiers of Justice*, and her inclusion of species membership (along with nationality and disability) as a key ethical issue that needs incorporation into the social fabric of the Rawlsian conception of justice defending inequality in liberal states.

The deliberative group will choose to preference one of the following at the expense of the others: market solutions, rights-based models, utilitarian models, and capabilities models. Market solutions will tend toward voluntary initiatives by industry retailers like McDonalds, Burger King, and Wolfgang Puck to require humanely sourced meat from its suppliers. Contractarian rights-based models will tend to exclude animal interests from anything but a derivative consideration, due to the nature of social contract theory. Utilitarian models will tend to use *sum aggregation* to order policy preferences (and, notoriously, to maybe ignore strong interests of a few to serve the weak interests of many). Finally, the capabilities approach—blending aspects of deontological and utilitarian thought—will view animals as moral agents *in se*, and will preference policies that allow animals to practice a range of necessary natural and psychological behaviors.

The mission of the deliberative experiment will not be to select one option exclusively; in fact, many of the tenets of the normative options are compatible with voluntarist market-driven initiatives, and Nussbaum's model is itself a blend of various philosophical traditions. Rather, the group members will seek to identify a priority position through which decisionmakers can prioritize policy options.

Section II – Optimal Architecture for a Deliberative Forum on Animal Justice. Many pitfalls scar the landscape of the animal welfare policy domain: the ‘debate’ is heated to the point of mutual hysteria, the social mores underpinning meat consumption are resistant to change, and the range of issues and tactics available to discuss and implement are open. But this openness is a strength as well as a weakness: it is ripe for groups like the Kettering Foundation to organize deliberative fora.

Although this work focuses on the possibility of using deliberative groups to select the optimal framework theory to guide and prioritize the legal, regulatory, political, social, and technical steps that would follow, other potential domains for deliberation include the definition of animal welfare² and the proper calculus of weighing animal interests against human ones. However, because the codification of standards involves the balancing of different values and preferences, such as the extent to which animal preferences should weigh in against environmental and human security preferences, or the value to be given to behavioral as against physiological welfare indicators, such interests cannot be categorized without a normative framework to guide them.

The questions to be asked, then, are: who will organize the forum? Who will participate in the forum? Which external agents will be contacted for assistance, if any? How will interests be balanced? What mechanisms will be in place to check against bias? What biases are most likely to surface in a deliberation of such a nature? And, finally, how will the results of the deliberation be put to use in policy formation?

Funding, Headquartering, and Solicitation. The importance of avoiding delegitimizing accusations of bias from either ‘camp’ of stakeholder groups means that

² Many such classificatory schemes exist, and they often vary specifically depending on the extent to which purely scientific criteria to define welfare are used (and also on the nature of how ‘scientific’ is defined as relevant to the research). See Fraser 2006 and Zaludik et al 2007.

the question of funding should be approached very carefully. Ideally, the funding should come from third-party sources without strong ties to either animal advocacy or to livestock production interests (through grants, private donations, or other such mechanisms). If these efforts are insufficient, however, the next best alternative would be to approach the leading organizations in both camps, explain the nature of the experiment, and demonstrate that it would be in their best interest both to support the program and to provide input for the group moderators to use in providing information.

On the question of what kind of organization should spearhead the project, the focus should be on what kind of organization should *not* do so. Any organization whose reputation is entrenched as an advocacy organization for either camp should be immediately dismissed; such organizations should play an advisory—and potential funding—role whose inputs are vetted, but no more. Thus, PETA and the National Pork Board, to name two examples,³ should have no part in spearheading the effort.

Instead, a “nonpartisan and nonpolitical”⁴ organization like the Kettering Foundation should spearhead the organizational effort. Such an organization, whose mission is “to make democracy work as it should,” has little bias in the domain of advocacy. (Indeed, the challenge in their case might be convincing the organization that such an experiment is within their purview.) Headquartering with Kettering would yield substantial social, institutional, and even financial capital to balance the competing interest group camps successfully against each other.

³ In the livestock production domain, other pertinent trade associations include, but are not limited to, United Egg Producers, the American Egg Board, the National Pork Producers’ Council, the National Pork Board, the American Protein Producers Industry, the National Cattlemen’s Beef Association, and the American Meat Institute. In the area of animal advocacy, the most prominent organizations include the Humane Society of the United States (HSUS), Compassion in World Farming (CIWF), the American Society for the Prevention of Cruelty to Animals (ASPCA), Farm Sanctuary, Mercy for Animals, and Humane Farm Animal Care (HFAC).

⁴ From the Kettering Foundation webpage. Available at www.kettering.org.

Upon establishment of the foundation and procurement of its financial resources, organizers should be hired with backgrounds in deliberation planning, philosophical ethics, and market-based initiatives. Additionally, the leading animal advocacy organizations and the leading animal production trade groups should both be solicited to provide an expert voice to defend their interests. These individuals should make up the core of the organization staff; although the organizing foundation may choose to allocate experts to mediate between these competing voices.

The volatile nature of the questions being asked are such that a competing interest group model in the tradition of interest group liberalism (Lowi 1979) can best capture and distill the opposing arguments that the participants will then judge. As a bonus, one of the main weaknesses of interest group liberalism will be addressed through a framework amenable to interest group liberalism itself: the tendency to shut out the public.

Participation and Selection. On the question of participant selection, a range of templates exist from which to select an optimal model. Using Archon Fung's democracy cube as a template (Fung 2005), the following ranges of participants exist as potential contributors: expert administrators; professional representatives; professional stakeholders; lay stakeholders; randomly selected; open, with target recruitment; open, self-selected; and diffuse public sphere.

As the previous section indicates, expert administrators will be selected from the relevant range of interest domains to complement each other (including invitations of professional representatives). The method of group selection, then, can be from the remaining options. The choice of open and self-selected can be summarily dismissed, due to the strength of professional stakeholders in the issue under discussion and the resultant

likelihood of group capture. The choice of diffuse public sphere can also be set aside, due both to the challenge of sampling a size equal to the population at large and to the abstruse nature of the question at hand. Similarly, although the choice ‘open, with target recruitments’ may appear optimal, the nature of the question—low public knowledge versus high stakeholder knowledge—weighs in against such a choice.

The least dangerous and most feasible option, then, is random selection. To guarantee an equitable distribution of participants, however, the sample should be stratified rather than truly random. Stratification may include, but should not be limited to: age, gender, income, ethnic background, level of education, religious affiliation,⁵ geographic background (i.e., urban, suburban, peri-urban, rural). Some stratifications will alter the sample more than others. Including level of education, for example, will, on the one hand, increase the likelihood that the group is able to truly comprehend the abstruse nature of the arguments being presented. On the other hand, peppering the sample with PhDs will also increase the chances that the highly educated few will dominate the less educated many, and deliberative growth will be the loser in the exchange.

Extent of Authority. More so than the manner of selection and the mode of communication,⁶ the final axis of Fung’s democracy cube is heavily contingent on the level of governmental and stakeholder cooperation; hence, it is impossible to say in advance where on the cube this decision will lie. Even ideally, it is difficult to

⁵ As the section on moral landscape in part I indicates, it may be helpful to have a variety of religious and secular perspectives present to enrich the debate. On the other hand, casting too wide a net will delegitimize the democratic purpose of the experiment by drawing too heavily on marginal populations while ignoring demographically predominant groups.

⁶ It is implicit in the aims and assumptions of this paper that the preferred mode of communication will be the development of preferences.

comfortably grant too much direct authority to the group, primarily because of the vanguard nature of the experiment and the potential instability of the outcome.

On the spectrum from least authority to most authority, the participants should most likely have an advice and consent role to communicate their inputs to policymakers: thus the deliberators will draft a final document that will be circulated among USDA and other relevant agencies with some level of guarantee that they will act on this citizen's mandate, if such action is warranted. (The cloudy language here is intentional—too much authority, and the experiment has little chance of being carried out without devastating dissent from opposing stakeholder parties. Too little authority, and the experiment may have little to no effect beyond the realm of deliberative organizing circles.)

Section III – Group Bias Susceptibility of the Four Policy Models. The above sections have highlighted the dangers of information asymmetry—through market failure, stakeholder capture, and group domination—but the organizers should be aware of a range of other biases and pitfalls when constructing and executing the deliberative experiment. In particular, the deliberation experts need to be able to spot and account for cascades, hidden profiles, and a variety of social distortions (Sunstein 2005) Also, as Sunstein points out,⁷ two primary shortcomings of deliberation need to be kept in mind: the amplification of cognitive error and group polarization. (Group polarization is especially relevant in a deliberation over animal rights.)

Beyond the overall framework's susceptibility to bias and other forms of capture, each framework option being tabled by the organizers for deliberators' consideration has its own relevant strengths and weaknesses.

⁷ Sunstein offers information markets and statistical aggregation as alternatives to deliberation when the weaknesses of deliberation outweigh its strengths. This is not such a case, so this paper does not consider what Sunstein terms "a Hakeyan response to Habermas."

Market Model. The market initiatives model likely speaks to many participants day-to-day experience, and thus may be unconsciously (or consciously, although conscious preferencing is not necessarily at odds with deliberation) preferred. Such deep-seated and potentially unfounded preferences may be fixed through a mixture of priming critical thought and devil's advocacy, although the latter runs the risk of polarizing the discussion by driving the alternative choices to the extremes.

Ethical Models. Although the rights-based, utilitarian, and capabilities models have nuanced distinctions regarding their strengths and weaknesses, their striking difference from the market model calls for their grouping under a singular umbrella. The ethical models share the danger of cascades and social distortions due to dominant group members with specific pertinent knowledge. This weakness can be addressed first through the selection process—by assuring a mix with neither too small nor too great of an education-level discrepancy—and at the deliberation stage through mechanisms specifying minimum and maximum allotted speaking times per member per day.

The above list is nowhere near exhaustive: the deliberative administrators need to be steeped in the relevant work on potential pitfalls and constantly looking out for anything that might detract from having the strongest argument carry the day.

Section IV – The Key Challenges: 1) Overcoming Religious and Market Fundamentalist Stonewalling; and 2) Stakeholder Capture and Abstruse Knowledge. Although the space for a public deliberation on farm animal justice and animal production is wide open and thus ripe for discussion, there are a number of key impediments that partially explain *why* the space is still so wide open. The first problem deals primarily with resistance in the society in general, and interested trade

organizations and NGOs in particular, to such an experiment.⁸ The latter two pitfalls deal primarily with issues to be kept in check within the deliberative process itself.

Overcoming Antagonistic External Forces. CAFO-operating trade organizations are unlikely to support the proposed experiment. In fact, they will probably use their muscle to oppose such an initiative, especially if it is carried out on a reasonably large scale and with a reasonably empowered mandate. To respond, then, organizers must be sufficiently removed from animal advocacy funding and organization to be insulated from critiques of stakeholder capture by animal advocates. Organizers should also be wary of balancing the level of deliberator empowerment with the realizability of the experiment's goals and its ability to survive a livestock industry onslaught.

Stakeholder Capture, Abstruse Knowledge, and Minority Tyranny. A further, related challenge is for deliberators to navigate the minefield of often unsubstantiated claims by animal rights advocates on the one hand and industry apologists on the other. What D. Fraser terms the “New Perception” of animal agriculture—epitomized by the fallacious claim of “legless cows,” a facetious jibe that was subsequently substantiated by animal advocates who then cite each others’ work—overstates the claims to be made against animal husbandry generally, with the “Neotraditionalists” responding by ratcheting up their defenses to equally indefensible rhetorical heights. (Fraser 2001)

The risk here for deliberators is to avoid falling prey to the rhetorical extremes of either camp, and, in doing so, of losing control of the deliberative process by allowing participants to edge towards the logical extreme of their preexisting position. The

⁸ And, to the extent that interest group preferences and religious exigencies align with member preferences, such concerns will also surface within the deliberative discussion itself.

solution to this problem lies in the proper accretion and distribution of comment for the sources to be distributed both to set the issue and on each framework option.

As with stakeholder capture by interested groups, the inclusion of high-level philosophical theory in the ambit the deliberation's scope raises a number of questions about participant capacity. For just a few of many examples, concepts like "deontology," the "original position," and the difference between preference utilitarianism and hedonistic utilitarianism seem straightforward to me, but might be thoroughly confusing—and even potentially abhorrent, through a branding as "ivory tower"—to the average deliberator. Again, as with the issue of stakeholder capture, the solution to this problem lies both in participant selection and in the organization and dissemination of accessible but comprehensive and balanced primer material.

Conclusion: Thoughts on Extrapolation from Existing Templates. Of all the material studied in class, the case of farm animal justice touches on each of the course's main lenses (unstable preferences, minority tyranny, and low information/capacity); the proposed deliberative experiment, however, deals primarily with the first: like Maslow's hierarchy of needs, the second and third issues can only be properly addressed in full once the issue of preference maximization is enriched and clarified.

After choosing the desired area of focus—preference stabilization and enrichment—it is educational to look to course selections as templates to help answer the problems raised in the suggested deliberative experiment: the British Columbia Citizens' Assembly and deliberative polling in China stand out as two particularly useful examples, the former for its rich structure and the latter for its promising legacy.

In the case of the B.C. Citizens' Assembly, the citizen group was assigned a similarly daunting task: parsing and understanding electoral systems. In particular, the organizers of the farm animal justice deliberation would do well to imitate a modified version of the four-stage citizen's assembly: selection, learning, public hearing, deliberation. (Final Report 2004) The manner of selection, the time and energy dedicated to the learning phase, and the procedural aspects of the deliberation phase all have useful inputs for the animal welfare deliberation organizers to select (or reject) as they see fit. The public learning phase, however, has little use in this scenario—if anything, an extended Q and A with interested stakeholders would be the most equivalent option, but such an activity could also fall under the scope of the learning stage.

Whereas the B.C. Citizen's Assembly case provides interesting input in the form of its structure, the results of Fishkin's deliberative polling in China provide evidence that minority tyranny and group domination bias by information holders can be overcome (albeit in very different circumstances). In the Chinese case, changes in priorities were found to be learning driven, and deliberators clearly did change their priorities away from ceremonial projects and towards basic infrastructure projects. (Fishkin et al 2005) On the other hand, the issues under discussion were more straightforward—list-prioritization rather than framework selection.

Whatever templates and prior examples the deliberative experiment in farm animal justice chooses to use, however, is almost immaterial; the point, as Nussbaum indicates in the frontispiece to this paper, is to get the ball rolling.

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