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The Foie Gras Journey

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The Foie Gras Journey

Arriving at the Farm

The ultimate goal of farming is not the growing of crops, but the cultivation and perfection of human beings (Fukuoka 2009). In recent decades many countries have bettered themselves by altering farming practices to include animal welfare standards. By finding a common ground, animal agriculture and animal advocates can work together to improve animal welfare. This case study will review California Senate Bill 1520 Force-Fed Birds to examine how the stakeholders in an active legislative battle are working through the controversy to find a place where all parties can thrive. This legislation was brought to the California legislature by Senator Burton and was passed in 2004, making it illegal to force feed ducks and geese within California as well as to sell force fed foie gras in California. This was a giant leap forward for animal welfare, providing farmers with a standard to meet by outlawing all force-feeding products within its borders. Yet, many wonder if this legislation goes too far and are concerned that this might be the beginning of government overreach with the government regulating what we are allowed and not allowed to eat. Through the analysis of this foie gras case study, we can begin to understand the complex issues of animal welfare versus animal agriculture.

Opening the Barn Doors: The details of foie gras production

Foie gras is the fatty liver of a duck or goose; it is created by raising ducks or geese, hereafter referred to as birds, for a few months. On the foie gras farm during the last two to three weeks of life, the birds are force fed high volumes of food to increase the their livers to ten times

the normal size. During the early months of the bird's life before the force feeding, the birds are generally well cared for by most farmers ((EU Report, 1998 (1)). According to Hudson Valley Foie Gras, a major United States producer, their ducks live under the upmost conditions and enjoy idyllic lives until slaughter.

At Hudson Valley Foie Gras we believe in providing conditions which allow for social interaction, exercise, freedom of movement, and reduction of stress. For this reason, our ducks are maintained cage free. Our birds are located in Ferndale, New York, on 200 lush acres in the Catskill Mountains, a lovely two-hour drive from New York City. The essence of farming is caring for animals (Hudson Valley, 2015 (1)).

The European Union's Scientific Committee on Animal Health and Animal Welfare evaluated the welfare of geese and ducks used in foie gras production. This evaluation yielded an eighty nine page report that was adopted on December 16, 1998. The report described numerous animal welfare indicators including physiological indicators, liver pathology, and mortality rates. The committee members also visited numerous foie gras farms to see first-hand how the birds were treated and found similar evidence regarding the bird's welfare before force-feeding occurs:

“During the rearing period prior to force feeding, the birds are reared in a group, usually with free access to outdoors. With the exception that the ducks and geese may not be provided with sufficient water for swimming and preening, no particular welfare problems are evident” ((EU Report, 1998 (1)). This seems to indicate that the majority of birds on European foie gras farms receive good care before the force feeding. But is that enough to justify the last few weeks of foie gras production?

The act of force feeding is the most hotly contested aspect of foie gras. The process of force feeding a bird is called *gavage*; a metal tube is inserted into the bird's throat and corn mash is fed directly into the bird's esophagus to the point of distention of their abdomens, leading to the dystrophy of their liver. As seen above, Hudson Valley Foie Gras states that the birds are well cared for and that the force feeding is not an inhumane process (Hudson Valley, 2015 (2)). They claim that the birds at Hudson Valley Foie Gras (HVFG) live in group housing and are hand fed by well-trained caretakers. Yet, many countries, animal advocates and California legislators disagree and have found that the force feeding process is not humane and cannot be humane even under the best conditions. The Humane Society of the United States (HSUS) describes foie gras production as “a product of extreme cruelty. Factory farms produce it by force feeding ducks so much that their livers become diseased and enlarged. This causes a tremendous amount of suffering and can make it difficult for the birds to walk and breathe normally” (HSUS, 2015). This discrepancy is why there is controversy over foie gras; its proponents feel that foie gras can be produced in a humane fashion, similar to other animal products; while animal advocates disagree and believe that force feeding production methods are inherently inhumane. This is the nature of the foie gras debate: can foie gras be produced humanely or is foie gras intrinsically inhumane?

The European Union's Scientific Committee on Animal Health and Animal Welfare evaluated farms to see first-hand how the birds were treated, and they generally agree with Hudson Valley Foie Gras (HVFG) statements about the beginning of the bird's life. Yet when they saw the force feeding in action and evaluated its welfare implications they found that there is more to foie gras than HVFG wants to discuss. The EU committee found that:

Force feeding results in an increase in liver size to the extent that the abdomen expands. Logically this should result in the legs being held further away from the mid-line of the body, making locomotion more difficult. Panting occurs more often than in ducks or geese which are not force fed. Some members of the working group have observed this displacement of the legs and panting. This might cause pain and distress but no scientific study has been carried out on this. Hypertrophied livers can cause discomfort in a variety of other species. Hence it may be that some discomfort results directly from the hypertrophied liver in force fed ducks and geese. It appears that this has not been investigated. The large amount of food which is rapidly intubated during the force feeding procedure leads to immediate esophageal distention, increased heat production and panting, and production of semi liquid feces (EU Report, 1998 (2)).

Rapid enlargement of the abdomen, hindered walking, panting and diarrhea are all signs of a distressed bird. Altering farming practices to end these side effects would be beneficial. In seeing the care given to the birds during the beginning of their lives, it can be assumed that farmers and animal advocates want to avoid unnecessary suffering. Pain can be a hard idea to pinpoint in other species, yet when one species acts similarly to how humans would act in pain, some degree of pain is assumed. "Daily hand-feeding of ducks and geese is normally associated with a positive response by the animals towards the person feeding them. . . . The avoidance behavior by most ducks and geese in pens during force feeding . . . indicates aversion to the force feeding procedure" (EU Report, 1998 (3)). If birds accustomed to this procedure actively try to avoid it despite their hindered mobility due to abdominal distention, it seems that pain is associated with force feeding.

The EU commission also highlighted a lack of research into the production of foie gras. The commission felt it necessary to state: "No feeding procedure should be used that results in substantial discomfort to the animals, shown by aversion to the feeding procedure or any other indicator of poor welfare in the birds. Automatic feeding devices should not be used unless proved to be safe for the birds" (EU Report, 1998 (4)). This is a pivotal point: if farmers want to use new methods, they need to demonstrate that these methods are safer and more humane than the previous method. It should not rest on the public to check the work of businesses that are looking to lower their bottom line. It needs to be the farmer's responsibility to illustrate how foie gras can be raised humanely. One of the commissioners of this report did not agree with the commission on their recommendations of proper staff training, group housing and limiting liver increases to less than what might cause pain or distress. According to the EU commission Dr. Alexander believed that:

Based on the animal health and welfare data presented in the Report, the only recommendation that the Committee can properly make is that force feeding of ducks and geese should stop and that this could best be achieved by the prohibition of the production, importation, distribution and sale of foie gras. He agrees that should the Commission decide that foie gras production should continue, for example due to the socio- economic impacts . . . then the recommendations [in section 8.3.4 a-g] should be enforced (EU report, 1998 (5)).

Dr. Alexander believed that the report did not do enough in regards to the welfare of birds and that foie gras should be completely banned due to its inhumane nature.

Dr. Alexander's opinion could be written off as one dissenter. However, Dr. Alexander has impressive credentials:

He obtained an honours degree in Applied Biology from Brunel University in 1968 and a PhD in 1971 after studying virus virulence using Newcastle disease virus as a model at the Royal Postgraduate Medical School, London University. In September 1972 he began work in the Poultry Department, Central Veterinary Laboratory, Weybridge." [Dr. Alexander then went on to be] a member of the European Community Expert Group on Contagious Diseases of Poultry from 1984-1992, the European Community Scientific Veterinary Committee from 1994-1997, and EU Scientific Committee on Animal Health and Animal Welfare from 1997-2003. [Finally receiving] The Robert Fraser Gordon Memorial Medal for distinguished contributions to poultry science in 2000, the OIE meritorious award – Médaille du Mérite in 2006, and elected Honorary Life Member of the British Veterinary Poultry Association in 2006. He received the honour Officer of the Order of the British Empire (OBE) from the Queen in 2006 (WVPA, 2015).

Dr. Alexander has dedicated his life to poultry and raising it for food, working to combat disease in animal agriculture, and he has received numerous awards for his contributions to the world of poultry production. He believed that the socioeconomic impacts of foie gras production were not enough to allow force-feeding to continue. This recommendation from Dr. Alexander goes against the rest of his committee who felt that although force feeding had great concerns, there was not enough evidence to justify a full ban. This illustrates that force feeding needs to be scientifically re-evaluated to determine if it is humane or if changes can be made to alter the current production methods of foie gras.

Several countries have worked to ban foie gras production. According to the LA times “Israel, once the fourth-largest producer of foie gras, has ended the practice in the wake of a ruling by the Israeli Supreme Court that force-feeding violates the country's animal cruelty laws.” (Burton 2012) Israel had a considerably sized foie gras sector within its animal agriculture, the 4th largest in the world, and were still outraged enough to outlaw production methods because force feeding was considered animal cruelty. Yet, Israel is not the only country that has changed its stance on force feeding. According to an online news source in France, “the farming of animals to produce foie gras is banned in 22 EU nations - excluding Belgium, Bulgaria, France, Hungary and Spain - but not the import or sale of what campaigners dub as ‘torture in a tin’ (France 24, 2012). France is the biggest holdout claiming that foie gras is part of its gastronomical heritage and provides employment of 35,000 people. This claim that foie gras is a necessary part of French culture is valid, with UNESCO the United Nations Educational, Scientific and Cultural Organizations, characterizing it as a French tradition. When considering foie gras, it is not whether the product is right or wrong; rather, the problem is with the production methods.

The question remains: Can foie gras be produced humanely? The Regal Vegan thinks it can be; they sell Faux Gras, a humane alternative to foie gras that is made from walnuts and is a pate similar to foie gras. (Regal Vegan, 2015) If this option is too vegan, there is also a foie gras made from non-force fed geese from Spain that is sold worldwide, exactly the same as force fed foie gras without the inhumane implications.

Sousa & Labourdette's philosophy is twofold: a return to the essence of foie gras, combined with a strong commitment to the welfare of the geese and their environment. . .

. When autumn comes round the geese begin to feed intensively, gorging day and night, in preparation for a migration journey. The animals are captured during the night by dazzling them with powerful lights and foie gras is harvested (Sousa 2014 (1)).

These are the types of options that were encouraged by SB1520 : “It is the express intention of the Legislature, by delaying the operative date of provisions of this chapter pursuant to subdivision (a) until July 1, 2012, to allow a seven and one-half year period for persons or entities engaged in agricultural practices that include raising and selling force fed birds to modify their business practices” ((Burton, 2004 (1)).

Talking to the Farmer and his Opponents: Who are the stakeholders in foie gras?

Two of the many stakeholders involved in this case are Brian Pease and Senator Burton who started the legislative effort against foie gras in California. Pease filmed the birds at the Sonoma Foie Gras Farm and then brought these videos to the public creating an issue that should be addressed by the legislature. Guillermo Gonzalez, the owner of the Sonoma Foie Gras Farm, is a stakeholder who changed his stance on the bill several times. Originally Gonzalez fought against the bill, but due to pressures from animal advocacy groups he then changed his stance and persuaded the governor to sign the bill. Later, after the bill was passed, he fought against it when it threatened to shut down his business. The Animal Legal Defense Fund (ALDF), the Humane Society of the United States (HSUS) and other animal advocacy groups joined the battle hoping to keep momentum high for the passage and the enforcement of this legislation. These groups have continued their involvement through its numerous appeals, planning amicus briefs for this upcoming appeal during the summer of 2015.

After the legislation passed many pro-foie gras businesses joined the fight in support of continuing the status quo with regard to foie gras production and sales. These businesses include the Hots Restaurant Group, a group of Los Angeles based restaurants headed by Michael Lindenlaub, along with Hudson Valley Foie Gras (HVFG) and Canada's Association des Eleveurs de Canards et d'Oies du Quebec (CAECOQ), two foie gras producers. These groups led the appeals in hopes of removing the piece of legislation that outlawed selling foie gras products within California. Seven and a half years were given to farmers to alter practices to fit within the new regulations brought on by SB 1520. Even though the law specifically outlawed force feeding, foie gras producers did not work to change this practice, instead they worked to improve other areas of production and use these alternate improvements to illustrate good welfare standards for their birds.

Hudson Valley Foie Gras (HVFG) has made changes in hopes of quelling fears about their practices, but they continue to participate in gavage feedings. HVFG voluntarily chose to follow the recommendations stated in the EU commissions report regarding: group housing, properly trained staff and adequate care prior to the force feeding stage of the birds' life. Even with these changes, there are still many questions about whether force feeding can be considered humane. The foie gras industry has taken efforts to make the production of foie gras more profitable, but not necessarily more humane. Producers previously used the goose for the majority of foie gras production, but now the most frequently used bird is the Moulard, a cross between the domestic Mallard and the Muscovy duck. Foie gras was originally made from geese livers due to their propensity to gorge themselves naturally before the fall migration, yet most foie gras farmers switched to ducks because of the duck's ability to have multiple birth cycles a

year unlike the goose who prefers to only have one birth cycle and must be tricked with advanced lighting techniques to induce multiple birth cycles a year. It seems that the Moulard duck was chosen for its ability to survive in artificial conditions and disease resistance. This is different from geese that naturally enlarge their own liver, because the Moulard is a cross between a species that only occasionally migrates and a species that doesn't migrate, it therefore doesn't naturally gorge itself. Altering the original species selected to the Moulard seems to be more based on increasing production and potential sales and not the bird's biology or best interest.

Self-regulation of farming practices does not appear to be working. Previous cases have shown that legislation might be necessary to promote humane farming practices and the enforcement of said practices. For example, in the case of the Hallmark slaughterhouse in California there were regulations in place, but these regulations were not enforced evenly, allowing the business owners to choose profits over safety and the welfare of animals. In the Hallmark slaughterhouse case animal abuses were found where diseased or injured cattle, also known as downed cattle, were forced to the slaughterhouse through water-boarding type methods and fork lifts to get them to stand long enough to be killed. Downed cattle have not been allowed to enter the human food chain due to health and safety reasons since the interim rule of the USDA asked for self-regulation in 2004 (Beef Staff, 2007). This interim rule became a final rule in October 1 2007, yet numerous downed cattle were forced through the slaughter process and sold to the public, including the national school lunch program. After the Hallmark case exposed that self-regulation was not working, a full ban was put into effect in 2009 by the Obama Administration. (LA Times, 2009) This self-regulation gap not only risked many human lives,

but was atrocious for the animals, leaving many slaughter house workers and the owners of the slaughterhouse to pay severe fines totaling hundreds of millions of dollars (HSUS 2013). This example shows a lack of concern over regulations on the part of some members of the farming community. It also illustrates a need for even enforcement of agricultural regulations.

Altering business practices can be challenging, self-regulation is one way that can work under the right conditions, otherwise government intervention is necessary. The National Center for Biotechnology Information (NCBI) a division of the National Institute of Health published an article which describes the latest food industries and whether self-regulation has worked.

An important factor is motivation for change. Industries protecting a dwindling resource face the internal threat of overuse and exploitation of the environment. They have incentives to regulate effectively and can behave in ways that benefit the public (e.g., reducing deforestation protects the environment). . . . As with the tobacco and alcohol industries, food industry self-regulation appears to be motivated more by external threats: negative public attitudes, government action that restricts key business practices, and litigation. Where industry and public health objectives conflict, an industry has incentives to create a public image of concern and to promise change, but then to create weak standards with lax enforcement. The cynical practices of the tobacco industry, and to a lesser extent the alcohol industry, have shown how under the guise of self-regulation, public health problems can be increased (e.g., young people being encouraged to smoke more rather than less) and government action can be warded off (NCBI 2010).

This research by the NCBI and the Hallmark slaughterhouse case shed light on this case of foie gras production. Specifically, it seems that if humane foie gras production is the goal,

implementing regulation is the best choice. Foie gras producers fit the same mold as tobacco producers. Just as many of the cigarette manufacturers saw external threats to their business interests; HVFG saw external threats from the California foie gras legislation. These threats caused HVFG to try to convince government agencies and the public that they improved bird welfare enough without ending force feeding. They did this by claiming that their birds lived a happy life. Numerous investigations by Israel, the EU, and California legislators have shown that force feeding is not humane and needs to be addressed. HVFG voluntarily altered some practices, but did nothing to alter the most pressing problem, that is, the force feeding of birds. For this reason, it is clear that legislation is necessary to protect the birds.

Many stakeholders have worked hard in California to achieve what appears to be in their own best interest. The author made numerous attempts to interview the stakeholders of this legislation including Senator John Burton, who was unavailable during the research time, Brian Pease of Animal Protection and Rescue League and the regional director of the Humane Society of the United States, each of whom did not respond to any of the author's three e-mail requests for comments. I also attempted to contact Hots restaurant group, Hudson Valley Foie Gras and Benoit Cuchet, president of Canada's Association des Eleveurs de Canards et d'Oies du Quebec. A total of three e-mail requests to each of the above yielded no response. An ALDF representative, Kelsey Eberly responded via email to set up a phone interview which was conducted on May 20 and John Burton's assistant followed up that he was not available for an interview. Attorney General Kamala Harris's assistant followed up once but was then unreachable to set up an interview.

Currently the Attorney General Kamala Harris is in the process of filing another appeal for SB 1520 and Animal Legal Defense Fund plans to support these actions. How the court and the opposition stakeholders will respond is yet to be seen.

Watching the Force Feeding: The legal battles

First a brief outline of the SB1520 “story” will be presented, and then the subsequent paragraphs will detail the specifics of the development and passage of this bill as well as the subsequent legal challenges to the law. Senator Burton brought the bill to the California senate where it was debated and passed in 2004 with a start date for enforcement of July 2012. On July 2, 2012 Hot’s restaurant group challenged the ban and tried to get an injunction until the court reviewed their case. The court denied the injunction and then denied their first attempt to overturn the legislation. Hot’s appealed this decision to the 9th circuit court. The 9th circuit agreed with the first ruling keeping SB 1520 intact. Then Canada's Association des Eleveurs de Canards et d'Oies du Quebec (CAECOQ) along with Hot’s restaurant group and HVFG appealed again over a different claim. This time the 9th circuit agreed and overturned the ban on the sale of products derived from force feeding within California. To be clear the second appeal was only concerning the sale of foie gras products produced outside California, so it is still illegal to produce foie gras within California. This has left Attorney General Harris to decide if she will appeal, which she plans to do in the summer of 2015.

There are a number of legal aspects to review and consider for SB 1520. Originally, Guillermo Gonzalez, the owner of Sonoma Foie Gras adamantly fought against SB 1520 by traveling to the debates and finding additional bird specialists to assist him during the initial

debates in the California senate. Dr. Jeanne Smith, of Allied Avian Health Services visited Sonoma Foie Gras and later testified that the force feeding done at Sonoma met her standards of humane practices (Arnold, 2015). Later, while the senate was still discussing the original legislation, Gonzalez reversed his opinion. According to the Los Angeles Times Mr. Gonzalez urged Gov. Arnold Schwarzenegger's signature on the bill. On September 7, 2004, he wrote: "I have the moral stature to accept that if within the seven-and-a-half years established by S.B. 1520, science and government don't arrive to the conclusion that the methods used in our foie gras production are acceptable ... I will be ready to quit'" (Gonzalez, 2004 (1))(see Appendix A for the entire letter). This statement is frequently quoted by animal advocates who are upset that Mr. Gonzalez later opposed the bill. They point out that if Mr. Gonzalez believed a humane option for foie gras was possible and that he was willing to alter his practices to meet the proposed standards, what changed? Yet the letter from Mr. Gonzalez shows that he supported the bill because he believed that without it animal advocates would have continued to bring legal battles against him and run his farm out of business. (Appendix A) By siding with the bill Mr. Gonzalez gave himself time to find common ground among his business interests, the new legislation requirements and animal advocates.

Unfortunately for Mr. Gonzalez seemed to believe that funds would be available to help find humane alternatives.

We compromise to demonstrate through science, that force feeding of ducks and geese can be integrated into the realm of an accepted animal husbandry practice specifically approved by the California Department of Food and Agriculture with the participation of the University of California. . . . I am willingly taking the risk of putting my practice

openly before the scientific scrutiny as a means to solve the issue once and for all and move on with our lives (Gonzalez 2004 (2)).

It seems that Mr. Gonzalez wanted to continue his business and believed that it was possible to find a middle ground between foie gras producers and animal welfare advocates. And even though nothing is spelled out in the bill, his letter points to use of science to study foie gras production. Whether Gonzalez was misinformed intentionally or if something went awry, no study was attempted. The author emailed Gonzalez once, but did not receive a response from him. Perhaps because there was no “scientific” study of foie gras production attempted, Gonzalez was left with no other option than to alter his support and try to fight against the legislation before time ran out and his business became illegal. Had studies been conducted, there may have been resolutions to whether faux gras products, non-force fed production or another humane method could have been found to continue foie gras to be created and sold in California. Unfortunately for Gonzalez, his business practices were banned when the law went into effect, leaving his farm in ruins. Why humane foie gras farming methods are not more widespread is not known. So the question remains: -will anyone find a way to humanely raise foie gras in California?

When Senate Bill 1520 Force Fed Birds went into effect, the Hots restaurant group was not willing to let it go and instead filed a lawsuit one day after the bill went into effect in July 2012. According to the suit, SB 1520 is vague when it defines force feeding:

Force feeding a bird means a process that causes the bird to consume more food than a typical bird of the same species would consume voluntarily. Force feeding methods

include, but are not limited to, delivering feed through a tube or other device inserted into the bird's esophagus. (CAECOQ v, Harris 2013 (1))

The claim of Hots restaurant group is that because the law does not state how much food the bird would voluntarily consume, the law is vague. The bill also expressly outlaws the act of force feeding: "A person may not force feed a bird for the purpose of enlarging the bird's liver beyond normal size, or hire another person to do so." (Burton 2004 (2)) The 9th circuit court pointed to these two aspects when it denied Hots claim for appeal--that it is illegal to force feed a bird to enlarge its liver and that is illegal to cause a bird to consume more food than it would on its own accord when it rendered its decision.

The written opinion of the 9th circuit explains its reason for denying the vagueness claim and the requested injunction:

According to Plaintiffs, the term "purpose" refers to a farmer's subjective intent in feeding his birds, and they are left to guess whether a farmer's state of mind violated the statute. . . . The natural reading of "force feeding a bird for the purpose of enlarging the bird's liver beyond normal size" is a description of the objective nature of the force feeding, rather than the subjective motive of the farmer. . . . Here, Plaintiffs do not contest that force feeding a bird through a tube inserted into the bird's esophagus is for the purpose of enlarging the duck's liver. (CAECOQ v, Harris 2013 (2))

This demonstrates that the law as it is supposed to be read is not vague, but the lawsuit seems to be out of a desire to repeal the law due to its effect on their business interests. Although Hot's restaurant group could not be reached for comment on their motives for their lawsuit, the

implication seems clear --they want to sell and profit from foie gras. This motive also seems to be evident in their second claim regarding an alleged commerce clause violation within SB 1520. ‘Plaintiffs argue that we should find that § 25982 violates the Commerce Clause because the statute: (1) discriminates against interstate commerce; and (2) directly regulates interstate commerce’ (CAECOQ v, Harris 2013 (3)). The commerce clause was originally about regulating interstate commerce, but has since grown to include a dormant commerce clause, which the 9th district used to evaluate Hots claim.

Specifically the commerce clause of the United States Constitution is the right of Congress to regulate interstate commerce, which Hots claims SB 1520 is violating. Ever since the Supreme Court decided “CTS Corp. v. Dynamics Corp. of Am., 481 U.S. 69, 87 (1987), and Dep’t of Revenue v. Davis, 553 U.S. 328, 337 (2008)” (CAECOQ v, Harris 2013 (4)) the commerce clause has been seen as a law that prohibits interstate commerce if it gives advantage to intra-state commerce over out-of-state commerce. Specifically the commerce clause has been interpreted to declare that states cannot impose regulations that assist intrastate commerce over out-of-state commerce. Yet, the Supreme Court has held that as long as the laws treat all states as equals, then states can impose laws that could affect interstate commerce. Specifically:

The Supreme Court has adopted a “two-tiered approach to analyzing state economic regulation under the Commerce Clause.” *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 578–79 (1986). When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, [the Court has] generally struck down the statute without further inquiry. When, however, a statute has only indirect effects on interstate

commerce and regulates evenhandedly, [the Court has] examined whether the State's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits. (CAECOQ v, Harris 2013(5))

This means that as long as California does not discriminate against out-of-state commerce and instead regulates all force fed products equally, it is not in violation of the commerce clause. SB 1520 outlaws the sale of products created by force feeding to enlarge the liver: "A product may not be sold in California if it is the result of force feeding a bird for the purpose of enlarging the bird's liver beyond normal size" (Burton, 2004(3)). The law does not disregard the commerce clause because it treats the location of origin as irrelevant. What is relevant is: 1) whether the product is being sold in California, -and 2) if it is the result of force feeding a bird to enlarge its liver. The courts believed they were acting within the confines of the law when they upheld SB 1520, but this would not deter the foie gras producers from continuing to fight to have SB 1520 repealed.

In summary the first court battles against SB 1520 were denied by the California district court in Los Angeles; that court decided that the lawsuit was not valid on September 28, 2012. The 9th circuit heard the appeal and agreed with the district court, upholding SB 1520 on May 8th 2013, because they found that the claims of vagueness were unwarranted. The 9th circuit court also felt that the plaintiffs failed to raise a serious claim in regards to the commerce clause. Because this first attempt was unsuccessful, the Hots Restaurant group joined with foie gras producers to bring another claim to the courts.

This second appeal to the 9th circuit court was made by the CAECOQ and HVFG who worked with Hots restaurant group. They claimed that SB 1520 violated the Federal Poultry Products Inspection Act (PPIA). This PPIA regulation was enacted by Congress in 1957 to ensure “that poultry products shipped in interstate commerce are continuously inspected: prior to slaughter, after slaughter, before processing and, if the poultry was imported, at the point of entry into the United States.” (USDA, 2015) The claim was that because force feeding is an ingredient in foie gras, California cannot outlaw its sale within the state because this violates the PPIA.

The PPIA expressly preempts states from imposing: marking, labeling, packaging, or ingredient requirements (or storage or handling requirements . . . [that] unduly interfere with the free flow of poultry products in commerce) in addition to, or different than, those made under this chapter [the PPIA] with respect to articles prepared at any official establishment in accordance with the requirements under this chapter. (US District Court 9th Circuit 2015 (1))

The plaintiffs made the argument that an ingredient can be the process of making a food item. It doesn't seem logical on face value, but if a part of making a food item requires a process to create said food item, the case could be made that this process is an ingredient in the food. The PPIA requires that states may not impose additional requirements than those outlined on the federal level that would hinder the free flow of poultry products from federally regulated slaughter facilities. The plaintiffs argued that PPIA preempts a sales ban on poultry products resulting from force feeding a bird because it imposes an ingredient requirement. Yet, the question is whether outlawing the sale of force fed foie gras falls under this law --is California unduly interfering with the free flow of poultry products by working to make the state more humane for birds?

When faced with this argument the 9th circuit felt that California had gone too far and was obstructing a federal law. With this the court found that:

The court recognizes that ‘the line between regulating the sale of a finished product and establishing product standards will not always be easy to draw. Any finished product can be described in terms of its components or method of manufacture. . . . Nevertheless, here the line is clear: Section 25982 [of SB 1520] expressly regulates only the sale of products containing certain types of foie gras products --i.e. foie gras from force-fed birds. Section 25982 does not ban the practice of force feeding; this practice is the subject of a separate provision [of SB 1520]. Additionally, it does not matter whether foie gras obtained from force-fed birds is a different product from non-force-fed bird foie gras. It is undisputed that the PPIA and its implementing regulations do not impose requirements that foie gras be made with livers from non-force-fed birds. Thus, Plaintiffs’ foie gras products may comply with all federal requirements but still violate [SB 1520] because their products contain a particular constituent -force-fed birds liver. Accordingly Section 25982 imposes an ingredient requirement in addition to or different than the federal laws and regulations. (US District Court 9th Circuit 2015 (2))

In summary the 9th circuit court felt that an ingredient is something that you mix into the food or something that is used to create said food, meaning that the process of force feeding is an ingredient. This means that a bird can be sent to slaughter and then banned from entering California due to the liver because the force feeding that created the liver is outlawed by California. This goes against the PPIA regulations. Through this line of reasoning the court found that since California cannot ban force-feeding nation-wide, SB 1520 interferes with the

PPIA. SB 1520 bans that sale of products that have force fed birds livers from being sold in California. The 9th circuit decided that the plaintiffs prevailed in their second appeal. It did not matter that force-feeding is not technically a marking, labeling, packaging, storage, handling or ingredient because SB 1520 makes the entire animal illegal to sell in one state thereby subverting the federal law. Yet many disagree with the logic of the 9th circuit. In particular Kelsey Eberly, an ALDF representative, states that it is a misrepresentation of the federal law and should be overturned when Attorney General Kamala Harris appeals the decision this summer. (ALDF, 2015) Unfortunately, California Attorney General Harris was not able to be reached for comment, the author attempted to contact her once via her website and twice via her more direct email.

Cleaning Up the Birds: Conclusion

In 2004 California legislators showed that they agreed with the EU commission's findings that force feeding as it is currently practiced needs to be altered. Species that are not built for gorging should not have this practice forced this upon them without research illustrating that it is in fact humane. Currently agricultural companies self-regulate, and the companies are taking advantage of having no oversight from an outside regulatory body. University of California Davis Sustainable Agriculture Research and Education program believes that currently federal regulations discourage sustainable farming practices. Specifically their website states:

New policies are needed to simultaneously promote environmental health, economic profitability, and social and economic equity. For example, commodity and price support programs could be restructured to allow farmers to realize the full benefits of the

productivity gains made possible through alternative practices. . . . Coalitions must be created to address these policy concerns at the local, regional, and national level. (UC Davis, 2015)

UC Davis points to an important aspect of farming, that altering practices to promote humane or environmental alternatives is difficult without government assistance which seems to be exactly what the foie gras legislation was trying to promote. By altering force feeding production methods to a more humane standard and requiring all sales of foie gras to meet said standard within California, farmers could change their practices to allow for humane alternatives to arise and expand.

Sousa and Labourdette, a foie gras farm in Spain, has achieved a level of humane foie gras production while maintaining a healthy business. They are returning to the origins of foie gras, where geese would naturally gorge themselves for their migration, and hunters would enjoy the spoils when they hunted during the right season. Sousa's farm illustrates that foie gras can be created without force feeding. Providing geese with plentiful food, the geese will voluntarily engorge their livers. This provides an opportunity for farmers to kill the geese, harvest the livers and sell them. Some may claim it is different than force-fed foie gras, but the chefs and foodies who have tasted the foie gras from this producer, sing its praises. "The international gastronomic community has praised the peerless quality of the foie gras Sousa & Labourdette in 2006 during the SIAL, International Agro-alimentary Paris' fair, winning the prestigious Coup de Cœur award." (Sousa 2014 (2)) Foie gras production can be humane, if practices are altered and non-force fed foie gras is given a chance to thrive.

The battle over SB 1520 continues, with another appeal in the works by Attorney General Harris. In the meantime, a number of new ideas have emerged. The first being that although this battle appears to be about a product known as ‘foie gras,’ it actually seems to be about force-feeding and whether it is acceptable to forcefully expand a birds liver for a decadent delicacy. Many chefs, farmers and legislators including Senator Michael Machado feel that this legislation is a slippery slope and are concerned that soon other foods will be banned for similar reasons. (Arnold, 2015) In a documentary by Dave Arnold, titled *The Politics of Food: Foie Gras*, Senator Burton stated that he does not believe a force feeding ban is a slippery slope. Burton was also visibly annoyed and upset when asked if foie gras was a starting point to further food regulations, stating that he thought it was a dumb question to even ask. He also stated in the documentary that “you shouldn't torture animals for an unhealthy food.” (Arnold, 2015) This is the feeling of many who have come to learn about foie gras, it may be delicious but it is not a necessity. Although animal advocates would disagree, many people feel that most animal products -i.e. meat and dairy- are a necessary part of a human diet. As Nicolette Hahn Niman states in her article *Has California Foie Gras ban Gone Too Far?:*

Ethical justification for eating fish, meat, and dairy are strong. Those foods provide our bodies’ essential nutrients that are virtually impossible to glean from foods other than those derived from animals. Moreover, I consider humans part of the diverse, complicated, and interconnected web of plants and animals, predators, and prey, whose bodies feed one another then return to the earth. But none of those rationales excuses the brutalities of modern industrial animal production. Nor can any of them justify force-feeding ducks and geese in foie gras production. . . . I can see no legitimate argument that foie gras is essential, or even helpful, to human health, nor that its production resembles

the functioning of a natural system. . . . Simply put, I cannot see how foie gras has a place in a humane, ecologically based food system. (Niman, 2012)

Foie gras as currently produced does not meet any standard of necessity for humans; therefore, most of the public finds it acceptable to ban a practice that is probably not humane -particularly when done at the large scale typical to animal agricultural in the United States. This demonstrates that SB 1520 Force Fed Birds is not a slippery slope, but a way for California to improve its food system or as Masanobu Fukuoka would put it “to cultivate the perfection of human beings.”

Leaving the Farm: Opinion

This author believes that the EU commission had it right when it stated that animal agricultural industries need to prove that their practices are humane. There is not enough research to show conclusively that force feeding birds is a humane practice, and the small amount of evidence of large scale foie gras farms points to a conclusion that this practice is, in fact, inhumane and should be banned. I do not believe we are on a slippery slope that will soon cause more animal products to be banned based on inhumane production standards. Foie gras is an extraordinary case, and when we look at it for what it truly is, a specialty product, there is no reason to keep such a product on the market if it is causing animal suffering. I feel that the foie gras produced on Sousa’s farm in Spain which does not use force feeding methods is a perfectly acceptable choice for any and all who want to eat foie gras. I do not agree with everything Nicolette Hahn Niman states, but I do believe all our food should come from an ecologically based and humanely raised food system. This is what Sousa Farms has achieved: raising and

slaughtering geese humanely after they have engorged their livers and these methods should be the standard for foie gras production.

Even though very few stakeholders wanted to discuss this legislative case, the evidence available leads me to believe that SB 1520 is not trying to alter a person's choice to eat what they choose. This legislation seems to support a desire to improve animal lives and push farmers of foie gras to look for alternative methods to continue producing foie gras for those who enjoy it. I am not advocating the abolishment of foie gras; instead I want to see an end to force feeding. The future can be a celebration for animal advocates seeing an end to force feeding and chefs, foodies and all who enjoy foie gras can continue to eat non-force fed foie gras.

For those who say it is not economical, I say that we haven't tried. By banning both the production and sale of force fed foie gras within California, we create an environment that allows the economics of non-force fed foie gras to grow and thrive because it is the only foie gras allowed. Obviously we will not stop people from loving their food, and we are not taking it away. Instead, we are improving its production methods to fulfill our moral obligations to the animals we eat.

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Appendix A: Sonoma Foie Gras Letter from Mr. Gonzalez, Retrieved via web.



September 7, 2004

Honorable Arnold Schwarzenegger, Governor
State of California
State Capitol, First Floor
Sacramento, CA 95814

RE: SB 1520 (Bartos) - Request for Signature

Dear Governor Schwarzenegger:

As the owner of Sonoma Foie Gras, the only producer of foie gras in California, it must come as a surprise that I ask for your signature of this bill. The August 26, 2004 version of this bill represents an instrument conducing to find a permanent solution to the controversy created by the groups sponsoring and in favor of it.

The first step I took before immigrating with my family in 1986 and establishing my then micro-business was to check if foie gras production was accepted in California as a legitimate practice. I was granted license to operate processing plant # 614 in Sonoma and license as poultry meat inspector (PMI) by the law enforcement division of the California Department of Food and Agriculture, and granted also with all the technical and personal support from avian scientists of the Cooperative Extension of UC at Davis.

Since thirteen months ago I have been attacked by the same groups sponsoring and in favor of the bill, which have used all means imaginable to make our lives miserable and put us out of business. I, as an immigrant to this great country, like you are, and now a U.S. citizen and California resident, respectfully ask for your government intervention on behalf of my family and employees. This intervention starts with my request for your signature of SB 1520, which I think makes sense for two reasons:

- 1) It is a vehicle to release me from legal attacks, which is one of the economic tactics used by the opponents of animal agriculture to put us out of business. My company, my family and I are subject of a frivolous lawsuit by animal rights organizations and cannot afford the continued onslaught of legal expenses. We need legal protection which can be obtained by your signing SB 1520 into law.
- 2) It will provide your administration an opportunity to dig into the issue and promulgate the appropriate guidelines so there will never be a question about which practice is approved by the government. We compromise to demonstrate

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September 7, 2004

Honorable Arnold Schwarzenegger, Governor
RE: SB 1520 (Bartos) - Request for Signature

through science, that the force feeding of ducks and geese can be integrated into the realm of an accepted animal husbandry practice approved specifically by the California Department of Food and Agriculture with the participation of the University of California.

I have the moral stature to accept that if within the seven and a half years established by SB 1520, science and government don't arrive to the conclusion that the methods used in our foie gras production are acceptable, as non-injurious and within the normal tolerable manipulation accepted in all animal agriculture, I will be ready to quit because I have always believed that what I have used to achieve my American Dream is a morally clean, culturally unique, free-enterprise in a multicultural, tolerant, respectful and inclusive society.

When SB 1520 was introduced I adamantly opposed its passage and came to Sacramento with my family to work against it within the confines of democracy and playing by the rules, as I have always done. I made friends through speaking the truth only and accepted to compromise with the author of the bill, to the point of negotiating amendments that constitute a leveled ground for everybody to work the issue. I am willingly taking the risk of putting my practice openly before the scientific scrutiny as a means to solve the issue once and for all and move on with our lives.

My natural allies would prefer that you use your veto power. The functional impact of a veto is to protect the status quo and allow the animal rights organizations to accomplish their goal - putting me out of business. This is a complex political case because an ally normally supports and wants for you what is best for you.

Attached you will find a one page summary of my operations.

Sincerely,


Guillermo Gonzalez
President, Sonoma Foie Gras

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