

Cowboys and Vegetarians: The Proposed “American Horse Slaughter Prevention Act”



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There is before the United States House of Representatives a bill – H.R. 857 – that would ban the slaughter of horses in the U.S. for their meat, and that would ban the export of horses for slaughter. Such a bill, at first blush, would seem to be relatively non-controversial as such things go. Americans are not much fond of horseflesh on their plates; cowboys may love their horses, but ordinarily not stewed or grilled. Depriving the French of one of their culinary delicacies would seem to strike a sympathetic chord these days. The raising of horses is but a small part of American agri-business, and the raising of them for their meat is practically unheard of, so no great economic impact should be expected. The various humane societies, one would think, would happily hop on the bandwagon and off we'd go, determined to prevent something that most of us don't like to think about. Sprit, Seabiscuit, and Funny Cide: relax, you're not for dinner.

It may still turn out that way. H.R. 857 has an impressively bi-partisan list of sponsors, from conservative Republicans, like Mr. Feeney of Florida, through moderate Republicans, like Mr. Shays of Connecticut, through moderate Democrats, like Mr. Spratt of South Carolina, to liberal Democrats. Well, no one much really admits to being liberal these days, but at least moderately liberal Democrats like Mr. Ford of Tennessee. The legislation got an emotional boost lately with the report in *The Blood-Horse* magazine that the 1986 Kentucky Derby winner, Ferdinand, had been

slaughtered for meat in Japan, the first time in anyone's recollection, apparently, that a Derby winner had suffered such an undignified fate.

The bill, too, is carefully drafted to pull together such a broad coalition. While it is certain to attract the support of the various humane societies, Buddhists, and such like, it is narrowly crafted to apply only to the slaughter of horses for food. This is not a bill being driven by the forces of mandatory vegetarianism, and none of its sponsors seems ready to sign on to the end of the slaughter of steers for food, though admittedly some of their supporters might wish for that. Looking at the websites of the sponsors, one does not see that lean, focused look that vegetarians have, and there does not appear to be a Buddhist among them; Methodists, Baptists, Catholics, yes, but no Buddhists. These Congressmen, one suspects, are driven less by the interests of vegetarianism, and more by the interests of the horse industries in their respective states – New York, Tennessee, Florida, California, Virginia, to name a few – industries that depend on public perceptions of horses having more to do with Seabiscuit than sausage.

But there is reason to suspect that this broad business-oriented, anti-slaughter coalition will face some vigorous attack before the bill becomes law. The web already ripples with attacks on H.R. 857, as various commentators wonder at the idiocy of those who would ban the practice of equine slaughter. The Farm Bureau seems ready to take

the bill on, advancing, as ever, the notion that Congress should leave the profession of agriculture unregulated, and carry on as the Framers intended they should, by minding their own business back in Washington, and sending cash. One suspects that there are talk-show hosts out there eager for the opportunity to serve up horsemeat paté or pony-tail soup, the better to show their disdain for the animal rights crowd. And those animal-righters fan the flames, seemingly unable to resist tacking onto their statements of support for H.R. 857 that, after all, sheep have beautiful eyes, too.

Into this maelstrom-to-be, I reluctantly step, with one small suggestion. Perhaps a good starting place would be for all to understand just what H.R. 857 says: what it does, what it prevents, what it restricts and so forth. At least that way, we'll all know what it is we're arguing about. Herewith, then, a rather straightforward section-by-section look at this short, and potentially non-controversial bill.

Sections 1 gives the short title, which is the one I used in the title of this commentary.

Section 2 contains twelve congressional findings, which range from the mundane ("Horses have played a significant role in the history and culture of the United States.") to the gruesome ("Horses endure repeated blows to the head with stunning equipment that often does not render the animals unconscious. Some horses proceed still conscious through the remaining states of slaughter being bled out and dismembered.") to the insular ("Approximately 55,000 American horses are slaughtered for human consumption annually in the United States by foreign-owned slaughterhouses.")

Section 3 states the narrow purposes of the act: "to prohibit the slaughter of horses for human consumption, to prohibit the sale, possession, and trade of horseflesh for human consumption, and to prohibit the sale, possession and trade of live horses for slaughter for human consumption." Three times does the bill use the phrase "for human consumption." Thus, the bill does not speak about any other use of horses, nor of any other kind of killing of horses, except as related to the human consumption of horseflesh. This bill is drafted so narrowly as not to even prohibit the killing of a horse for pet food, nor zoo-animal food. (One suspects that the

drafters of the bill considered these uses of horsemeat to be sufficiently limited to wither away once the trade in horsemeat for human consumption was prohibited.) Nor does it prevent or restrict the killing of horses for scientific research, unless it were being done in the Food Sciences department or unless the researchers planned to dine on their subjects. No, not even then, unless they were intent on commercial dealing in horseflesh.

Section 4 is the definitional section, and contains the usual non-controversial provisions defining the word "person" to include various business entities and the several states, the word "secretary" to mean the Secretary of Agriculture, the word "horse" to include ponies, donkeys, mules, asses and burros. The terms "export" and "import" are defined in unobjectionable ways.

Two terms, though, require some closer attention. "Euthanasia," is defined to mean "to kill an animal humanely by means that immediately renders the animal unconscious, with this state remaining until the animal's swift death." This term will be relevant in later provisions when the bill addresses the treatment of horses seized in enforcement of the act's prohibition. And secondly is the definition of the word "slaughter" itself: "The term 'slaughter' means the commercial slaughter of one or more horses with the intent to sell, barter, or trade the flesh for human consumption." Of course, a definition that uses the term defined as part of the definition has its own difficulties, not unknown in statutory construction, but more important here is the addition of the word "commercial." The bill intends to regulate only the *commercial* slaughter of horses, which should assure those concerned that Congress is telling any particular horse owner if, when or how any particular horse is to be killed. Nor is Congress telling some poor farm family that they may not kill a horse and serve horsemeat up for dinner, if circumstances have driven them to that. It is the *commercial* selling, bartering and trading that this bill seeks to regulate, indeed, prohibit.

Section 5 is the key prohibitory provision. Three acts are prohibited: (1) slaughtering a horse for human consumption, (2) importing or exporting horseflesh for human consumption, or live horses intended to be slaughtered for human consumption, and (3) trading in horseflesh or live horses for human consumption. Since the word "slaughter"

itself contains the limitation based on human consumption, one can see that the drafters have been doubly emphatic that it is *only* the trading of horses in the context of the human consumption of horseflesh in a commercial setting that Congress has set out to prohibit. Finally, soliciting, requesting or knowingly causing any of the three prohibited acts is prohibited.

(It is the stuff from which anti-government conspiracies are made: Section 5 has a 5(a), but no 5(b). Is there more? Is Congress out to prohibit something without telling us about it? As best I'm able to determine, the omission is innocent and inadvertent and will be cleaned up during the legislative process.)

Having made those three activities a crime in Section 5, the penalties are set out in Section 6. The criminal penalties are small: a fine and or one year in jail, though that is per horse slaughtered, see Section 6(f)(1). More to the purpose of the bill, however, are the civil penalties: a civil fine, confiscation of the horses intended for slaughter, and debarment from trading in horses even for other legitimate purposes, if trading for slaughter is shown. Enforcement is by the Secretary of Agriculture or her designate, who may arrest the perpetrator and confiscate the contraband.

Of course, seizing horses intended for slaughter presents its own problem, for what is the seizing officer to do with the poor beasts? Temporary placement is the initial choice, and is governed by Section 6(d)(3). Preference is given to tax-exempt animal rescue facilities; funding is potentially available under Section 6(e). The horses' owner – still only *allegedly* involved in the slaughter business at this point, of course – may have the horses returned to him or her by the posting of a bond. Because the bill deals only with the commercial slaughtering of horses, the posting of the bond would seem to be an effective tool to prohibit their slaughter while proceedings continue.

With the horses now safe from slaughter in temporary placement, the choices are three. First if their owner is found not to have been holding them for slaughter, then they go back to that owner. Secondly, if the owner is guilty of prohibited acts (or, the bill is careful to note, if the Secretary's designate is unable to identify the owner) then the horses are to be permanently placed with an animal rescue facility. And then,

third, there is euthanasia, a sad fact of life in the horse business. The bill addresses two different occasions for euthanasia in Section 6(d)(4). On some occasions, the officer enforcing the act may find a horse or horses "injured beyond recovery and suffering irreversibly." Such a horse may be put down immediately by the officer. Because euthanasia by gunshot, rather than chemical injection, is a matter of some controversy, the bill makes it clear that gunshot is an appropriate method of euthanasia in emergency situations. Two methods of euthanasia that are prohibited to the officer, even in emergency situations, are – skip down if you don't want to read this – "electrocution or penetrating captive bolt."

Euthanasia in non-emergency situations is treated somewhat differently. Here we are talking about horses that have been confiscated from the owner, but which are "injured, disabled or diseased beyond recovery." In these circumstances the horse must be put down by a veterinarian using chemical injection, and death by gunshot is not permitted. Also in this non-emergency category is the situation "when placement at an animal rescue facility or other suitable facility . . . is not possible within 90 days." This category would be expected to be a large one, unless there is an explosion of animal rescue facilities following passage of the bill. And it is just such an explosion that Section 6(e) intends to spark, by sending all fines and penalties garnered from violators of the act to such facilities, and by leaving open the possibility of further congressional appropriations.

Section 7 of the bill requires that the Secretary of Agriculture report to the Congress on the enforcement of the law, annually, beginning two years after enactment.

Section 8 has two exemptions, both crucially important to understanding the narrow focus of H.R. 857. "Except as provided in section 5," Section 8(a) says, "nothing in this Act shall be construed to affect the regulation by any State of its horse population." Because Section 5 is itself narrowly written to apply only to the commercial killing of horses for human consumption, and related activities, this exemption should allay the fears of those who think that the Congress intends by H.R. 857 to put itself in the position of the controller of the horse trade at the state and local level. This bill does not restrict commercial deal-

ing in horses except for slaughter, nor does it restrict or regulate the practice of euthanasia generally. And I stress, because it is such an emotional issue, the bill only prohibits the use of gunshot in one circumstance – where a horse has been confiscated by officers pursuant to the law and, in a non-emergency situation, must be destroyed. Then, chemical means must be used by a vet, but in other situations, most emphatically where human consumption is not to be the horse's fate, state law continues to control.

Section 8(b), similarly, is a restriction on the officers, state or federal, who will enforce the act, if passed, making it clear that they may only perform the acts mentioned when they are actually enforcing the law.

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Thus stands H.R. 857 today, September 22, 2003. It may never pass, or it may pass in some form stronger or weaker than its present version. There are surely those who think that it is not nearly restrictive enough, as there are those who think it is much too restrictive as it stands.

For me, it is a nicely crafted bill, carefully designed to accomplish very narrow domestic pur-

poses. (It does seem to me to raise some thorny NAFTA issues regarding limitations on the export of horses to Mexican slaughterhouses, but those complex issues must await further discussion.) It comports, I would guess, with the attitude that most Americans would proclaim if asked their opinion on the business of raising horses for their meat. And it seems to me that it can be limited to the slaughter of horses, and not other animals, a position that will seem illogical to the animal rightsers and weak-kneed to the cowboys.

We are talking here about what might be called "The 101 Dalmatians Quandary," with the Farm Bureau playing Cruella DeVille. Every adult who ever saw the film knew that Cruella only needed a new press agent and a better hair stylist to make her case; what is the difference *really* between a Dalmatian and a mink? For most of us, there is a difference, and it is determined only by our society's attachment to certain animals and not to others. As John Hettinger, the Chairman of Fasig-Tipton, the Thoroughbred auction house, and leader of the anti-slaughter forces in the Thoroughbred industry, has become famous for saying, "They are not just fast cows." To which I, an Arkansan, must add, "They are not just large chickens." They are horses.