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of Animal Welfare Law

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A note from ALAW

In the Spring-Summer 2012 edition of the Journal Dr Jane Jones provides a criminological analysis focusing on key discourses in relation to farming which impacts on farm animal abuse. Steven McColloch, from a veterinary background, considers whether there is a clear dividing line between animal welfarism and animal rights doctrines and how they may be integrated into a right of wellbeing. Deborah Rook and Anna Stephenson discuss the role of food labelling as a means to improve welfare outcomes in relation to religious slaughter.

Many readers will be aware of the recent events concerning the animal transport ship Gracia del Mar where 2000 Brazilian cattle died in prolonged and appalling circumstances off the coast of Egypt. Peter Stevenson from Compassion in World Farming documents the horrors of live transport and what happens after arrival.

Penny and John Morgan look at the highly controversial Orca case in California. Sabine Brels discusses animal welfare as an emerging concern in international law.

There is the usual round up of news and updates with two briefings: one by David Thomas concerning the regulation of chemicals within the EU and the other, by Christina Warner, regarding this issue of dangerous dogs. Grateful thanks, as ever, goes to Dominika Flindt for compiling the news and update section of the Journal.

Jill Williams
Editor

Beyond Farm Gates: Criminology, the Agricultural Industry and Animal Abuse

**Dr Jane Jones, Lecturer in Criminology, Department of
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Studies of human-animal relationships in criminology have emerged in more recent times however the issue of farm animal abuse remains a neglected focus. Any interest shown by criminologists in studying the agricultural industry has tended to focus on the theft of tools and machinery, animal rustling and vandalism. This article sets out to redress this neglect by exploring why farm animal abuse remains hidden from view. It argues that this neglect has been exacerbated by two dominant discourses with regard to the agricultural industry. One, the image of a traditional farming lifestyle, a heritage which has continued to play a significant role in the formation of the national psyche and two, farm animals are viewed primarily in terms of their economic value. It will argue that this binary status which locates farm animals in terms of their symbolic and economic value can be seen to have dominated the institutionalised practices and legislative frameworks surrounding the agricultural industry since at least the beginning of the twentieth century. Furthermore, these

‘accepted’ practices have obscured the issue of farm animal abuse beyond farm gates from the criminological lens.

In England and Wales the Police deal with farm crime as it is currently understood and the Department of Environment, Food and Rural Affairs (DEFRA) deal with farm animal abuse under the legislative framework of animal welfare. The definition of farm animal abuse however, is open to question and within the area of human-animal relationships and crime different definitions have been proffered. These definitions can be broadly contextualised within either a speciesist or non-speciesist framework. The former tends to locate the issue of animal abuse as cruel behaviour that takes place outside of culturally and temporally situated socially condoned practices that have become institutionalised in everyday life. The focus here then of what can be defined as a speciesist approach would be on the study of animal cruelty within particular settings as a ‘means’ of furthering an understanding of human cruelty. Ascione¹ considered this in the domestic violence context.

From a non-speciesist perspective a definition of animal abuse moves away from viewing animals as a ‘means to an end’ and argues for an understanding that concerns itself with the interests of animals and hence the consequences of animal abuse for their welfare². One direction of the emerging work from a non-speciesist perspective on animals and crime has begun to focus on the issue of animal welfare and question the ‘unnecessary suffering’ phrase often inscribed in animal welfare laws. Cazaux³ points out for example that such a reference point to ‘unnecessary suffering’ acts to legitimise the ‘necessity’ of animal suffering for economic, political or scientific reasons.

“**‘accepted’ practices have obscured the issue of farm animal abuse beyond the farm gates from the criminological lens**”

¹ Ascione, F. R. [1993] Children who are cruel to animals: A review of research and implications for development psychopathology, *Anthrozoos*, 6: 226-247

² Beirne, P. [2007] Animal rights, animal abuse and green criminology in Piers Beirne and Nigel South

(Eds), *Issues in Green Criminology: Confronting harms against environments, humanity and other animals*, Devon: Willan Publishing.

³ Cazaux, G. [2007] Labelling animals: non-speciesist criminology and techniques to identify other animals

in Piers Beirne and Nigel South (Eds), *Issues in Green Criminology: Confronting harms against environments, humanity and other animals*, Devon: Willan Publishing.

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**The rural idyllic image of
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 psyche...whatever the
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 ”

This paper argues that this can be seen to be the case with regard to farm animal welfare. The increased production of farm animal protein and by-products during the last century has been underpinned and indeed propelled by public policy, scientific endeavour, technological advancement and the development and ‘takeover’ of agriculture by corporate business⁴.

The symbolic image of farming

The basic impulses of man, as they have been shaped by the past, are to be satisfied much easier in the environment and by the occupational activity of the farmer. There is neither the lack of nature, nor the killing monotony of work, nor extreme specialisation, nor one-sidedness. His standard of living may be as low as that of a proletarian; his house or lodgings may be as bad; and yet the whole character of his structure of living is quite different and healthier and more natural⁵.

The rural idyllic image of Britain’s countryside has long endured and the contrasting of the city and country has occupied a dominant role within the national psyche for centuries, whatever the realities⁶. Realities for example are negated in the above quote regarding the ‘killing of farm animals’ and the supposedly ‘healthier’ and ‘more natural’ life that selectively focuses on humans leaving aside the issue of the ‘naturalness’ of intensive farming practices for farm animals.

Such a representation of country versus city can be said to be a simplistic one and the ‘realities’ of what constitutes everyday life personal experiences are based on interpretations drawn from a variety of resources such as literature, media, family and friends⁷. Taking the case of north Wales as an exemplar, even in the face of rural economic and social changes, the agricultural tradition has somehow maintained a significant symbolic presence in the mind-set of locals and those living farther afield when reference is made to the environment:

Farming is still pre-eminently the local occupation in this area...it often seems as if everyone there is occupied in one way or another with the farming industry. Large and sturdy with pink faces and muddy gumboots. In the pubs at night... they sit in the corners with their caps on and talk in Welsh about farming⁸.

The reality however of farming hillside farms which are often inaccessible across the mountain ranges of north Wales during bad weather, involves hard manual labour and an on-going battle against the elements. In more recent times farming has faced a number of crises such as the BSE⁹ and foot and mouth outbreaks¹⁰ and yet it somehow retains its lifestyle image, long set

apart as Sorokin exemplifies as a clean and healthy life in contrast to the industrial nature of the city¹¹.

This historical legacy has been a potent force in more contemporary images of agricultural life, where the increased production of farm animal protein and by-products has been paralleled by the separation of production and consumption of farm animals from the 20th century¹². Animals have been exploited in intensive farming systems since the nineteenth century onwards, although not necessarily in the full gaze of the public or with the full recognition by consumers. As Mitchell¹³ has shown, there is an ambiguity in the public consciousness about how much individuals believe they may participate in animal abuse when they purchase by-products of the agricultural industry.

Further adding to a selective consciousness of the agricultural industry are the numerous sanitized references to farming culturally reproduced regularly for public

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 abuse**
 ”

⁴ Franklin, A. [1999] *Animals and Modern Cultures: A Sociology of Human-Animal Relations in Modernity*, London: Sage.

⁵ Sorokin, P. A., & Zimmerman, C. C., [1929: 466-7] *Principles of rural-urban Sociology*, New York: Henny Holt.

⁶ Jones, J. [2008] *Farm Crime on Anglesey: Local partners’ and organisations’ views on the issues*. Second report, December 2008. Unpublished report. Available from the author.

⁷ Halfacree, K. [(1993) *Locality and representations: Space, discourse and alternative definitions of the rural*, *Journal of Rural Studies*, Vol 9, No 1: 23-37.

⁸ Senior, M. [1987: 48] *Portrait of North Wales*, Llanrwst: Gwasg Carreg Gwalch.

⁹ BBC News [2000] *BSE and CJD: Crisis Chronology*. Available from: http://www.news.bbc.co.uk/hi/english/static/in_depth/health/2000/bse/default.stm Accessed 17 September 2009.

¹⁰ Browne, A. and Harris, P. [2001] *How a rural idyll turned into a hotbed of disease: the foot and mouth disaster throws the whole of Britain’s livestock farming practices into question*. *The Observer*, Sunday 25th February.

¹¹ Jones, J. [2008] *Farm Crime on Anglesey*.

¹² Franklin, A. [1999] *Animals and Modern Cultures*.

¹³ Mitchell, L. [2011] *Moral Disengagement and Support for Nonhuman Animal Farming*, *Society and Animals*, Vol 19, No 1: 38-58.

consumption. Children are told a range of stories based around the happy lives of cows, sheep, ducks and chickens and television programmes such as *Emmerdale Farm* never seem to go beyond a concern with the daily lives of the characters and attempts to resonate with contemporary social issues such as drug abuse and most recently the question of assisted suicide. It seems that such representations resonate in contemporary times with a more urbanised lifestyle which sets apart the mass consumption of animal protein from the processes involved. It is indeed a representation of a farming idyll as Scott¹⁴ cites that is: “moulded through urban sensibilities and television programmes as more people lose touch with the raw reality of the countryside”. That said, there are occasional attempts to reconnect production and consumption such as the ‘River Cottage’ series and the efforts of Hugh Fearnley Whittingstall¹⁵ whose latest television series has focused on promoting a vegetarian diet. Of course this acts as a direct challenge to the agricultural industry and the production of animal protein for profit.

Agriculture, economics and animal welfare legislation

The agricultural industry has increasingly commodified animals for maximum profitability and this has been supported through the practice of breeding which has become tightly governed by science,

experimentation, technology and corporations¹⁶. In contemporary times agriculture actually represents 0.9% of the UK’s gross domestic product with the total income from farming in 2008 being estimated at £3.46 billion¹⁷. As an industry, it employs 1.8% of the UK’s workforce, and British farmers and growers produce 60% of the UK’s total food supplies¹⁸.

“**there are occasional attempts to reconnect production and consumption such as the ‘River Cottage’ series**”

The UK encompasses a wide range of agricultural holdings of various sizes and production types and in June 2007 the total area of land on agricultural holdings was categorised as 77% of the total land area of the UK excluding inland water¹⁹. There are in excess of 900 million farm animals reared annually in the UK²⁰. The implementation of legislation with regard to farm animal welfare can be understood to underpin the developments that have taken place in the agricultural industry. In other words, legislation acts to maintain the status quo regarding economically driven intensive commodification ‘treatment’ practices towards animals.

The Animal Welfare Act 2006 makes it an offence to cause ‘unnecessary suffering’ to any animal and contains a duty of care to animals. The welfare of farmed animals is further protected by the Welfare of Farmed Animals (England) Regulations 2007 (S.I. 2007 No. 2078²¹) which are made under the Animal Welfare Act.

Legislation also guides organisations working within the animal cruelty/welfare field, although the nexus of cruelty/welfare is not a simple distinction. Definitions of animal cruelty are open to interpretation. As already alluded to Ascione²², in studying cruelty to animals in a domestic violence setting defined animal cruelty towards animals outside socially accepted practices. In contrast, legislation acts to regulate both socially accepted practices towards animals from a welfare stance and cruelty to animals. There appears then some difficulty conceptually with defining animal cruelty. This ambiguity can be seen to lie with the separation of cruelty into actions towards animals that sit either within or outside socially accepted practices. An example will illustrate this dilemma further. The RSPCA²³ report that:

More than 900 million farm animals are reared every year in the UK. Unfortunately the law alone is not always strong or detailed enough to ensure that they all have a good quality of life, and are transported and slaughtered humanely.

¹⁴Scott, J. [2011: 1] Rural Reality part 1 and 2. Available from: <http://www.jacscott.com/collections/excess.html> Accessed 6th July 2011.

¹⁵Channel 4, [2011] River Cottage. Available from: <http://www.channel4.com/programmes/river-cottage> Accessed 5th September 2011.

¹⁶Franklin, A. [1999] Animals and Modern Cultures.

¹⁷Department for Environment, Food and Rural Affairs [2009] ‘Defra announce farm incomes in the United Kingdom rise by 42 per cent. Statistical release.

Available from: <http://www.defra.gov.uk/news/2009/090129b.htm> Accessed November 2009.

¹⁸NFU [2006] What Agriculture and Horticulture Mean to Britain, NFU.

¹⁹National Statistics [2007] Agriculture in the United Kingdom 2007. Department for Environment, Food and Rural Affairs: Department of Agriculture and Rural Development (Northern Ireland): Welsh Assembly Government. The Department for Rural Affairs and Heritage: The Scottish Government, Rural and Environment Research and Analysis Directorate.

²⁰RSPCA [2011] Farm Animals, available from: <http://www.rspca.org.uk/allaboutanimals/farm?p-pid=printAndEmail-WAR-ptlCon> Accessed 5 July 2011.

²¹DEFRA [2010: 1] Archive on Farm Animal Welfare, available from: <http://www.archive.defra.gov.uk/foodfarm/farmanimal/welfare/onfarm/> Accessed 22 November 2011.

²²Ascione, F. R. [1993] Children who are cruel to animals

²³RSPCA [2011:1]

The prevention of cruelty to animals according to the RSPCA does not mean the prevention of animal exploitation and slaughter for farm animals. The concern is with welfare issues, and thus the ‘unnecessary suffering’ caveat can be taken as the underpinning motivation for taking any responsive action towards cases of farm animal neglect/welfare breaches as grounded in the law. Whilst this is arguably better than no action, defining what is ‘suffering’ and what is ‘unnecessary suffering’ is open to subjective/constructed understandings. This is further evident in the Animal Welfare Act 2006 where farm animals are regulated within ‘welfare’ constructs, primarily designed for the benefit of feeding humans. For example, section 9 on the ‘promotion of welfare’ sets out an animal’s needs to be:

- (a) Its need for a suitable environment.
- (b) Its need for a suitable diet.
- (c) Its need to be able to exhibit normal behaviour patterns.
- (d) Any need it has to be housed with, or apart from, other animals.
- (e) Its need to be protected from pain, suffering, injury and disease.

“ farm animals are regulated within ‘welfare’ constructs, primarily designed for the benefit of feeding humans ”

If we just take item (c) for a moment to consider how ‘normal’ can behaviour patterns be in mass production processes? Or item (e), are we saying animals do not suffer pain in their rounding up, transportation and mass slaughter? What about protecting animals from injury and disease – can we be sure that we are protecting them in mass production methods? What about BSE, is it the case that the cows did not suffer? What about foot and mouth disease, where in 2001 the UK agricultural industry suffered from the worlds’ worst outbreak²⁴.

There are then a number of questions that can be raised about definitions of farm animal abuse that warrant further exploration.

Having established the current status of farm animal abuse as a focus of study within criminology and thereby revealing its neglect, this article moved on to explore the reasons for this position. It argues that the lack of focus on the subject of farm animal abuse within criminology has been exacerbated by two powerful stances. One, the symbolic images and myths promulgated around an agricultural way of life that have formed part of the national psyche for centuries and two, the economics of the agricultural industry whereby the political, scientific and economic promotion of an increased production of animal protein has been underpinned by a supportive legislative framework in the interests of humans. This approach can be termed speciesist in its endeavour. The key argument in this paper is that these two referent points regarding agriculture have had a powerful influence in keeping the lived reality of farm animal abuse hidden from the criminological lens.

The focus on animal abuse within the study of human-animal relationships in criminology is beginning to develop, however the focus on farm animal abuse beyond farm gates is sadly lacking. Animals as victims are neglected in the wider criminological literature and in any discussions of farm crime. This paper argues that farm animal abuse is a subject worthy of study by criminology and in order to take this project forward there is a need to move beyond the legal framework and the ‘unnecessary suffering’ caveat of animal welfare legislation. Moving beyond existing frames of reference will shift the debate and allow for different analytical frameworks to challenge dominant images of farming and to question the practice of conducting criminological research on farm crime within constructed parameters that allow for issues of abuse within socially accepted institutionalised practices.

Acknowledgements

I would like to thank John Williams, Professor of Law, Department of Law and Criminology, Aberystwyth University for his advice and support in writing this article.

²⁴Browne, A. and Harris, P. [2001] How a rural idyll turned into a hotbed of disease.

On the Virtue of Solidarity: Animal Rights, Animal Welfarism and Animals' Rights to Wellbeing

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It is sometimes useful to know a little about the history of things, so I shall mention how I came to write this essay and the motivation behind it. In April 2011 I attended an Association of Lawyers for Animal Welfare (ALAW) event in London¹. The speakers were Antoine Goetschel (a lawyer), Joy Lee (WSPA) and Alexandra Hammond (RSPCA). Goetschel's words prompted my comment from the floor on unity in the animal protection movement. Afterwards Jill Williams, the editor of ALAW's Journal of Animal Welfare Law, suggested I write an article based on this. Goetschel served as the animal advocate for the Swiss canton of Zurich. His style, perhaps befitting

of a lawyer, was eloquent and his arguments persuasive about animal protection strategy. Goetschel talked about the differences between ethics and law. Ethics, a system of human values, is often expressed in ideals but law must be based on realism. Although ethics is important as a system of people's values, in law a public prosecutor has a duty to enforce these values. He mentioned that in democratic societies changes in law are ordinarily based on majority opinion. Goetschel for instance argued that since vegetarians and vegans constitute only a minority of the population, it is unrealistic to expect these values to be imposed on the wider population². This situation holds no matter how cogent the ethical arguments might be for these dietary practices. Furthermore, he suggested that if the constituency of vegans/vegetarians reached a majority, since food choice is considered a human right, vegetarianism would still not become law. Goetschel was, in essence, talking about the problem of a pluralism of reasonable values in society and the problem of how to adjudicate between them³. Importantly, he reminded us that

many politicians are lawyers and it helps to explain issues to them in a legal way. Finally, he advised of the importance of an evidence base for legislation and policy.

Solidarity and the virtue of a unified message

*Coming together is a beginning.
Keeping together is progress.
Working together is success.*
Henry Ford

Few would doubt the benefits of collective, coordinated activity. The coordination of a group can bring greater results than the sum of its parts. There is a synergy—as opposed to a mere addition—of output. Whether in military organisation, politics, business or social reform movements, working together can be a virtue. Sports are perhaps the paradigmatic illustration of the of coordinated group action. Consider the Great British rowing duo of Steve Redgrave and Matthew Pinsent. Without coordination between them of mind and muscle, world-beating

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Ethics, a system of human values, is often expressed in ideals but law must be based on realism
”

¹ The protection of animals from cruelty – a global perspective, on 7 April 2011. Doughty Street Chambers, London.

² Of course, many vegetarians/vegans do not advocate that others follow their dietary habits.

³ John Rawls, 1971, *A Theory Of Justice*, Harvard University Press.

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The extent and diversity of the animal protection movement suggests solidarity with fellow animals
 ”

success would have been out of their reach⁴. Team-working is a form of solidarity and the creation of a unified message has been critical in the success of social movements. Consider the progress that could be achieved in the animal protection movement with the unity of mind and resource of an Olympic rowing team. The animal rights movement and the related animal welfare movements can be framed to have different ideologies and ultimate aims. Currently there is no joined-up, unified message of the animal protection movement to publics and governments around the world. This essay explores the differences and similarities of the animal rights and animal welfarism doctrines, and argues for a unified, pragmatic position with elements taken from both.

Bringing together the animal protection movement

The animal protection movement⁵ (APM) is an umbrella term that includes actors and institutions concerned to promote the interests of non-human animals⁶. The group includes a large number of sub-groups including, firstly, academics⁷; secondly, the professions⁸; thirdly, NGOs (non-governmental organisations) and charities⁹; fourthly, commercial organisations¹⁰; fifthly elected representatives and government civil

servants¹¹: This list, of course, is not exhaustive and serves simply to demonstrate the scope of sub-groups that can be classified within the animal protection movement. The diverse groups also reveal the benefit of having a defined aim of the APM. Finally, listing these actors and institutions shows that the APM includes both ‘animal rightists’ as well as ‘animal welfarists’.

On solidarity with animals

By the words ‘solidarity with animals’ I do not mean to make some ethical prescription that we *ought* to have solidarity with animals. Rather, I am making the descriptive proposition that we *do* have solidarity with animals¹². The extent and diversity of the animal protection movement suggests solidarity with fellow animals¹³. More importantly, we know that citizens at large are disposed to solidarity towards animals¹⁴. The disposition to treat animals well probably follows from what David

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the creation of a unified message has been critical in the success of social movements
 ”

Hume called our moral sentiments¹⁵. The purpose here is to highlight the major positive for the animal protection movement. No matter how badly animals might be treated, the raw material for improving this state of affairs is abundant and widespread. Our moral sentiment—a disposition towards treating animals well—is ubiquitous and, since these feelings are part of human nature, they are here to stay. This is fundamentally important because, as Goetschel rightly pointed out, we need majority opinions to make matters better in law¹⁶.

Solidarity: moral sentiment and democratic transparency

If moral sentiments are widespread, and it is true that animals are not currently treated well, *how did we arrive at the position that we are now in and why does it persist?* Human solidarity towards animals is based on moral sentiments that dispose us to treat animals well. However, a condition for these moral sentiments is a real exposure to the lives of these animals as they are experiencing it¹⁷. Much of the treatment of animals that is of concern to actors within the animal protection movement is not

⁴ Sir Steven Redgrave and Sir Matthew Pinsent together have won the Olympic Coxless Pair gold medal three times.

⁵ See also Robert Garner, 1998, *Political Animals: Animal Protection Politics in Britain and The United States*, Macmillan Press Ltd.

⁶ The animals that are the subject of this article are *non-human animals*.

⁷ Natural scientists, arts and humanities scholars, social sciences scholars, legal scholars, etc.

⁸ E.g. the veterinary profession, the legal profession (e.g. prosecuting animal cruelty cases), and other relevant professions.

⁹ RSPCA, WSPA, CIWF, Soil Association, BUAV, Animal Aid, the Vegetarian Society, etc.

¹⁰ E.g. some supermarkets with progressive animal protection policies.

¹¹ Members of Parliament (e.g. APGAW – the Associate Parliamentary Group for Animal Welfare), UK government departments e.g. Defra (Department for the Environment, Food and Rural Affairs) and the Home Office.

¹² Edward O. Wilson, 1984, *Biophilia*, Harvard University Press.

¹³ I have made the reasonable assumption that these

actors and institutions are motivated by moral feelings towards animals.

¹⁴ See e.g. *Eurobarometer 2007*. Also consider the huge number of pets kept in family households.

¹⁵ David Hume, 1739 [1978], *A Treatise of Human Nature*, Oxford University Press.

¹⁶ See footnote 1.

¹⁷ Also see Siobhan O’ Sullivan, 2011, *Animals, Equality and Democracy*, Palgrave Macmillan.

directly amenable to human experience. Of course, reasons such as biosecurity, human security and commercial secrecy are used as justification for this barrier between animals and the public. However, this separation means that the moral sentiments cannot be activated, which has facilitated an environment in which treatment of animals has become the norm that would have otherwise been judged ethically unacceptable. In intellectual language this state of affairs constitutes an *alienation* of democratic citizens from the animals about which it is their civic duty to make informed decisions about the justice of their treatment. The importance of the ability of citizens to make experience-informed decisions on the just treatment of animals in society far outweighs any reasons that prevent this. Indeed, the issues of biosecurity, human security and commercial secrecy are premised upon the justified continuation of these practices in the first place.

Alienation (separation) cuts off the oxygen source of morality, starving the potential for justice towards animals at its source. Up until now, a general message of the animal protection movement has been ‘society should treat animals much better than we currently do’. This is perfectly correct and could be called the major *content-message* of the movement. However, there is a gap in this message which does not explain the why of the story. This is a formal-message most effectively presented as

the question: *Why in a democratic society are the public separated from sentient animals about which they care how they are treated?*

Animal welfare/wellbeing and animal welfarism

The concept of animal welfare is a state of the animal and is not directly concerned with how we ought to treat animals. The notion of welfare in animals is equivalent to the notion of wellbeing in people¹⁸. The words ‘welfare’ and ‘wellbeing’ can always be substituted when considering animal welfare¹⁹. Precisely why we tend to use the term welfare instead of wellbeing I do not know. Haynes has written²⁰ that the phrase was first used by Henry Salt²¹ and that Charles Hume²² revived the term.

“Alienation (separation) cuts off the oxygen source of morality, starving the potential for justice towards animals at its source”

In veterinary schools and other institutions, natural scientists study the science of animal welfare. This began in earnest after the publication of the Brambell report in 1965²³, which made a recommendation that

animal welfare be studied scientifically. The concept of animal welfare has been discussed extensively and a detailed exploration is not needed for this article. A simple overview is that some authors have considered animal welfare to be constitutive of an animal’s physical state and how it functions²⁴, others have defined it in terms of feelings²⁵, and others have defined it in terms of the naturalness of the animal’s environment²⁶. These concepts have been combined to form an integrative definition of animal welfare, which includes physical/functional, feelings-based and naturalness aspects²⁷. The important point here is that animal welfare as a science is precisely that: it is a discipline that attempts to gain truth about empirical issues (namely the welfare of the animal).

In contrast, the concept of *animal welfarism* is categorically different. Animal welfarism is an ethical or political doctrine that goes way beyond descriptive, scientific, or empirical issues. Animal welfarism as a doctrine can be described in terms of its main tenets. The underlying presumption is that humans are morally justified in using animals for the purpose of human benefit. The second major idea is that any suffering caused to animals must be ‘necessary’. Thirdly, any suffering caused to animals must be minimised as far as possible. In effect animal welfarism prioritises human interests over animal interests. This legitimises the instrumental use of animals for

¹⁸This is despite wellbeing in people and welfare in animals not being determined by the same causes. For instance consider reading a novel and human wellbeing, and wallowing in a muddy pool and pig welfare.

¹⁹In the USA ‘welfare’ principally means state benefits, so the term as applied to animals is less common.

²⁰Richard Haynes, 2010, *Animal Welfare: Competing Conception and Their Ethical Implications*, Springer p. xiii footnote 12.

²¹Henry Salt, 1894 [1980] *Animals’ Rights Considered in Relation to Social Progress*, p. 34 “the welfare of certain animals”, The Society for Animal Rights.

²²Major Charles Hume, founder of UFAW (Universities Federation of Animal Welfare).

²³F. W. Rogers Brambell (Chairman), 1965, *Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems*, London, Her Majesty’s Stationary Office.

²⁴E. J. McGlone, 1993, What is animal welfare? *Journal of Agricultural and Environmental Ethics* 6, Supplement 2: 26-36

²⁵E.g. Ian Duncan, 1993, Welfare is to do with what Animals Feel, *Journal of Agricultural and Environmental Ethics* 6, Supplement 2, p. 8-14.

²⁶E.g. Bernard Rollin, 1993, Animal welfare, science, and value. *Journal of Agricultural and Environmental Ethics* 6, Supplement 2, p. 44-50.

²⁷David Fraser et al, 1997, A Scientific Conception of Animal Welfare that Reflects Ethical Concerns, *Animal Welfare* 6, p. 187-205, UFAW. The latter ‘mixed’ conception of animal welfare was formulated due to the belief that a single reductive-type definition of animal welfare was not sufficient to fully explain the concept.

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The vagueness and flexibility of animal welfarism contribute to different perceptions of it
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human purposes, even if it causes those animals to suffer. Any suffering caused to animals must be deemed to be necessary. This condition in effect acts as a moral and legal²⁸ constraint on the subjugation of animals interests to human interests. These ideas are perhaps most fully expounded in terms of Banner's principles, although it could be argued that his first principle goes beyond animal welfarism²⁹. Banner's principles are as follows:

- (i) Harms of a certain degree and kind ought under no circumstances to be inflicted on an animal.
- (ii) Any harm to an animal, even if not absolutely impermissible, nonetheless requires justification and must be outweighed by the good which is realistically sought in so treating it.
- (iii) Any harm which is justified by the second principle ought, however, to be minimised as far as is reasonably possible.³⁰

The Farm Animal Welfare Council (now Committee) is an independent advisory body to the government. In its 2009 report *Farm Animal Welfare in Great Britain: Past, Present and Future* FAWC write: 'FAWC believes that the Banner principles should apply to livestock farming'³¹.

Animal welfarism has been analysed by Robert Garner³², who concludes that the concept as a doctrine is

intellectually flawed but pragmatically useful. His claim that the doctrine is flawed is in part based on the idea that it doesn't take seriously enough the interests of individual animals. The claim that animal welfarism is pragmatically useful is based on how the unnecessary suffering principle has brought about real improvements in animal welfare. The fluidity of the animal welfarism doctrine can also be seen to be progressive, since what society deems to be necessary at one time it may deem unnecessary at a later stage³³. The vagueness and flexibility of animal welfarism contribute to different perceptions of it. If animal welfarism is sold as a doctrine that justifies the use of animals for (truly) necessary human purposes whilst maximising the welfare of the animals used, then a great majority are animal welfarists³⁴. Conversely, if animal welfarism is considered in a more realist sense, then many see the doctrine as deficient³⁵. This is the sense in which we are currently living in an animal welfarism paradigm. In short, the animal welfarism ethic has the potential to be radical but also the potential to be misinterpreted and abused. We can say—uncontroversially I think—that the authentic paradigm of animal

welfarism currently constitutes not a reality so much as an *ideal* to aim for³⁶.

There is another issue at hand here that relates to the fluidity of the animal welfarism doctrine. To my knowledge, the ethic of animal welfarism has not been rigorously defended. In contrast, consider the many texts defending a thesis broadly outlining the animal rights position³⁷. The animal welfarism doctrine doesn't have an obvious intellectual theorist to champion it. Of course, there are many eminent animal welfare scientists, but there is no single person who has systematized the animal welfarist position. I bring this point up because I think it highlights something about animal welfarism. Animal welfarism is a doctrine rather than an ideology because it is a syncretism. Firstly, the foundation of animal welfarism is the justification of animal use for human benefit. This aspect is based on the Judaeo-Christian tradition of western society. It posits a clear

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²⁸Animal Welfare Act 2006. Available at: <http://www.legislation.gov.uk/ukpga/2006/45/contents>

²⁹Animal welfarism is a syncretism and has not been clearly defined. This is discussed later in the essay.

³⁰Michael Banner, 1995. *Report of the committee to consider the ethical implications of the emerging technologies in the breeding of farm animals*. HMSO, London.

³¹Farm Animal Welfare Council, 2009, *Farm Animal Welfare in Great Britain: Past, Present and Future*, p. 13. Available at: <http://www.fawc.org.uk/pdf/ppf-report091012.pdf>.

³²Robert Garner, 2009, *Animal Welfare: Strengths and*

Weaknesses, *AWSELVA Journal Vol. 13 No. 3*, Animal Welfare Science, Ethics and Law Veterinary Association.

³³E.g. housing layer hens in battery cages.

³⁴Such an animal welfarism would be radically progressive with respect to the status quo. Played out in society the implications are massively reduced consumption of animal products, at least a large reduction in animals used for biomedical experimentation, radical changes to the practices of pet keeping, etc.

³⁵This is because of the widespread misuse of the word 'necessary': overconsumption of animal products

leading to overproduction of animals in ethically unacceptable systems, toxicity testing for unnecessary products, biomedical experimentation for lifestyle diseases, breeding of pedigree dogs highly predisposed to genetic and conformational diseases, etc.

³⁶I intend to convey the optimistic meaning of ideal, i.e. a vision, something to aim for, *which is attainable*. I clarify this because of the presence of a pervasive realism-idealism dualism within animal welfare circles that sees idealism in a pejorative sense and realism as some higher level of understanding of the economic, political and social realities of the world.

³⁷E.g. Tom Regan 1983, Steve Sapontzis 1987, Evelyn Pluhar 1995, Gary Francione 1996.

separation between rational man in the image of God and irrational beast³⁸. Secondly, the aspect of animal welfarism that brings animals' interests into focus is based on the radical utilitarian philosophy. I deliberately stress the radical nature of utilitarianism here, because it has not been fully understood within animal welfare circles. The meaning of the term seems to have been turned round to justify just about any treatment of animals that creates *some* utility for humans. This unfortunate misuse of the term arises because of two different senses of the word utilitarian. It can first mean 'pertaining to the doctrine of utilitarianism'³⁹. In this sense, any genuine application of utilitarian philosophy would render radically progressive treatments for animals in society⁴⁰. Utilitarianism counts each as one and none for more than one. Even if we allow for humans counting for a little more than one, to satisfy the traditional Judeo-Christian strand of animal welfarism, utilitarianism prescribes that we take seriously the interests of sentient animals⁴¹. Despite this, it is a derivative, secondary meaning of utilitarianism that has come to be influential in animal welfare discourse. This is the sense of the word utilitarian meaning to have 'utility or usefulness to humans'⁴². Hence, one often hears of the

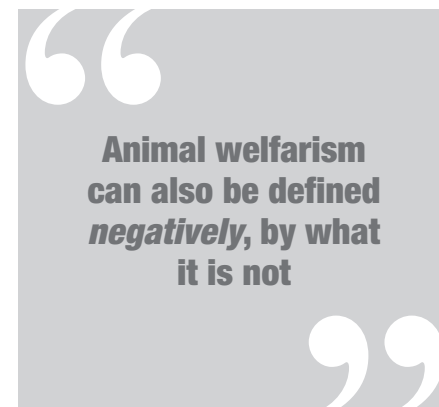
utilitarian justification of animal use, with the emphasis very much on the human utility gained⁴³.

Moral rights as valid claims

Above I have described the doctrine of animal welfarism. In a simple way it can be described as the doctrine of justified use of animals for human benefit, as long any suffering caused is for a necessary purpose, and that this suffering is minimised. Banner's first principle, which arguably has been absorbed by the doctrine of animal welfarism⁴⁴, goes as far as to prohibit harms of a certain degree, no matter what the benefit. This is a *positive* description of the doctrine of animal welfarism. Animal welfarism can also be defined *negatively*, by what it is not. Animal welfarism can be considered to be bound on either side by alternative doctrines. On one side is the conservative⁴⁵ doctrine of human dominion of animals, perhaps allowing for some indirect duties towards animals⁴⁶. On the liberal or progressive side is the ideology of animal rights. There are no doubt some advantages of defining oneself as a part of a group and delineating a group from others. In some ways it seems a natural part of human nature to do this, both on an individual and a group level. Despite this, I would like to consider whether there is any

genuine conceptual distinct boundary between animal welfarism and the 'animal rights' position. I contend that there is no obvious place to draw a line between animal welfarism and an animal rights doctrines. I will furthermore claim that the only way to construct and perpetuate two mutually exclusive groups is to warp the meaning of concepts, repeat defunct arguments and mischaracterise personal doctrinal beliefs.

First let us deal with the concept of a right. Above we made the distinction between animal welfare as a state of wellbeing and the doctrine of animal welfarism. Similarly with rights, we can understand the *concept* of a right without committing ourselves to a belief that some individual (human or animal) has a substantive right (e.g. the right to life). A moral right is most simply defined as a *valid claim*



³⁸I do not intend to argue these points further here and I understand there are other grounds for this central plank of animal welfarism. My only aim here is to demonstrate that animal welfarism is a syncretic doctrine.⁴⁸ As contained in EC Regulation 338/1997, Art. 2(w)

³⁹Oxford Compact English Dictionary 1996.

⁴⁰Peter Singer is well known for his book *Animal Liberation*. Although there is no doubt widespread respect for Singer in animal welfare circles, his main claims do not appear to have been taken seriously. Singer claims that we ought to widen the moral sphere by treating sentient animals based on the principle of equal consideration of interests. Consistent with the radical nature of utilitarian theory, Singer's conclusion is radical reform of animal use industries, albeit not necessarily prohibition. It is perhaps surprising that Singer's conclusions are watered down so much by the

animal welfarist movement. Indeed, his views are criticised (Regan 1983) for being moderate by animal rightists, despite him being viewed as a radical within animal welfarism. It is surprising that Singer is not more of a champion for the animal welfare movement. This could be in part because of the equivocation of the use of the word 'utilitarian'.

⁴¹Sentient animals consciously experience feelings such as pleasure and pain. They can therefore live a good life or alternatively experience suffering.

⁴²Oxford Compact English Dictionary 1996.

⁴³The word 'utilitarian' has also come to mean being a realistic and pragmatic person. The idea is that a utilitarian realist can trade human and animal values and offer pragmatic solutions. In contrast, the animal rights idealist is portrayed as being weighed down by conflicting absolute rights.

⁴⁴FAWC recommend Banner's principles. There are also other animal welfarist actors that advocate absolute prohibitions of certain practices (e.g. CIWF on husbandry systems such as battery cages for layers, gestation crates for sows and veal crates for pigs, although it can also be argued that these practices are not 'necessary').

⁴⁵I use conservative here in a loose sense to describe boundaries around animal welfarism. I believe progressive animal protection policies can be defended cogently from most if not all places on the political spectrum, including political conservatism.

⁴⁶Indirect duties towards animals are duties towards animals ultimately for the benefit of people, for example, Kant's example of killing a retired dog that has served its master well. Such action will affect the character of the human master.

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has a right not to be
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person has a valid
claim not to be tortured
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to some sort of treatment by others. Such treatments might be defined negatively (e.g. the right *not* to be tortured), or positively (e.g. the right *to* access to fresh water). Therefore, to say that someone has a right not to be tortured is to say that person has a valid claim not to be tortured. Similarly, to say that a person has a right to fresh water is to say that person has a valid claim to access to fresh water. By *valid* we mean in some sense a justified reason. By claim we mean an entitlement, such that the person can legitimately put their case to others if the right *from* (torture) or *to* (water) is withheld. Therefore, we say an individual has a moral right to access to fresh water for the justified reason that fresh water is vital to health and wellbeing. The individual has a right not to be tortured by others because torture causes pain and immense suffering, which can cause lasting harm to an individual's physical and mental wellbeing.

Now, I should like to mention two ways that the meaning of the concept of rights has been warped, which helps magnify any difference between animal welfarism and animal rights doctrine. The first is that rights are often mistakenly considered to be necessarily absolute. It is true that rights are more concrete and inviolable than the interests indiscriminately weighed up in utilitarian calculations of the overall good. This, indeed, is the purpose and function of rights; they are an individual's tangible protection against the impersonal maximisation of the utilitarian

calculus. The major moral criticism⁴⁷ of utilitarianism is that it does not respect the separateness of persons⁴⁸. Rights are intended as insurance against this, to protect the vital and important interests of individuals. Despite this, it is well known that rights may sometimes conflict. For instance, the right to freedom of speech can conflict with the right against physical violence, for example in the case of verbal incitement to violence towards others⁴⁹. Some rights must therefore ultimately be traded against one another. More important rights 'trump' less important rights. Context may allow what are more important rights in some circumstances to become less important rights in others⁵⁰. Therefore, rights theory has a degree of sophistication and flexibility that is often not appreciated in the polarised debate between animal welfarism and animal rights. To repeat, a moral right is simply a valid claim to some form of treatment, but not necessarily an absolute claim.

The second warping of the meaning of a moral right involves confusing it as a strictly formal concept and imbuing it with substance at the outset. So, rather than basing the discussion about the just treatment of animals on foundational ideas about whether an animal ought to be protected by *any rights*, there is a

short-circuit to the specific question of whether an animal has a right to life. Since the right to life of animals would involve unimaginable and perhaps unintuitive changes in the way that we treat animals, the notion of animal rights is discarded as impossible. Thus the more vague idea of animal welfarism is ascribed to, and animal welfarism defines itself in opposition to an extreme, idealistic, categorically different animal rights movement.

Parallel to this is the element of doubt induced by the strange but bizarrely still influential notion that an animal cannot have rights because it does not have duties⁵¹. As I understand, there are two sources of this confusion. The first is a logical fallacy predicated on the proposition that moral rights are correlative. This property of moral rights means that for every right there is a corresponding duty. For example, a child has the right to be educated and society has a duty to educate the child. However, notice that the right and the duty do not adhere in the same individual; the child has the right and society has the duty (the

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⁴⁷As opposed to practical criticisms, such as the problem that in many circumstances it is not possible for an agent to weigh up the good and bad consequences of an individual act.

⁴⁸See e.g. John Rawls 1971.

⁴⁹This example is a current problem in the UK. The UK Government resolved the problem by enacting legislation against freedom of speech in such situations.

⁵⁰For example, in war-time many individual rights (freedom of speech, freedom of choice in food rationing, freedom of personal wellbeing in conscription etc) are overridden by other rights concerned with the wartime effort.

⁵¹In moral philosophy duties are considered to be a general category that includes obligations and responsibilities. For our purpose here any of the

words duties, responsibilities or obligations could be used. The phrase 'rights and responsibilities come together' is most often heard (as opposed to rights and duties or rights and obligations) but I have used the word duty in the main text to provide continuity with the word duties in the remainder of the essay.

state represents society and delivers the education).

The second source of this doubt about the possibility of animals having rights lies in a different conception of rights to the one I have outlined above. I have described an interest-based conception of rights, following thinkers such as Feinberg⁵² and Rachels⁵³. In such a conception of rights, it is the interests of the individual that grounds the rights. For instance, an individual has a right to access to fresh water because fresh water is essential for his/her interest in wellbeing. There is a second conception of rights that some rights theorists ascribe to. This is that a right-holder requires being able to make a *choice* between two goods for that individual to genuinely have a right. On this interpretation, it is argued, animals do not have the capacity to choose between options in the way that being a rights-holder demands. It is not my intention here to evaluate the merits of *interest-based* and *choice-based* conceptions of rights. Rather, I want to examine these ideas about moral rights in the light of the doctrine of animal welfarism. I have suggested earlier in the essay that animal welfarists in part define their doctrine in opposition to animal rights. Let us assume that animal rights proponents base their doctrine on an interest-based conception of rights. That is, it is the *interests* that animals have which grounds the belief that animals have a right to be treated in certain ways. Since we are investigating the doctrinal differences between animal welfarism and

animal rightsism (examining the boundary between the two), let us ask the following simple but revealing question: why do animal welfarists not believe in animals' rights? Let us suppose that an animal welfarist replies that animal rights implies that an animal has a right to life⁵⁴, and that to prohibit killing animals would

“an individual has a right to access to fresh water because fresh water is essential for his/her interest in wellbeing”

lead to intuitively absurd and unrealistic conclusions. To this, I reply: 'very well, but I am not asking about an animal's right to life, but an *animal's right to wellbeing* during the period that it lives'. A reply to this more precise question might be that the animal welfarist is wedded to the idea of consequentialist ethics. For example, Jeremy Bentham famously wrote that rights are 'nonsense on stilts'⁵⁵. This answer is a reasonable one, but only in so far as arguments can be provided in support of the assertion. By this I mean that it might be expected that some individuals simply think in terms of consequences and genuinely believe that the notions of rights are spurious⁵⁶. If this route was taken, such an individual would have to bite the bullet and also criticise the notion

of moral rights as applied to human beings. Alternatively, if an animal welfarist supported the concept of moral rights as applied to human beings but not as applied to animals, then again good reasons would have to be given to support this. It is at this point, I believe, where one begins to see that animal welfarists and animal rights proponents ought not necessarily to differ with respect to openness to the general concept of moral rights for animals. In the case of the animal welfarist who supports the concept of human rights but not the concept of animals' rights, this position would presumably have to be grounded in a choice-based conception of rights. Such a conception of rights is based on choice as a rational discernment between different options being necessary to qualify for a right. When the idea of choice-based rights is unpacked, it seems very unlikely that an animal welfarist would have this conception of moral rights. This is because the animal welfarist position is fundamentally grounded in animals having interests as sentient beings⁵⁷. It is this progressive element of the doctrine of animal welfarism that defines it negatively from a conservative morality based on a distinction between human rationality and animal irrationality. Therefore, the animal welfarist who does not accept the concept of rights as applied to animals is forced either to reject the widely accepted notion of human rights or to abandon a sentience-based ethics which their own welfarist position is grounded in. The first horn of this dilemma is a rejection of what is commonly held

⁵²Joel Feinberg, 1980, *The Rights of Animals and Future Generations*, in: *Rights, Justice and the Bounds of Liberty*, Princeton University Press.

⁵³James Rachels, 1997, *Do Animals Have Rights?*, in: *Can Ethics Provide Answers? And Other Essays in Moral Philosophy*, Rowman and Littlefield Publishers.

⁵⁴This is a reasonable reply because it can be argued

that wellbeing is premised on continued existence, i.e. life. This is consistent with the intuition that the right to live in humans is a fundamental one.

⁵⁵Jeremy Bentham, 1879, *An Introduction to the Principles of Morals and Legislation*, Clarendon Press, Oxford.

⁵⁶Bentham was criticising rights in part from an atheist

stance that there was no such thing as God-given rights that could justify natural inequalities in nineteenth century British society.

⁵⁷A position given legal standing in the UK (Animal Welfare Act 2006) and the EU (Treaty of Amsterdam 1997).

to be a leap forward for humanity in the twentieth century⁵⁸. The second horn appears to contradict the very basis of the animal welfarist position—the primacy of sentience above such things as rationality and language⁵⁹.

The right to wellbeing as a reasonable, unified and pragmatic animal ethics

In essence I want to make two claims about animal welfarism and moral rights. The negative claim is that there is no theoretical reason why the doctrine of animal welfarism is incompatible with animals' moral rights. The positive claim is that animal welfarism becomes a stronger and more cogent doctrine when it utilises the concept of rights. The positive claim I have only begun to make and I will provide further support for below. It is evident from reading animal welfare literature and attending conferences and symposia within animal welfare circles that animal welfarism is an evolving entity. For instance, during my final years at veterinary school, animal welfare scientists⁶⁰ would talk very positively about utilitarian theory. Today, there is more suspicion of utilitarianism as a basis for the human animal relationship. A good

illustration of the evolution of animal welfarist thinking is found in the Farm Animal Welfare Council (FAWC⁶¹) *Farm Animal Welfare in Great Britain: Past, Present and Future* report of 2009⁶². The report includes a review of animal welfare policy, an assessment of the current situation, and recommendations for the future. It includes a criticism of what it judges to be an undue focus on negative welfare and suffering, for example implicit in the Five Freedoms⁶³ ⁶⁴. An important point I want to highlight is the increasing use of deontological language being used. This is consistent with a general feeling of moving away from the dominance of utilitarianism that I have described above⁶⁵. The FAWC proposes that all farm animals in Great Britain should have a life worth living, and an increasing number should have a good life⁶⁶. It also recommends that government assume guardianship (a duty) of animal welfare, as a public good⁶⁷. In an annex on ethical principles, entitled *How can we decide what is right and wrong in the treatment of animals?*, FAWC concludes 'the most useful way forward is to look both at the consequences of any proposed course of action and at any possible relevant intrinsic considerations before reaching an ethical conclusion'⁶⁸. In the paragraph prior to this, FAWC



describes 'intrinsic principles' as normally 'concerned with rights and duties'⁶⁹. Finally, FAWC notes that rights and duties are correlative⁷⁰, as I have described earlier. Taken together, FAWC's mixed ethical approach, together with the correlative nature of rights and duties, suggests that FAWC's prescription is very close to a recommendation of moral rights for farm animals⁷¹. I do not intend to convey here that FAWC has what might be called an 'animal rights' agenda⁷². On the contrary, FAWC has done all it can to avoid the language of rights, by talking about intrinsic value, dignity, duties etc. The claim I am making is that once one moves away from a purely consequentialist-based animal welfarism⁷³ (and animal welfarism was never a pure concept), if one uses the language of duties and if

⁵⁸The Universal Declaration of Human Rights was signed after the atrocities of the Second World War.

⁵⁹Bentham's dictum: 'the question is not can they talk, nor can they reason, but can they suffer?'

⁶⁰A small amount of ethics was taught by animal welfare scientists.

⁶¹FAWC was renamed the Farm Animal Welfare Committee in 2011.

⁶²FAWC, 2009. FAWC (now the Farm Animal Welfare Committee) is an independent advisory body to the government. Its current Chair is Christopher Wathes. It normally includes an ethicist, the current one being Michael Reiss.

⁶³See *ibid* p. 2. The Five Freedoms are: Freedom from hunger and thirst, by ready access to water and a diet to maintain health and vigour; Freedom from discomfort, by providing an appropriate environment;

Freedom from pain, injury and disease, by prevention or rapid diagnosis and treatment; Freedom to express normal behaviour, by providing sufficient space, proper facilities and appropriate company of the animal's own kind; and Freedom from fear and distress, by ensuring conditions and treatment, which avoid mental suffering.

⁶⁴See Steven McCulloch (in press) for a critique of this position.

⁶⁵This observation I cannot substantiate here, but I believe it is supported by the increased deontological discourse. Moral philosophers classify ethical theories as consequentialist (e.g. utilitarianism) or non-consequentialist (e.g. deontological). Therefore more deontological discourse implies less emphasis on consequentialist (utilitarian) theory.

⁶⁶p. 17.

⁶⁷p. 30.

⁶⁸p. 56.

⁶⁹p. 55.

⁷⁰FAWC 2009 p. 56 'If A has a right, then it relies on something else (e.g. B) having a corresponding duty.'

⁷¹FAWC's position does not entail animals' rights. Rights and duties are correlative: for every right there must be a duty. However, for every duty there is not necessarily a right. See Joseph Raz, 1984, *On the Nature of Rights*, *Mind*, 93; p. 194–214. I have written that FAWC's position is very close to recommending moral rights because arguably in this context the duty appears to imply a right.

⁷²I am using the FAWC report here as illustrative of the evolution of animal welfarist doctrine generally.

⁷³I.e. animal welfarism based on utilitarianism.

one admits the correlative nature of rights and duties, then one comes very close to a position of *accepting the concept* of certain rights for animals.

Building on this, we can ask whether anything is gained by using the concept of moral rights about animals. The relevant part of the animal welfarist arguments goes something like ‘we have a duty to respect animal welfare because sentient animals have interests that are important to them.’⁷⁴ To be sure, this proposition is cogent, but placed under a microscope there is a short leap from the animal’s interests (an empirical concept) to the human’s duties (a moral concept). We should try and explain the gap as much as possible, and although we cannot completely fill this gap⁷⁵, we can make it smaller. As the proposition stands, the question is: why do animals’ interests confer human duties (to respect those interests)? The most obvious answer is that the animals possess moral rights⁷⁶, as valid claims (which are justified reasons, grounded in *their* interests).

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Finally, we can examine whether the relationship between moral rights and legal rights sheds any light on the issue. FAWC’s policy recommendation⁷⁷ is cast in legal terms: ‘We propose that the minimum legal standard should be set at the test of whether a farm animal has had a life worth living’⁷⁸. The precise relation between moral and legal rights is contended by moral and political philosophers and legal jurists. One explanation is that legal rights are grounded in moral rights. In this way, one can make sense of moral rights that are not codified as legal rights, in an imperfect legal system⁷⁹. Similarly, a legal right can be described as codification of more basic moral rights. In this respect, using the potentially greater explanatory power of rights as well as duties, FAWC’s policy proposal could be interpreted in the following way: first, animals have interest-based moral rights to a life worth living (i.e. net positive life wellbeing⁸⁰); second, humans therefore have moral duties to respect these rights (as valid claims); third, government, as guardian of the public good, should act as guardian of animal welfare as a public good⁸¹; fourth, government, as guardian of animal welfare, should codify the duties of citizens to respect the interest-based moral rights of animals

as the legal rights of animals to a life worth living. I repeat that I do not mean that FAWC actually proposes that animals have either moral or legal rights. As I have written above, FAWC’s official reports are a good example of how proponents of animal welfarism tend not to use rights discourse, despite using the language of duties. The purpose here is to illustrate that using rights discourse together with the language of duties gives the narrative greater explanatory power: In the analysis of FAWC’s policy recommendation, it is the animals’ moral rights that grounds society’s correlative duties and it is government’s duty as guardian to enforce the rule of law. The moral right here is simply a tangible representation of the animal’s interest to have that interest protected. The next question then is why animal welfarism proponents do avoid rights-based language. It is to this question that I now turn.

Up to this point I have been using observations and philosophical analysis to argue that the doctrines of animal welfarism and animal rights are not mutually exclusive. Why do some consider these doctrines to be different in the first place? The first reply to this is simply that they are perhaps not in fact considered to be so different by a majority of people. Amongst the general public ‘animal rights’ is a term often used to describe the general social movement to protect animals⁸². It could be argued that the public has conflated two separate

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⁷⁴E.g. see FAWC 2009 p. 12 on the *Brambell Report* and p. 13 on Parliament’s judgement going back to the early twentieth century.

⁷⁵This is Hume’s guillotine: the notorious philosophical problem of deriving an *ought* from an *is*.

⁷⁶It is reasonable to ask what precisely such rights might consist in at this point. This is a fair question and alludes to another reason that Bentham considered rights to be ‘nonsense on stilts’. The metaphysical nature of rights is beyond the scope of this essay.

⁷⁷FAWC’s remit is the welfare of farm animals on agricultural land, at animal gatherings, in transit and at the place of slaughter, in Great Britain.

⁷⁸p.15.

⁷⁹John Stuart Mill [Ed. Mary Warnock], *Utilitarianism*, 1861 [1962] p. 298.

⁸⁰‘Wellbeing’ here corresponds to what has prudential value for the animal.

⁸¹FAWC’s proposal of government as guardian of animal

welfare, by invoking the concept of the public good, actually implies indirect duties to animals. Despite this, elsewhere FAWC is clearly discussing direct duties towards animals grounded in their sentient interests.

⁸²Paul Waldau, 2011, *Animal Rights: What Everybody Needs to Know*. Note that Waldau is writing for an American perspective. However, ‘animal rights’ is used similarly as an umbrella term in the UK and elsewhere.

movements (rights and welfarism). Despite this, the public may sometimes have a collective intelligence that we should not discount; as I have argued, rights are moral and political concepts that are not easily replaced. The concept of animal rights is not only compatible with animal welfarism but augments the cogency and explanatory power of the doctrine as a theoretical proposition. Nevertheless, why might animal welfarist proponents define themselves in opposition to animal rights? The first answer might be concerned with animal rights being a more extreme ideological position than animal welfarism. I have discussed at length above the issue of confusing the *substantive* right of a right to life with the more basic idea of the formal possibility of an animal having any moral right (e.g. the right to wellbeing).

“the public may sometimes have a collective intelligence that we should not discount”

Nevertheless, we must examine this point because it is important from the point of view of the boundary between animal welfarists and animal rights proponents. Let us

grant that animal welfarists and animal rightists are categorically different. Animal welfarists believe we are morally justified to use animals for certain purposes under certain constraints. In contrast, animal rightists believe that animals' moral rights preclude morally justified use of animals for the same purposes⁸³. Let us agree that both claims are reasonable beliefs based on a Rawlsian interpretation of a plurality of values in society⁸⁴. As the two are different in content of beliefs, when the two are deliberately contrasted, it is relatively easy to make the mistake that the animal welfarism position is in fact an anti-moral rights position. This is facilitated by the name of the animal rights position: 'animal rights'. By this I mean that the name of the animal rights position might contribute to the impression that a doctrine that is opposed in some ways must be opposed in all ways that concern moral rights. This is an equivocation of the formal possibility of recognising animals' moral rights (e.g. a right to wellbeing) with the attribution of specified rights (e.g. the right to life⁸⁵) on the part of the welfarist doctrine. Similarly, animal rights discourse can be polarised by opposition to the legitimate promotion of animal welfare⁸⁶. In animal rights discourse, the promotion of animal welfare is often criticised on the basis that humans should not be using animals in the first instance. The fact that the animal welfarist doctrine, by name,

is a 'welfare'-ism⁸⁷, I believe similarly has the potential to polarise the animal rights doctrine towards opposition to any improvements in animal welfare⁸⁸.

Let us briefly engage in a thought experiment about these common characterisations of proponents in the two groups. An animal rights person is characterised as having absolute beliefs prohibiting any instrumental use of animals and the premature killing of them. In contrast, the animal welfarist is characterised to have far more conservative beliefs about the instrumental use of animals, and permits them to be killed so long as their suffering is minimised. It is these simplified characterisations that I urge need to be problematised. Imagine that we are set the task of describing these groups to someone with no prior knowledge of the subject. Would it be more accurate to describe animal welfarists and animal rights proponents as two separate groups or as different elements of the same group? Let us imagine that a number of animal welfarists and a number of animal rights proponents are consulted and asked the following question about their aspirations for the treatment of animals. Consider for example this question:

Would you be satisfied if, within your lifetime, society came to judge through its institutions that all animals⁸⁹ have a legal right to access⁹⁰ to a life worth living (based on the moral right to wellbeing)?

⁸³It might be claimed that the difference is that animal rightists do not believe that animals should be used for any human purposes. While no doubt this is true of some animal rightists, the purpose here is simply to contrast the two positions for the sake of the argument I am making. If the animal rights characterisation is written in this absolute sense, it will not be logically the negation of the animal welfarist position.

⁸⁴John Rawls, 1971, *A Theory of Justice*, Harvard University Press.

⁸⁵Another moral right commonly claimed by the animal

rights doctrine is the right not to be treated as a means to an end, i.e. instrumentally for human benefit.

⁸⁶E.g. see Gary Francione's position in Francione and Garner, 2010, *The Animal Right Debate: Abolition or Regulation*, Columbia.

⁸⁷This is despite animal welfarism being a prescriptive moral doctrine and animal welfare an empirical descriptive state-of-the-world.

⁸⁸Of course, this would be difficult if not impossible to substantiate empirically. Despite this I believe there is

something in the fact that the two doctrines have in a sense come to the point where they are named in opposition to each other.

⁸⁹Animals used for human purposes, i.e. mostly domestic animals. Here 'animals' does not therefore include wild animals.

⁹⁰This avoids the problem that some animals won't achieve a life worth living no matter what provisions are made for them, due to uncontrollable and inevitable factors such as disease and accidents.

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The moral right here is simply carrying out its purpose, to protect the important wellbeing-interests of the animals
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Consider the animal welfarist first. Is it likely that the welfarist will object to this proposition based on an ideological dislike of the concept of rights? I very much doubt that this would be the case. The moral right here is simply carrying out its purpose, to protect the important wellbeing-interests of the animals, which the welfarist is primarily concerned about. In our current social, political and economic circumstances, any welfarist not satisfied with this situation within their lifetime would need to give very strong reasons to support their case⁹¹. Returning to Antoine Goetschel's advice, we should also remember that many legislators are trained lawyers and we should speak to them in language that will be understood. It goes without saying that lawyers understand the language of rights.

Let us now consider the position of the animal rights proponent. Would an animal rights proponent be satisfied within their lifetime if all animals have a legal right to a life worth living (based on a moral right to wellbeing)? Again, animal rights proponents should be satisfied with this proposition. A dissatisfied animal rights proponent must have expectations about the medium-term treatment of animals that do not seriously take account of current social, political and economic circumstances. John Dewey was an American thinker who based his moral philosophy on pragmatism⁹² and the link between ethics and pragmatism is highlighted well by this hypothetical question. The question that we are asking the animal welfarists and animal rights proponents, as members of the animal protection movement, is one about the real world in our own

lifetimes. The consensus answer to this question should impact on the strategy of the animal protection movement. If this proposition is one that many in the animal protection movement accept, then a case can be made for it to become an overriding goal of a unified movement. Since there does not appear to be any single, unified and well-defined goal of the animal protection movement at the current time, I suggest that the following one can be used:

Society and its institutions ought to respect the principle that every animal used for human purposes should have a legal right to a life worth living (based on the moral right to wellbeing).

The animal protection movement will benefit from a coordinated strategy based on an overarching but realistic aim. This aim should combine important elements of the animal rights and animal welfarism doctrines. It should have a reasonable amount of idealism that reflects the natural moral sentiments of human beings, and utilise moral and legal concepts that policy makers and democratic citizens understand. The prescription that all animals should have a legal right to a life worth living, based on a moral right to wellbeing, can be used as a starting point to explore these ideas further.

Acknowledgements

The author is grateful to Christopher Wathes and Michael Reiss for helpful comments on this essay.

⁹¹I cannot think of any.

⁹²John McDermott [Ed.], 1981, *The Philosophy of John Dewey*, University of Chicago Press.

Weighing the necessity of animal suffering in religious slaughter: religious freedom versus consumer choice and animal welfare

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In July 2011 the European Parliament was faced with the contentious issue of the religious slaughter of animals. A few months earlier its Environmental Committee had adopted amendments to the Food Labelling Regulations which required labelling of 'meat from slaughter without stunning'. Under the Jewish laws of Shechita animals intended for food must be healthy and uninjured at the time of slaughter and consequently stunning is not permitted for meat to be kosher. According to Islamic law halal meat comes from the Dhabiha method of slaughter which uses a sharp knife to make a deep incision in the animal's throat and in some cases also prohibits the prior stunning of the animal. Therefore the decision of the Environmental Committee jettisoned the relatively mundane subject of food labelling into the highly controversial and emotive area of ritual slaughter and animal welfare. Perhaps not surprisingly in these circumstances the amendment was rejected by the European Parliament. However the matter is far from laid to rest and in January 2012 the European Commission issued its second strategy for the welfare of animals 2012-15.¹ This includes plans to

consider the labelling of meat from slaughter without stunning.

In his recent article Bruce identifies two possible regulatory responses that the Australian government can take to address the conflict arising between respect for religious diversity on the one hand and the welfare of animals on the other: the government can prohibit religious slaughter or it can introduce new food labelling laws identifying meat from slaughter without stunning.² This article will consider these same two regulatory responses but analysed in the context of UK law. In a similar vein to Bruce it concludes that a ban on religious slaughter is unrealistic at the present time and we should instead concentrate on the more attainable goal of food labelling which allows meat consumers to make an informed choice. Interestingly the position of the Coalition Government was summarised by Lord Henley who stated that there were "*no plans whatever to make the practice of halal or kosher killing illegal. However, we think it worth considering the appropriate labelling of all meat so that people know exactly what it is that they are eating and how the meat has been killed*".³ In reaching our conclusion that the

best current regulatory response is to implement new food labelling laws, we recognise that the concept of unnecessary suffering, which underpins much of the UK animal welfare law, requires a balancing of competing interests in order to assess the necessity of any animal suffering. Determining the necessity of animal suffering is vital as necessary suffering is lawful whilst unnecessary suffering is not. Consequently it is crucial to accurately identify what is being weighed in the balance to decide the question of necessity. This is especially important with such an emotive subject as religious slaughter. This article will identify the interests to be weighed in the balance for each of Bruce's two regulatory responses and thereby predict the likelihood of any legislative changes.

Determining the necessity of animal suffering is vital as necessary suffering is lawful whilst unnecessary suffering is not

¹ Communication from the Commission on the European Union Strategy for the Protection and Welfare of Animals 2012-2015, COM(2012) 6 final/2.

² Bruce 'Do Sacred Cows make the best Hamburgers? The Legal Regulation of Religious Slaughter of Animals' (2011) UNSW Law Journal, Vol.34, p.351.

³ HL Deb 23 November 2010 c1006.

Is a ban or religious slaughter likely?

With this in mind we will first consider why a ban in the UK on religious slaughter is unrealistic at present even though the Government's own advisory body, the Farm Animal Welfare Council has recommended a ban⁴ – a measure which is supported by the British Veterinary Association.⁵ The rules governing the slaughter of farm animals are set out in the Welfare of Animals (Slaughter or Killing) Regulations 1995 (WASK regulations) which implement Directive 93/119/EC.⁶ The WASK regulations require the prior stunning of animals before slaughter but there is an exemption in Schedule 12 in relation to religious slaughter. This exemption permits religious slaughter “without the infliction of *unnecessary suffering*” by Jews and Muslims who hold the requisite licence and comply with the conditions set out in Schedule 12. In addition the Animal Welfare Act 2006 applies to all domestic animals including farm animals and under s.4 it is an offence to cause *unnecessary suffering* to an animal. It is important to appreciate that s.4 does not prohibit necessary suffering. Consequently the crux of whether or not an offence has been committed is whether the suffering was necessary or not. There are a set of statutory considerations set out in s.4(3) which include the presence of a legitimate purpose and the question

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of proportionality between the object to be achieved and the means of achieving it. Slaughtering animals for food is seen by society as a legitimate purpose but the WASK regulations aim to protect the welfare of farm animals and keep any suffering to a minimum.⁷

Proportionality requires a weighing in the balance of different, often competing, interests. Let us illustrate this with the example of a pig raised in an intensive farming system and slaughtered in an abattoir for meat. There is evidence that pigs suffer in intensive farms.⁸ Is this suffering necessary? Here we weigh in the balance the suffering of the pigs against the human desire for pig meat and the need for large quantities of it at a cheap price. The reality is that the suffering of the pig is given less weight than the benefit to humans of eating pork. In the affluent West meat is not requisite for a healthy diet and consequently the interest which competes with animal suffering, and trumps it, is that of taste and price. Let us now apply this to religious slaughter. It is unclear to what extent the Kosher and Halal slaughter methods cause increased suffering. In the USA the Humane Slaughter Act

defines ritual slaughter as one of two “humane” methods of slaughter. However recent scientific evidence indicates that there is increased suffering for the animal⁹ but this suffering is for a relatively short period i.e., 20 seconds to 2 minutes.¹⁰ So this increased and intense suffering for a relatively short period of time needs to be weighed in the balance against the freedom of the Islamic and Jewish communities in the UK to comply with specific requirements concerning the slaughter of animals for food. Having accurately identified the competing interests to be weighed in the balance we need to be realistic about the weighting to be attached to these interests. Religious freedom is a strongly protected human right.

The case of *Cha'are Shalom Ve Tsedek v France*¹¹ in the European Court of Human Rights illustrates this. The case confirmed that ritual slaughter is a religious custom and comes within the scope of Article 9 of the European Convention on Human Rights as a fundamental freedom of religion. The Jewish community in France was granted a licence for ritual slaughter but a minority group of Jews wanted to perform their own religious slaughter and were refused an exemption under French law to permit them to slaughter animals without pre-stunning. The Court's decision, that there was no infringement of Art.9, could be seen to support a ban as it suggests that

⁴ Farm Animal Welfare Council ‘*Report on the Welfare of Livestock when Slaughtered by Religious Methods*’, 1985; ‘*Report on the Welfare of Farmed Animals at Slaughter or Killing, Part 1: Red Meat Animals*’, 2003 and ‘*Part 2: White Meat Animals*’, 2009.

⁵ www.bva.co.uk, ‘Disappointment at backwards step on religious slaughter’ Feb 2011.

⁶ Council Regulation 1099/2009 will replace Directive 93/119/EC from 1st January 2013. However this new regulation retains the current derogation from stunning for religious beliefs.

⁷ Under the Welfare of Animals (Slaughter or Killing) Regulations 1995 it is an offence to cause or permit an animal avoidable excitement, pain or suffering.

⁸ For example, Meunier-Salaün, MC; Vantrimpont, A; Raab, A; Dantzer, R (1987) Effect of floor area restriction upon performance, behaviour and physiology of finishing pigs. *Journal of Animal Science*, 64: 1371-1377; and Prunier, A; Mounier, AM; Hay, M (2005) Effects of castration, tooth resection, or tail docking on plasma metabolites and stress hormones in young pigs. *Journal of Animal Science*, 83: 216-222.

⁹ Gibson, T.J., Johnson, C.B., Murrell, J.C., Hulls, C.M., Mitchinson, S.L., Stafford, K.J., Johnstone, A.C., and Mellor, D.J., 2009.

Electroencephalographic responses of halothane-anaesthetised calves to slaughter by ventral-neck incision without prior stunning. *New Zealand*

Veterinary Journal. 57:77-85. This research detected pain signals in the brains of the calves lasting up to 2 minutes after the incision of the knife.

¹⁰ Farm Animal Welfare Council ‘*Report on the Welfare of Farmed Animals at Slaughter or Killing; Part 2: White Meat Animals*’, May 2009. The report cited research measuring the time to loss of consciousness and found that birds were likely to be conscious for up to 20 seconds after the incision is made across the neck. However, it recommended that further research is needed.

¹¹ (2000) Eur.Ct H.R. 232. Application number, 27417/95.

animal welfare outweighed religious freedom, but in fact that was far from the case. Reading the judgement it is clear that this case turned on its own particular facts and the Court confirmed that the right of religious freedom will be fiercely protected.

In conclusion, past experience demonstrates that the suffering of farm animals generally is given less weight than the interests of humans' food preference and price. How much more important is religious freedom? Haupt observes that "...it is asserted that in weighing the interest in religious free exercise against the legitimate state interests in health and animal protection, religious freedom would prevail".¹² This is certainly endorsed by the views of the European Court of Human Rights in *Cha'are Shalom Ve Tsedek v France*.

“the suffering of farm animals generally is given less weight than the interests of humans' food preference and price”

Lerner and Rabello, opponents to a ban on ritual slaughter, argue that the issue of animal rights can be misinterpreted as a cloak for religious discrimination.¹³ Perhaps whilst intensive farming practices are permitted under our legislative system and whilst the concept of unnecessary

suffering, involving the balance of human interests versus animal interests, is the benchmark for permissible practice this could be seen as a valid danger which in arguing our case we must be careful to avoid. Interestingly Lerner and Rabello do acknowledge that religious law should not be static and should be harmonized with science and new knowledge. There has been recent discussion of new methods which may allow prior stunning and still be in compliance with shechita law, however this is not in place at present.¹⁴

The implementation of food labelling laws to address public concerns over animal welfare

We agree with Bruce that the way forward is by indirect regulation through food labelling laws. In England food labelling is currently governed by the Food Labelling Regulations 1996.¹⁵ The new European Union Food Information Regulation (EU/1169/2011) will be directly applicable in all Member States thereby replacing our current legislation and will apply from 13 December 2014. During negotiations on the content of the Food Information Regulation the European Parliament Environment Committee adopted amendments in April 2011 which would have required clear labelling to indicate 'meat from slaughter without stunning'. This needed to be followed by a vote by the full European Parliament and then approved by the EU Council of Agriculture. However in July 2011 the

amendment was rejected by the European Parliament. It approved the requirement for country of origin labelling for meat but rejected the requirement to label it as un-stunned. Nevertheless in January 2012 the European Commission issued its second strategy for the welfare of animals 2012-15 and this includes plans to consider the labelling of meat from un-stunned animals.

Shechita UK is opposed to a requirement that meat labels have to specify 'meat from slaughter without stunning'. It argues that such a requirement is discriminatory against certain religious communities. It observes that "The EU's recommendation for labelling this meat as "not stunned" is discriminatory because a) it suggests that shechita slaughtered meat comes from a non-humane process, and b) there will be no label to indicate how non-kosher meat is slaughtered or if their stunning methods have failed (as they so frequently do)".¹⁶ In addition, it argues that labelling meat as un-stunned would reduce the market value of the meat and "this could in turn represent a large financial loss for the abattoirs that produce kosher meat. This would drive the price of kosher meat up to a level where many would be unable to afford it".¹⁷

There is a recognition here that many consumers may choose not to buy meat without stunning if that information is available to them. The Farm Animal Welfare Council in its 1985 report found that a high proportion of Shechita meat was distributed on the open market.¹⁸

¹²Haupt, 'Free exercise of Religion and Animal Protection: A comparative perspective on ritual slaughter' (2007) *Geo Wash. Int'l L. Rev.* Vol 39 p.839.

¹³Lerner and Rabello 'The prohibition of ritual slaughtering and freedom of religion of minorities' 22 *J.L. & Religion* 1 2006-07.

¹⁴JL Cohen 'New Methods may allow animals to be stunned during Shechita', *Jewish Chronicle* online, 22nd February 2010.

¹⁵SI 1996 No.1499.

¹⁶www.shechita.co.uk, at Frequently Asked Questions

'Why is the labelling of un-stunned meat so controversial?'

¹⁷Shechita UK *The Jewish Chronicle* 9th March 2012, p.2.

More recently, a newspaper investigation in 2010 found that schools, hospitals, pubs and sporting venues in the UK were serving halal meat to the general public without informing them of this fact.¹⁹ It should however be noted that a large quantity of halal meat is pre-stunned and so would not be affected by the proposed new food labels.²⁰ Even so it is likely that there would be a large reduction in the number of animals slaughtered without pre-stunning and consequently this is a significant step to improving the welfare of farm animals in the UK.

This article concludes that implementing changes in food labelling laws is currently the best option in the UK for addressing the concerns for animal welfare raised by religious slaughter. It is suggested here that this is an attainable goal because under our legislation animal suffering is prohibited unless it is necessary. In assessing the necessity of the suffering the question of proportionality is crucial and in this respect it is vital to accurately determine what interests are to be weighed in the balance. To implement changes in the food labelling laws the interests are the convenience of having halal and kosher meat affordable and readily available as against the importance of consumer choice. It is submitted that the interest of informed consumer choice is likely to be given significant weighting and may tip the balance in its favour. This is a very different prospect than weighing in the balance the sanctity of religious freedom – an interest that attracts fierce protection

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in the courts - against animal suffering. This significantly alters the odds of achieving a legislative breakthrough. Food labelling is a proportionate measure and would benefit animal welfare by reducing the number of animals killed in the UK without prior stunning.

¹⁸Farm Animal Welfare Council, Report on the Welfare of Livestock when Slaughtered by Religious Methods, 1985, para.27.

¹⁹Simon McGee and Martin Delgado, 'Britain goes Halal but no-one tells the public' Mail on Sunday, 19th September 2010.

²⁰C. Barclay 'Religious Slaughter' House of Commons Standard Note SN/SC/1314, March 2012. Barclay notes that "Most Halal meat in the UK comes from animals that were stunned before slaughter". He cites figures from a recent survey of UK abattoirs carried out by the EU funded Dialrel project (www.dialrel.eu/).

Live Animal Exports: an Inhumane and Unnecessary Trade

**Peter Stevenson, Chief Policy Advisor,
Compassion in World Farming**

Each year millions of farm animals worldwide are transported very long distances to slaughterhouses or for further fattening. This trade is responsible for a huge amount of animal suffering. And it's completely unnecessary.

Compassion in World Farming (Compassion) agrees with the Federation of Veterinarians of Europe that "Animals should be reared as close as possible to the premises on which they are born and slaughtered as close as possible to the point of production".¹

The UK exported an estimated 80,000 sheep and young calves in 2011. Many of the calves are sent to be reared in continental veal units and sheep are exported for slaughter abroad. Compassion wants live exports from the UK to be brought to an end.

We are opposed to calf exports because of both (i) the detrimental impact of long journeys on calf welfare and (ii) the very poor rearing systems in which calves can be kept

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on the continent. A review of the scientific literature by Dr Claire Weeks concludes that scientific evidence indicates that young calves are not well adapted to cope with transport.² Dr Weeks stressed that "[calf] transport should be avoided where possible; particularly as morbidity and mortality following transport can be high". Some British calves have been exported to Spain and calves from Northern Ireland have been sent to both Spain and Hungary; these exports entail extremely long journeys.

Once on the continent, the calves are sometimes reared in very barren systems in which they are kept on

concrete or slatted floors without any straw or other bedding. Such systems are illegal in the UK as UK legislation requires calves to be provided with appropriate bedding³ whereas there is no such requirement in EU law. We believe that it is wrong for UK calves to be sent for rearing abroad in systems that have been prohibited on welfare grounds in the UK.

Much of Europe is criss-crossed with long distance animal transport routes. For example, almost 3 million pigs are exported each year from The Netherlands on long journeys to Southern and Eastern Europe. Most are young pigs going to be fattened though some are being sent to distant abattoirs. The Netherlands also imports around 180,000 young calves each year from Poland, Lithuania and Ireland; this trade entails prolonged journeys for these delicate animals.

Unfortunately Council Regulation 1/2005 on the protection of animals during transport permits these long journeys.⁴ The Regulation provides that where certain (not particularly demanding) vehicle standards are met, cattle and sheep can be transported

¹ http://www.fve.org/news/position_papers/animal_welfare/fve_08_016_transport.pdf

² http://www.ciwf.org.uk/includes/documents/cm_docs/2008/u/uk_calf_transport_and_veal_rearing.pdf

³ Welfare of Farmed Animals (England) Regulations, Schedule 6, paragraph 8(1). Similar legislation is in force in the other parts of the UK.

⁴ Council Regulation (EC) No 1/2005 on the protection

of animals during transport and related operations.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:003:0001:0044:EN:PDF>

for 28 hours, pigs and horses for 24 hours and unweaned animals for 18 hours after which they must be unloaded and given food, water and at least 24 hours rest. This pattern of travel and rest can be repeated indefinitely. We are campaigning for the EU to place a maximum limit of 8 hours on journeys to slaughter or for fattening.

Welfare problems and poor enforcement

Animals in the EU are regularly packed into overcrowded trucks and are often given no, or far too little, food, water or rest. As the journeys progress, the animals become increasingly exhausted, dehydrated and stressed. Some get injured. Many



We are campaigning for the EU to place a maximum limit of 8 hours on journeys to slaughter or for fattening



journeys take place in extreme summer heat in severely overcrowded trucks with inadequate ventilation. Combined with water deprivation and the sheer length of the journeys, this leads to great suffering. In the worst cases, many animals die.

Reports by the European Commission's Food and Veterinary Office show that many transporters ignore key aspects of the Regulation

and many Member States fail to enforce it properly. Common breaches of the Regulation include: failure to give animals the rest, food and water required by the legislation for lengthy journeys; exceeding the permitted stocking density; insufficient headroom; failure to provide water on the vehicle; the use of vehicles that fail to meet the legislative standards for journeys exceeding eight hours; and the transport of ill or injured animals.

Live exports from EU to third countries

The EU exports a huge number of animals to third countries. It has, for example, recently developed a massive live export trade to Turkey; in 2011 over one million sheep and cattle were exported from the EU to Turkey.

Subsidies (export refunds) are available on the export of cattle from the EU to third countries for breeding. A European Commission paper reports that €8.6 million was paid in export refunds for live bovines in 2010.⁵ These refunds were paid in respect of the export of 70,147 cattle. Some of these animals were transported on extremely long journeys to Russia and Kazakhstan.

Although it is often assumed that breeding animals are transported in good conditions, the Commission paper reveals that some of the breeding cattle exported from the EU experienced very poor welfare. For example some gave birth or aborted during the journey, others were badly injured and yet others died. In a number of cases transport conditions

were found to be unsatisfactory as regards the provision of food and water. In all 2,149 cattle experienced welfare problems. Compassion believes that it is wrong for taxpayers' money to be used to subsidise a trade that entails much animal suffering.

Once the animals leave the EU they will be covered in some countries by the European Convention for the Protection of Animals during International Transport.⁶ This was made by the Council of Europe which has a much wider membership than the EU. Regrettably, however, few Council of Europe members outside the EU have signed and ratified the Convention.

Live exports from Australia and South America

Each year Australia exports over two million sheep by sea to the Middle East and over 500,000 cattle, mainly to South East Asia but also to the Middle East. The animals are often transported in overcrowded conditions and at certain times of year temperature and humidity are high and ventilation may be inadequate. A proportion of the sheep die en route from inanition (failure of grazing animals to adjust to the pellet food provided on the ship), disease and injury. The mortality rate is, however, only the tip of the iceberg. Many sheep who survive nonetheless suffer greatly from injury and disease, for example eye infections and even blindness, as well as from hunger, thirst, heat and exhaustion.

⁵ <http://register.consilium.europa.eu/pdf/en/11/st15/st15182.en11.pdf>

⁶ <http://conventions.coe.int/Treaty/en/treaties/html/193.htm>

Brazil too exports cattle to the Middle East on sea journeys that take around 18 days. In a recent disaster 2000 Brazilian cattle died when the Gracia del Mar, which was carrying them to Egypt, encountered severe weather conditions.

Investigations by Animals Australia have repeatedly shown animals being subjected to immense cruelty during slaughter in the Middle East and South East Asia. The animals are usually not stunned. Their throats are cut while they are fully conscious and they are left to bleed to death, a process which in some cases can take several minutes. But it is not just a question of the lack of stunning; the pre-slaughter handling can be atrocious.

New film footage shows cattle in Egypt being beaten – very hard – on the head with a large pole. In many cases it takes several blows before the animal is so dazed that it falls to the ground when its throat is then cut. Other footage from Egypt shows slaughtermen slashing the leg tendons of cattle in order to control them.

The World Organisation for Animal Health (known as OIE, its historical acronym) has adopted Recommendations on welfare during transport and slaughter.⁷ These could have a beneficial impact but regrettably are ignored in many of the OIE's 178 member countries. The OIE has to date done far too little to persuade its members to put its Recommendations into effect. Compassion is calling on the OIE to adopt a leadership role in encouraging and assisting its

developing member countries to implement its Recommendations.



The long distance transport of animals for slaughter or fattening often entails great suffering. This trade should be brought to an end worldwide. Animals should be fattened on or near the farm where they are born. They should be slaughtered as near as possible to the farm of rearing with long distance trade being in the form of meat and carcasses.

⁷ http://www.oie.int/index.php?id=169&L=0&htmfile=titre_1.7.htm

News, Updates and Briefings

Wild Animals in Circuses

An overwhelming proportion of the public, as well as NGO's and members of Parliament, supported the ban on wild animals performing in circuses during last year's circus-gate. This, however, did not encourage the government to introduce a ban, rather they came up with a scheme. The licensing scheme is supposedly a temporary solution while the government works towards a ban. In government's own words: "The precise detail of a ban must be carefully thought through to ensure it has the intended effect. This will take time." According to DEFRA the proposed licensing scheme would promote and safeguard the welfare of wild animals in travelling circuses in England. The scheme would fall under new regulations that would be incorporated in the Animal Welfare

Act 2006 and would be enforced through government appointed inspectors. Circus operators failing to meet the conditions set out in licences would face enforcement action (criminal prosecution and suspension of a licence). The consultation closed on 25 April 2012 and draft Regulations are planned to be introduced to the Parliament by the summer.

It is estimated that between 35-50 wild animals are still performing in circuses in England. Elsewhere, Bolivia was the first country to introduce a ban followed by Austria, Peru, Costa Rica, Israel, Singapore and Greece.

Who's Afraid of Squirrels?

The EU Commission has recently completed a public consultation on a dedicated legislative instrument on Invasive Alien Species (IAS). This instrument will be a first of this kind filling a gap in the existing legislation. Invasive Alien Species are species of flora and fauna that were intentionally or accidentally released into the environment where they are not normally found. According to the EU biodiversity strategy to 2020 IAS can affect all types of ecosystems and are also a threat to human health. It is estimated that €12,5 billion worth

of damage has been caused by IAS across the EU. The strategy aims to identify and manage pathways to prevent the introduction and establishment of new IAS and to control or eradicate priority species. The Eurogroup for Animals advice that the best way to put an end to further damage is through prevention by limiting the import, trade, sale and keeping of invasive animal species and education on risks and impact of IAS, establishing codes of conduct and consideration of low risk species.

Elimination of Sow Stalls in Jeopardy

The Eurogroup for Animals reports (20/3/2012) that only 12 Member States will be ready to comply with Directive 2001/88 (amending Directive 91/630) which lays down minimum standards for the protection of pigs essentially recognizing that the current pig-rearing practices are detrimental to animals' welfare. The Directive will come into force on 1 January 2013 having given the producers 12 years to introduce the necessary structural changes to production facilities. This new piece of legislation aims to ban the use of individual stalls for pregnant sows and gilts during a period starting from 4 weeks after service to 1 week

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The licensing scheme is supposedly a temporary solution while the government works towards a ban

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the Independent
reported that the Badger
Trust had been allowed
to judicially review
DEFRA's decision
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before the expected time of farrowing and the use of tethers, improve the quality of the flooring surfaces, increase the living space available for sows and gilts, allow the sows and gilts to have permanent access to materials for rooting, introduce higher level of training and competence on welfare issues for the stockmen and the personnel in charge of the animals, and request new scientific advice in relation to certain issues of pig farming. It is not yet clear how the EU intends to enforce the law in the rest of the member countries.

The UK banned stall and tether systems in 1999.

Badger culling in England and Wales

On 21 April 2012 the Independent reported that the Badger Trust had been allowed to judicially review DEFRA's decision to allow the cull of badgers in England in order to stop the spread of bovine TB in cattle. At the judicial review the Trust will seek to overturn DEFRA's decision to cull on 3 grounds: 1) the proposed eradication of badgers will not stop the disease from spreading and may even increase the spreading of TB; 2) the cost impact assessment that lays behind DEFRA's decision is flawed; and 3) the responsibility to grant licences for killing of badgers should not have been given to Natural England. The hearing will most likely take place in June.

Earlier this year the Welsh government decided to vaccinate badgers against bovine tuberculosis instead of culling. In their communiqué the Trust said: “*Badger Trust is pleased that this Government is saving Welsh taxpayers, rural communities, and badgers from a cull. Following a thorough review of the science, the Minister has today*

concluded that a cull of badgers is not necessary and would not bring about any substantial reduction in the incidence of bovine TB. Vaccination represents a safe and satisfactory alternative.”

Review of Wildlife Legislation

The Law Commission is in the process of preparing provisional proposals to reform the wildlife management legislation. In the Commission's view the current law is complicated, inflexible and contradictory and the outdated regime needs to be aligned with modern day approach to wildlife. The main legislation, the Wildlife and Countryside Act 1981, has been amended so many times that it is practically impossible for non-lawyers to use. The reform seeks to simplify and modernise the current framework and to properly align it with the EU law requirements.

The Commission's aim is to open public consultation after the publication of the provisional proposals in June 2012. A final report with the Law Commission's recommendations and draft bill is in plans for mid 2014.

Keeping of Primates as Pets (Prohibition) Bill 2012

Keeping of Primates as Pets bill was a private members' bill introduced by Sheryll Murray (South East Cornwall, Conservative). The bill went through first reading at the House of Commons at the end of January 2012 but failed to complete its passage

through the Parliament meaning that the bill will not go further in the parliamentary process. Apart from the prohibition of keeping of primates as pets the bill also aimed to ban breeding, sale and purchase of primates, and to introduce regulations for animal sanctuaries and for conservation purposes.

RSPCA estimates that between 2,500 and 7,500 primates are kept as pets in England, Wales and Scotland. Other sources claim that the numbers are a lot higher, 15,000 to 20,000.

New definitive guideline for dangerous dog offences

The Sentencing Council for England and Wales has issued a new definitive guideline for dangerous dog offences. The new guideline will come into effect from 20 August 2012 and applies to all cases dealt with on or after 20 August, regardless of when the offence was committed. The new guideline heralds a tougher approach for those convicted of dangerous dog offences with increased top of sentencing ranges. It also aims to provide greater clarity and consistency in relation to sentencing. It is envisaged that more offenders will receive jail sentences and community orders with fewer discharges. According to the Sentencing Council enable the courts to make best use of their powers against irresponsible dog owners. The offences in the Dangerous Dogs Act 1991 covered by the new guideline are:

- Owner or person in charge of a dog dangerously out of control in a public place, injuring any person.
- Owner or person in charge allowing a dog to be in a private

place where the dog is not permitted to be, injuring any person.

- Owner or person in charge of a dog dangerously out of control in a public place.
- Owner or person in charge allowing a dog to be in a private place where the dog not permitted to be which makes a person fear injury.
- Possession of a prohibited dog (Pit Bull Terrier, Japanese Tosa, Dogo Argentino and Fila Brasileiro).
- Breeding, selling, exchanging or advertising a prohibited dog.

The guideline includes injuries to other animals as an aggravating factor in allowing the dog to be out of control and widened the definition of vulnerable victims from children to apply to the elderly, disabled and visually impaired.

The new guideline can be downloaded from www.sentencingcouncil.org.uk

Cheale Meats former slaughterhouse employees receive jail sentences

On 25 April 2012 Piotr Andrezej Wasiuta and Kelly Smith received jail sentences after pleading guilty to offences under the Animal Welfare Act 2006. Wasiuta, aged 23, admitted three charges of stubbing out cigarettes on the faces of pigs. Smith, aged 40, admitted two counts of beating animals with excessive force and frequency. Wasiuta was jailed for six weeks and Smith for four weeks. Both men received reduced sentences after pleading guilty to the charges.

The men had been filmed abusing animals by covert cameras. One pig



was filmed being hit more than 32 times in 62 seconds. The Food Standards Agency declined to investigate and referred to Defra which was unwilling to prosecute on the basis of covertly obtained footage by a third party that it could not have obtained under its own statutory powers. However, the Crown Prosecution Service thought differently. In March 2012 Simon Clements, Head of the Welfare, Rural and Health Prosecutions Division at the Crown Prosecution Service said:

“I have advised the Food Standards Agency that Piotr Andrzej Wasiuta and Kelly Smith should be prosecuted for animal cruelty offences following the alleged mistreatment of pigs at Orchard Farm, Little Warley, Brentwood, Essex in March and April of last year.”

After sentencing Animal Aid’s Head of Campaigns, Kate Fowler commented:

“We are satisfied that Wasiuta and Smith have now been brought to justice. Their acts of cruelty were inexcusable and caused untold suffering to animals who were already scared and vulnerable. However, many other slaughterhouse workers, who also caused serious and deliberate suffering to animals, have escaped justice because this

government refused to act. We are now calling on the Food Standards Agency to look again at two other cases to see whether charges may be brought under the Animal Welfare Act.’

EDM 2273, which calls on mandatory CCTV in Slaughterhouses, has been signed by ninety-five MPs. For more information see:

http://www.animalaid.org.uk/h/n/NEWS/news_slaughter/ALL/2688/

For further background information to the case see Bates, A (2011); Undercover Evidence: The Use of Filmed Footage as Evidence in Animal Welfare Prosecutions. The Journal of Animal Welfare Law Autumn-Winter Edition 2011 pp 1-3

A new practitioner work is available at discount to ALAW members

The new publication: Civil Liability for Animals has been written by Peter North, Former Principle of Jesus College and Vice Chancellor, University of Oxford. The book focuses on liability for animals, covering the harm done by dangerous and straying animals including both dangerous and non-dangerous species.

For more information visit: www.oup.co.uk/isbn/9780199600816

The Oxford University Press will offer ALAW members a 20% discount on the book when ordered directly from the OUP. To claim the discount please quote ALAUTH6. (Discount is valid until 31.08.12.)

Briefing: Challenging REACH Decisions

**David Thomas, former ALAW Trustee,
BUAV and ECEAE solicitor**

EU Regulation 1907/2006 (REACH) introduced a new and ambitious scheme for the regulation of chemicals in the EU. It aims to protect human health and the environment, whilst maintaining the competitiveness of the EU chemicals industry and innovation and facilitating the internal market. It covers both existing and new chemicals ('substances') and seeks to fill information gaps in company safety portfolios. It does not extend to substances used in certain types of products, such as medicines and pesticides. The legislation is very complicated.

To the chagrin of consumer and environmental lobbies, very few substances will be banned, although there will be restrictions on the use of some high-risk substances. REACH is about managing risks on

an informed basis. Responsibility for safety rests with companies.

The problem for laboratory animals is that they are one of the primary vehicles for generating the required information, especially for substances produced at high volumes. Estimates vary but it is certain that REACH will lead to millions of additional animal tests. The tests meet various forms of toxicity (poisoning) 'endpoints' and are often highly invasive. Many believe they represent crude science.

Despite the overall context for animal welfare, some of the legislative rhetoric sounds reasonably promising. Animal tests are to be a 'last resort'. The Three Rs principle – under which animals cannot be used if there is a replacement method, numbers should be reduced as far as possible and suffering kept to a minimum (refinement) – is stressed. That applies to the test methods regulation which the European Commission must keep updated as much as to decisions under REACH itself. Companies must share data to avoid duplicative tests. REACH gives precedence to the animal test bans in the cosmetics directive. There is a degree of new transparency. Third parties can provide information relevant to proposals for animal tests at the higher tonnages.

As with so much animal protection legislation, the reality, sadly, falls some way short of good intention. Animal welfarists believe that both the Commission and the European Chemicals Agency (ECHA) have shown themselves to be toxicologically deeply conservative, with a preference for bureaucratic convenience over protecting animals. ECHA, the primary regulator, has published voluminous guidance, mostly in step with the legislative principles, but the experience of the BUAV and the European coalition it leads, ECEAE, is that it increasingly opts for animal tests as the default position, sometimes in the face of clear words in REACH.

One of their complaints is that ECHA now argues that, if a company registering a substance proposes particular animal tests, it cannot stop the company from carrying them out, even though ECHA believes they are not necessary and would therefore breach REACH (and the animal experiments directive). This is clearly wrong. CEFIC, the umbrella body for the European chemicals industry, has accused the agency of scientific inconsistency and going beyond common toxicology practice.

What is to be done? Lobbying continues, including legal argument.

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”**

“
The Lisbon treaty has relaxed the rule to some degree but it remains to be seen what difference this makes in practice
”

Concerns are highlighted through the media. Ultimately, of course, alleged unlawfulness needs to be challenged through legal means. At European level, this can be very difficult. The rules for standing for the General Court and the Court of Justice – the recently renamed European Union Courts – are extremely restrictive, far more restrictive than the English approach, for example.

Environmental groups are given a degree of access through the Aarhus Convention, but other NGOs find it all but impossible to establish standing. This is because they are not ‘directly and individually concerned’ by decisions, as the courts have interpreted that phrase in the relevant treaty rule. The problem is particularly acute for animal protection NGOs because, unlike some NGOs advocating for groups of people, their intended beneficiaries have no standing themselves.

The Lisbon treaty has relaxed the rule to some degree but it remains to be seen what difference this makes in practice. It is likely that in most cases the only method of challenge will remain via domestic courts, with the hope that they will make a reference to the Court of Justice. This adds to expense and delay, and there is no guarantee of a reference – there might, for example, be a domestic solution which leaves the EU-wide question unresolved.

It is easier, fortunately, to intervene in cases – though that of course depends on someone else bringing a case. The ECHA Board of Appeal, in the face of fierce opposition from ECHA itself, has given ECEAE permission to intervene in the first substantive appeal against an ECHA regulatory decision. The Board of Appeal recognised that animal protection is a key objective under REACH and that ECEAE, as an

accredited ECHA stakeholder, could add value to the appeal.

The case involves a refrigerant for car air-conditioning systems. The company, Honeywell, fulfilled all the standard REACH requirements, including a battery of animal tests. In one of these, a developmental toxicity test, a number of pregnant rabbits died at certain dosages (though the foetuses were unaffected). ECHA, understandably, was concerned. It could have insisted that the company’s risk management measures reflected the concern and focused on the classification and labelling of the substance (under separate legislation). And it could have earmarked the substance for special evaluation by member states, perhaps leading to restricted use. It chose instead to exercise the discretion, unusually given to it by REACH for this sort of test, to order a further test.

There is nothing wrong with that in principle. However, the test it ordered is virtually unprecedented in toxicology (which leads to obvious interpretative problems), and almost certainly falls outside international testing guidelines. The test would involve forcing 120 rabbits to inhale the substance for several hours a day, for five or seven days a week, for 90 days, while held in a small chamber. Rabbits are known to experience high levels of stress in the lab, which apart from adding to their suffering could confound the result.

ECEAE argues that the appropriate approach (assuming any further studies) is, first, to find out why the

pregnant animals died (strangely, Honeywell had not carried out an autopsy); second, to use a recognised in vitro test to determine whether the rabbit is the appropriate test species for the substance – in other words, whether there was correlation between rabbits and humans; and then, if it is, to use an established mathematical formula to extrapolate from that test to humans. No further animal test is needed, ECEAE contends. It complains that the decision is scientifically flawed and disproportionate, in EU law terms.

The appeal raises important points of principle, with implications far beyond this particular substance. For example, ECHA has sought to sideline the last resort principle, and it says that, in its decisions, it has no obligation to order a stepwise approach, under which the need for each further test is evaluated depending on the results of preceding tests. Instead ECHA has ordered Honeywell to carry out the rabbit test regardless of what preliminary further investigation shows.

In light of the complicated background and the principles at stake, ECEAE has suggested an oral hearing. In the meantime, it has been granted permission to intervene in another appeal, brought by Dow Chemicals, where the issue is whether ECHA has applied appropriately a technique called read-across. Under read-across, tests on a substance, including animal tests, can be avoided where there is enough evidence about toxicity from structurally similar substances. And there are other important recent ECHA decisions which ECEAE believes are unlawful and where it may well apply to intervene if an appeal is brought.

On the Leash: Controlling Dangerous Dogs

Christina Warner, ALAW Trustee and JP, looks into why more controls are being called for

Increased numbers of dog attacks have attracted much media attention of late, along with pressure for reform of the current legal controls.

Battersea Dogs & Cats Home recently released statistics indicating that it had put down one third of the dogs it received in 2009 as their behaviour was deemed to be a safety risk. The charity put down 2,815 dogs in 2009, of which 1,931 were physically healthy; these statistics merely being symptomatic of a wider-spreading problem. With dog attacks causing over 5,000 hospital admissions in 2008/09 in England alone, and the cost of these to the NHS amounting to some £3.3 million, the problem is one which has forced address. In February this year, the Home Office issued a public consultation of a streamlined

approach on dealing with anti-social behaviour, including schemes for dealing with dangerous dogs.

The issues appear to be plentiful on a subject that has caused national debate. Why are the statistics regarding dog attacks on the increase? And can a reform of legislation limit what appears to be an ongoing problem?

Current legal controls

Section 3 Dangerous Dogs Act 1991 makes it a criminal offence to allow any dog to be dangerously out of control in a public place or in a private place where it is not meant to be. Actual injury is not required to make out the offence. Police and local authorities have the power to seize a dog they deem to be a danger to the public.

As well as these legislative attempts to control dogs' behaviour, s1 of the 1991 Act specifically bans four types of dog: the pit bull terrier, Japanese Tosa, Dogo Argentino and Fila Brasileiro. These types are deemed to be bred specifically for fighting and intrinsically dangerous.

Potentially prohibited dangerous dogs are assessed by 'type' and not breed label, meaning that a judgment will be made by a court as to the

dog's physical appearance and characteristics and whether these place the dog concerned into one of the banned type categories. It has been argued that there is a need for further types to be added to the banned list such as the Presa Canario and Rottweiler, but at present there is no intention to expand on the current list.

The other main legal control of potentially dangerous dogs is by way of owners having civil proceedings brought against them in the magistrates' court under the Dogs Act 1871. This can be regardless of whether the dog is in a private or public place, and a complaint can be made by the police, the local authority, or by a private individual. If the court finds (on balance of probability) that the dog is dangerous, orders can be made including directing that the dog be kept under proper control by the owner, or the court can order the dog's destruction.

Status dogs

But other breeds outside the banned list, such as the Staffordshire bull terrier, or 'Staffies', have become victims of mistaken identity. Although some Staffordshire breeds fall within the pit bull type (such as the American Staffordshire terrier and the Irish Blue or Red Nose) most

The charity put down 2,815 dogs in 2009, of which 1,931 were physically healthy

Staffies do not. Once dubbed the 'nanny dog', and considered to be loyal family pets, Staffies are often mistaken for pit bull terriers causing them to be rejected by potential new owners. Last year alone, Battersea Dogs & Cats Home in London saw 43% of the dogs they took on to be Staffies, with similar figures at their Birmingham equivalent where 40% of their dogs are Staffies.

Some dog owners have become attracted to this hard-looking breed due to the current fashion for these types of dogs as accessories. Some breeders are attempting to cross-breed Staffies in order to create an animal looking even more like a pit bull; the result often being that the dog does not reach the breeder's expectation and is abandoned or the dog is horrifically ill-treated either through starvation, goading or beating in order to 'toughen' it by encouraging the animal to behave savagely.

“ Staffies are often mistaken for pit bull terriers causing them to be rejected by potential new owners ”

Louise Campbell, manager of Dogs Trust, in Shropshire, says: '[Owners] treat these dogs as a disposable item. We are seeing Staffies come in less than a year old, and this is really sad – some are already on their third or fourth home. They are being passed around. This hasn't given them the best start in life, and it doesn't help with their reputation.'

“ the dog is horrifically ill-treated either through starvation, goading or beating in order to 'toughen' it ”

About half a million people are bitten or attacked by dogs in the UK each year, but there are fewer than 650 convictions annually. One thing that has become clear is that the issue is one more concentrated in urban areas. Although not conclusive, speculations have been made as to whether the increase in gang culture in England's inner cities has played a significant part in the rise of dangerous dog related injuries.

The March 2010 Department for Environment, Food & Rural Affairs (Defra) consultation on dangerous dogs coined the term 'status dogs' as being directly attributable to those who used their dog to 'intimidate or harass members of the public'. The consultation suggested that there was a correlation (although not exclusively) between young dog owners living in inner-city estates or those involved in criminal activity, and the use of dogs as threatening tactics.

Defra Minister Lord Henley has suggested that owners should be held equally accountable as breeders and suppliers of dogs on the banned list: 'The issue of dangerous dogs is not just a problem of dangerous breeds but also one of bad owners. They need to be held to account and stopped from ruining people's lives.'

Apart from the impact on the NHS, charities such as Battersea Dogs & Cats Home have become saturated with unwanted dogs, some failing their owners' expectations or because they are uncontrollable. As

has already been shown, many of these abandoned dogs leave charities with no other option but to euthanise. Of the 2,815 dogs put down by Battersea Dogs & Cats Home in London in 2009, some had medical problems, 321 were banned breeds, 81 were aggressive, and 1,931 were judged to have temperament problems yet were physically fit.

Control 'by deed not breed'?

New proposals have been put forward by animal welfare campaigners arguing that extensive reform is needed of the 1991 Act. Suggestions have been made that the list of banned types should not be exhaustive and rather that the actions of the animal or owner should be criteria for classification rather than the type or breed itself.

Suggestions have been made that police powers should be increased to enable them to deal more efficiently with non-banned types of dog, such as the issuing of dog control notices, or 'dog ASBOs' as they have been dubbed. But monitoring the application of these 'ASBOs' may prove difficult as many breeders of illegal breeds remain underground in order to evade apprehension.

Another problem with dog attacks is the financial ramifications for the victims, especially those more at risk while working such as postal workers, telecoms engineers or others whose work takes them onto private land. As the law stands, people are legally safer in a public park than while carrying out duties that may require them to be on private land. Compulsory third-party insurance has been suggested



as a remedy to ensure that all victims are duly compensated. But this would be problematic to enforce, and if linked to existing pet insurance, it would increase premiums, causing some owners to be even more reluctant to insure their pet.

Battersea Dogs & Cats Home, the Metropolitan Police and RSPCA have all shown support for the introduction of a registration or licence scheme, paid for by the owner, which would accurately link the dog to the individual responsible for it. This is not completely supported by Lord Henley who fears that such a scheme would only toll the responsible dog owner rather than monitor those likely to be irresponsible. Simpler and less expensive proposals have been suggested such as compulsory micro-chipping and neutering of potentially dangerous dogs to aid in the locating of an owner and to reduce aggression and control breeding.

Meanwhile Ryan O'Meara of K9 Magazine argues that reform of the 1991 legislation is urgently needed, also arguing that the onus should be on the owner and not the breed or type of dog, and that ignorance is not an excuse. Using the analogy of faulty brakes on a car, he says: 'If I own a motor and think my brakes

are a little dodgy, and I end up crashing into somebody, the police will tell me that just because I'm not a mechanic doesn't excuse me from what happened.'

Ultimately, the issue is one which requires input from animal welfare charities and veterinary surgeons alike as well as legislative bodies and law enforcement.

A last item of good news for dog-lovers; Battersea Dogs & Cats Home in London were able to rehome 1,300 Staffies in 2009, indicating that not all new dog owners have been put off by the media coverage or the statistics.

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Orcas – A Landmark Case

Penny and John Morgan

In 2002 Angela Campbell, a young legal intern, wrote a bold paper entitled ‘Could a chimpanzee or bonobo take the stand?’¹ She asserted ‘The federal competency standards for witnesses testifying on the stand are fairly liberal. Witnesses must be able to distinguish right from wrong, understand the concept of punishment, perceive events, and remember those events to communicate them in the future. Chimpanzees and bonobos are able to do all of these things to some degree, and therefore, arguably satisfy the federal competency standards. In some situations, this indicates that these nonhuman apes

should be allowed to testify in court, subject to the federal competency and interpreter rules.’ She concluded that a chimpanzee or a bonobo could meet the substantive requirements for qualifying as a competent federal witness. They are able to communicate, distinguish right from wrong, understand the concept of punishment, perceive events and then communicate about them.

Campbell felt that while the best chance of getting a chimp or bonobo on the stand would be to give testimony as witness to a crime, it would be more difficult for her to testify on her own behalf to protest some action which had been taken against her, because the apes at this point in time are considered property, and a ‘thing’ cannot testify on its own behalf.

Since that time there have been a couple of cases which have taken the latter route, testing the legal concept of ‘personhood’ in non-human primates, with somewhat differing results.

In a ground-breaking case at the Mödling district court, Austria, a judge ruled on the ‘humanness’ of a chimpanzee (Hiasl*), specifically over whether he was entitled by law to a legal guardian². As only humans can have legal guardians, the primary question to be answered by the Austrian courts was whether a chimp would qualify as such or not. This was a prerequisite to Hiasl securing donation money and thus avoiding deportation. The judge decided not to proceed as Hiasl was not mentally handicapped and faced no imminent threat, both being preconditions for getting a legal guardian. The applicants (VGT**) appealed but on 9th May, 2007, the judge turned down the appeal arguing that the applicant had no legal standing, thus avoiding the real issue.

On all levels, from the district court to the provincial appeal court in Wiener Neustadt (turned down on 5th September, 2007) up to the Austrian Supreme Court, judges refused to decide this question. Instead, the application was refused on the grounds that VGT had no legal standing. There followed an

“
a chimpanzee or a bonobo could meet the substantive requirements for qualifying as a competent federal witness
”

¹ Campbell, A. (2002). Could a chimpanzee or a bonobo take the stand? *Animal Law*, 8, 243, 25 April.

² <http://www.guardian.co.uk/world/2007/apr/01/austria.animalwelfare>

* The chimpanzee in question is called Hiasl. He was

born in the Sierra Leone jungle in 1981, captured by animal traders and illegally shipped to Austria in 1982, destined for a pharmaceutical laboratory. Customs officials intercepted the crate and Hiasl was handed to an animal sanctuary. Years later, the sanctuary went bankrupt and Hiasl was sent to a zoo.

** VGT is Verein Gegen Tierfabriken (the Association Against Animal Factories) in Austria

“
**Suíça, a chimpanzee,
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 ”

appeal to the ECHR³. The applicants asked the court to nullify the Supreme Court ruling on the grounds of an unfair trial and other basic rights being broken. Several high profile names supported the case***.

According to Dr Martin Balluch, applicant on behalf of VGT, there is no definition of what constitutes a person in Austrian civil law code³ and all the judges evaded the question of ‘personhood’.

In the second case⁴, in 2005, the late Suíça, a chimpanzee, became part of Brazilian legal history as the first animal to be considered a “legal subject” under a petition for habeas corpus, the aim being to equate primates with human beings for the purposes of granting habeas corpus in order to secure release from solitary confinement and relocation to a primate sanctuary. The judge in the case, Edmundo Lúcio da Cruz, who analysed the petition submitted to the Brazilian courts, dismissed the case as Suica died and the petition for habeas corpus lost its purpose. However, he stated that “criminal procedural law is not static, but rather subject to constant change, and new decisions have to adapt to new times. I believe that even with Suíça’s death, this subject will endure in continuous debates, principally in law school courses.” Some have taken this to mean he might have ruled that Suica was subject to habeas corpus.

Both cases, adopting different strategies, concerned non-human hominids and attempts to achieve

transubstantiation, i.e. a change from property to person. The recent Orca case is the first of its kind to concern the ‘reclassification’ of a cetacean species who many consider display several of the cognitive abilities of great apes, eg. self-recognition, use of a form of communication, use of tools, deception and solving complex problems, and also share a theory of mind****.

Orca case

In Oct 2011 People for the Ethical Treatment of Animals (PETA) filed a lawsuit against SeaWorld on behalf of 5 wild-captured orcas (Tilikum, Katina, Kasatka, Ulises, and Corky), the putative plaintiffs, seeking a declaration that these five orcas (Orcinus orca, or Killer Whales, the largest member of the dolphin family and apex predators) are slaves and subjected to involuntary servitude in violation of the 13th Amendment to the U.S. Constitution. The case sought the release of the animals to a more appropriate environment such as a coastal sanctuary.

On January 13, PETA’s legal team filed a brief⁵ in the US District Court for Southern California, opposing SeaWorld’s motion. PETA’s brief cited more than 200 years of US Supreme Court precedent, including such landmark cases as Dred Scott⁶ to establish that the orcas’ species does

not deny them the right to be free under the 13th Amendment, and that long-established prejudice does not determine constitutional rights.

A federal judge, Jeffrey Miller, dismissed a claim by PETA that orcas were enslaved, ruling that they have no standing to seek the same constitutional rights as people (‘...there is simply no basis to construe the Thirteenth Amendment as applying to non-humans.’)⁷. He added the ‘goal’ of PETA attorneys who brought the lawsuit ‘to protect the welfare of orcas is laudable’, even if the 13th Amendment was not the correct way to approach the case. Indeed, some conservationists and legal experts assert that PETA have made a serious strategic error in attempting to apply the 13th Amendment, which abolished ‘slavery or involuntary servitude’ in America, to non-humans.

‘It was a foolish suit and a sure loser,’ says Steven Wise, president and founder of the Centre for the Expansion of Fundamental Rights’ Nonhuman Rights Project (NhRP), which seeks to establish legal personhood and legal rights for animals⁸. Over the objections of both PETA and SeaWorld, NhRP secured leave of the judge to file an amicus curiae brief in which it urged the court not to reach the merits of PETA’s claim⁹. SeaWorld objected to the amicus request as they were confident that the Court would rule that orcas are not slaves under the 13th Amendment.

³ <http://www.vgt.at/publikationen/texte/artikel/20080118Hiasl.htm>

*** Jane Goodall and Volker Summer, among others.

⁴ For translation of the Suica case see <http://www.animallaw.info/nonus/cases/cabrsuicaeng2005.htm> “Historic decision recognises chimpanzee as legal subject”, *Correio da Bahia*, 6 October 2005.

**** The theory of mind has diffuse aspects, but essentially refers to the ability to infer another’s

state of mind even if it differs from one’s own.

⁵ United States District Court for the Southern District of California, Case No.11-cv-2476 JM WMC, Feb 13 2012.

⁶ The Dred Scott case, bought by the African-American slave who unsuccessfully sued for his and his family’s freedom, eventually led to the abolition of slavery in the US.

⁷ United States District Court for the Southern District of California, Case 3:11 –cv- 02476 JM-WMC,

Document 32, filed 02/08/12. <http://www.nonhumanrightsproject.org/wp-content/uploads/2012/02/Court-ruling-in-PETA-v-SeaWorld.pdf>

⁸ <http://www.nonhumanrightsproject.org/2012/02/26/the-moral-rights-of-dolphins-and-whales/>

⁹ Reach the merits: (US) Generally, courts decline to reach the merits of a case when an aggrieved party does not utilize the administrative procedures available.

“
**if the case fails and there
 is then case law history
 against recognising
 those rights, that would
 not be helpful for the
 cause**
 ”

What then might be the more effective methods of achieving transubstantiation from ‘thing’ to ‘personhood’ for great apes or cetaceans?

1) Within the courts, rather than tackling the question of personhood head on, perhaps a more nuanced approach, would be to adopt Angela Campbell’s advice – the giving of testimony as a witness to a crime. This would be difficult but if such testimony is accepted then legal parity between human and non-human hominids or other species is achieved, at least in that respect, and may open a door to other species or other situations.

In the US, Steven Wise and his team are preparing a series of strategic cases that rely upon the common law of the 49 American common law states, rather than on statutes or constitutions of the United States or any state. ‘That way the problems of statutory interpretation and legislative history will not arise’ (pers. comm., Mar 2012). Their objective is not about standing but gaining personhood for the species.

NhRP believe the more promising course of action is to pursue a common law writ of habeas corpus and investigate the circumstances under which it might be used by a third party to transfer custody rather than as a release from custody¹⁰.

2) Within parliaments, the New Zealand Animal Welfare Act stands out. As long ago as October 7th, 1999, this Act was passed by the New Zealand Parliament] which

recognised the need for protection for “non-human hominids”, a world first, included the following statement: “No research, testing or teaching involving the use of a ‘non-human hominid’ is permitted unless ... [it] is in the best interests of the non-human hominid or ... in the interests of the species to which the non-human hominid belongs and ... the benefits to be derived ... are not outweighed by the likely harm to the non-human hominid.”¹¹

In 2008 the Environmental Committee of the Spanish parliament [Cortes Generales] passed a resolution endorsing the aims of the Great Ape Project, including banning the use of great apes in circuses and similar venues. It seems, though, that this resolution was never enacted by the full Spanish parliament, and little seems to have come of this resolution¹².

Now there is a Declaration of Rights for cetaceans which includes the following: ‘No cetacean should be held in captivity or servitude; be subject to cruel treatment; or be removed from their natural environment.’¹³ If that declaration were adopted into law, no one would be permitted to keep orcas in captivity. While it does not address the question of legal personhood – indeed, it is more of a moral than a legal document - it may serve to protect them from exploitation until the matter of personhood is settled.

Declaration of Rights for Cetaceans: Whales and Dolphins:

1. Every individual cetacean has the right to life.

2. No cetacean should be held in captivity or servitude; be subject to cruel treatment; or be removed from their natural environment.
3. All cetaceans have the right to freedom of movement and residence within their natural environment.
4. No cetacean is the property of any State, corporation, human group or individual.
5. Cetaceans have the right to the protection of their natural environment.
6. Cetaceans have the right not to be subject to the disruption of their cultures.
7. The rights, freedoms and norms set forth in this Declaration should be protected under international and domestic law.
8. Cetaceans are entitled to an international order in which these rights, freedoms and norms can be fully realized.
9. No State, corporation, human group or individual should engage in any activity that undermines these rights, freedoms and norms.
10. Nothing in this Declaration shall prevent a State from enacting stricter provisions for the protection of cetacean rights.

The Helsinki Group, 22nd May 2010, Helsinki, Finland.

The Declaration was discussed at the AAAS Meeting in Vancouver, Feb 2012

¹⁰Wise, Steven M [2011] Legal Personhood and the Nonhuman Rights Project. Animal Law, 17, 1.

¹¹Animal Welfare Act 1999, Section 85 and Appendix II

¹²In June of 2008, a resolution concerning great apes

was proposed in the Spanish Cortes Generales (Spanish Parliament) which, inter alia, would have required Spain to promote forums that protect great apes to prevent them from being mistreated, enslaved, tortured, killed, or driven into extinction.

¹³<http://cetaceanconservation.com.au/cetaceanrights/index.php>

Animal Welfare Protection: A Universal Concern to Properly Address in International Law

Sabine Brels¹

Animal welfare protection is an emerging universal concern (1) that needs to be addressed properly in international law (2).

At the beginning of this 21st century, animal welfare protection is a new hot topic on the international scene. As a growing concern in the international society, it is now desirable to reach a universally agreed basis to regulate international relations on this subject and address international issues not yet resolved, particularly in the frame of the World Trade Organization (WTO)². In order to remedy to this unsustainable insecurity in international law, a global instrument would be essential to provide proper guidance for animal welfare protection on a uniform and harmonized basis. The absence of such a framework instrument on animal welfare protection appears to be a gap in international law³.

Therefore, the international community should globally address this subject while taking into account its inherent disparity. Instead of continued disagreement, common points could be agreed and converging elements put forward in order to bring all member states together towards a universal conception of animal welfare protection in international law.

1. Animal Welfare Protection as an Emerging Universal Concern in the International Community

The next United Nations (UN) Conference on Sustainable Development (Rio, 20-22 June 2012) will address animal welfare protection through "sustainable consumption and production" goals⁴.

A Declaration adopted by the UN General Assembly on this topic stressed the need to "safeguard animal welfare and conserve biodiversity for future generations" and set more precisely the objective of "respecting animal welfare" amongst the "millennium consumption goals for the period 2012-2020"⁵. In particular, intensive farming is no longer sustainable, either environmentally as a major contributor to climate change⁶, or ethically for animals by generating a

“ a global instrument would be essential to provide proper guidance for animal welfare protection ”

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² See generally on these issues THIERMANN, A.B. and S. BABCOCK, "Animal welfare and international trade", in BAYVEL, A. C. D. (dir.), *Animal Welfare, global issues, trends and challenges*, Office international des épizooties, 2005, pp. 747-754; VAN CASTLER, G., "Animal welfare, the EU and the World Trade Organization: Member state's sovereignty between a rock and a hard place?", in VEDDER, A. (dir.), *The WTO and concerns regarding animals and*

nature, Wolf Legal Publishers, 2003, pp. 61-85; and for a recent study concerning the European ban on seal products: FITZGERALD, P.L., "Morality" may not be enough to justify the EU Seal Products Ban: Animal Welfare Meets International Trade Law", *Journal of International Wildlife Law and Policy*, vol. 14, n°2, 2011, pp.85-136.

³ Such a gap has been raised by AUSTEN, M. and T. RICHARDS, *Basic legal documents on international animal welfare and wildlife conservation*, Kluwer Law International, 2000, p.1; CURNUTT, J., *Animals and the law: a sourcebook*, ABC-CLIO, 2001, p.15; and NIELSEN, L., *The WTO, animals and PPM*, Martinus Nijhoff Publishers, 2007, p.325.

⁴ See the Millennium Consumption Goals Initiative (MCGI) of the Rio+20 Conference, online at: <http://www.uncsd2012.org/rio20/index.php?page=view&type=510&nr=312&menu=20>.

⁵ See the Declaration A/66/750 of the United Nations General Assembly, 20 March 2012 (at 8 & 15).

⁶ According to the United Nations Environment Programme: "Agriculture is an important contributor to climate change, with the sector's greenhouse gas emissions (GHG) comparable in volume to those of the transport sector". See online UNEP/AGRI-FOOD: <http://www.unep.org/climateneutral/Topics/Agrifood/tabid/139/Default.aspx>.

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huge amount of suffering due to productivity conditions⁷. Even though it was absent from the sustainable development concept when it was first drafted in 1987 and proclaimed in the 1992 Rio Declaration⁸, animal welfare protection now has a place under its goals. At the least, this protection would be a way of taking into account the "need and aspirations" of "present and future generations" towards a more sustainable world for animals from an ethical point of view⁹.

A *Universal Declaration on Animal Welfare* is also proposed by governments and NGOs for adoption by the UN General Assembly "as a means of improving the welfare of animals"¹⁰. If adopted, this short declaration would establish the foundation of a global animal welfare protection¹¹. At first, it states as a fundamental precept: "Animals are sentient beings and their welfare should be respected" (Art.1). Then it defines animal welfare as a "positive state of wellbeing" (both "physical and psychological") when the "individual is fit, healthy [and] free from suffering" (Art.2). It also specifies that sentient animals refers to "all vertebrates" and "some invertebrates" having "the capacity to

have feelings, including pain and pleasure" with a "level of conscious awareness" (Art.3). Finally, it provides the general obligation for every Member States to take "All appropriate steps [...] to prevent cruelty to animals and to reduce their suffering" (Art.4). In order to achieve this objective, "Appropriate policies, legislation and standards" should be developed and implemented (Art. 5 & 6) and "all necessary measures" should be adopted "to give effect to these agreed principles" (Art.7).

Broadly framed, this draft declaration remains a non-binding instrument. Even so, its adoption would be a first step of crucial importance to build animal welfare protection in international law by providing an agreed basis and allowing further development in this field. Moreover, universal protection would complement the animal welfare protection already existing at national, regional and international levels. Such protection can be found in numerous laws around the world since the 19th century - at national level¹², in various European

instruments since the 1970s - at regional level¹³, and in the standards of the World Organisation for Animal Health (OIE) since the beginning of the 2000s¹⁴ - at international level. In this continuity, a universal protection would be the last step of the geographical extension of animal welfare consideration by the law world-wide.

2. The need to Properly Address Animal Welfare Protection in International Law

Initially, the concept of animal welfare protection should be clarified in order to determine its dimensions in the international legal system, while identifying the common ground for international law-making. For this purpose, domestic laws seem to provide a consistent, solid and operational basis. Common ground can be found in general provisions of these national laws and constitutions where obligations for humane treatment and care, as well as interdictions of cruelty and ill-treatments are stated¹⁵. No less than 65 countries in the 5 continents have stringent provisions aiming to protect animal welfare¹⁶. Even if the content of these provisions can differ from one country to another¹⁷, animal welfare protection is a

⁷ Cf. D. FRASER, *Animal welfare and the intensification of animal production: An alternative interpretation*, Food and Agriculture Organization of the United Nations (FAO), Rome, 2005.

⁸ *Rio Declaration on Environment and Development*, UN Document A/CONF.151/26 (Vol. I), 12 August 1992.

⁹ See the Report of the Brundtland Commission, Chapter 2, Section I: "The Concept of Sustainable Development" where it is defined as a "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"; World Commission on Environment and Development, *Our common future*, Oxford University Press, 1987 p. 43.

¹⁰ Over 330 animal welfare groups and many supportive governments – including Cambodia, Fiji, New Zealand, Palau, the Seychelles, Switzerland and the 27 European Union member states are supporting the *Universal Declaration on Animal Welfare*. See online: <http://www.wspa-international.org/wspaswork/udaw/Default.aspx>.

¹¹ See the *Universal Declaration on Animal Welfare* draft agreement of 2011, online at: http://s3.amazonaws.com/media.animalsmatter.org/files/resource_files/original/Latest%20draft%20UDAW%20Text%20-%20202011.pdf?1314177486.

¹² First animal welfare laws were adopted in England (*Act to Prevent the Cruel and Improper Treatment of Cattle*, 1822) and in the United States (New York anti-cruelty law of 1829). Early laws were also adopted in foreign countries like "*The Prevention of Cruelty to Animals Act*" of 1890 in Pakistan. See national protection laws online at: http://www.animallaw.info/nonus/articles/art_pdf/arbrellsabine2012.pdf.

¹³ Numerous conventions were adopted by the Council of Europe, followed by the instruments of the European Union. See online index at: http://www.animallaw.info/nonus/articles/art_pdf/aranimalwelfareeuropean.pdf.

¹⁴ OIE International Standards on Animal Welfare: http://www.animallaw.info/nonus/articles/art_pdf/aranimalwelfareinternational.pdf.

¹⁵ These provisions can be reflected from the very title of the laws as for examples: acts on "animal welfare", "protection", "care", "humane treatment"; or "anti-cruelty (and "ill-treatment") laws. Constitutional provisions can be found in Germany (animal protection), Luxembourg (animal welfare and protection), India (compassion), Switzerland (animal dignity) and Brazil (cruelty interdiction).

¹⁶ Animal welfare protection laws concern 12 countries in the American continent, 10 in Africa, 9 in Asia, 24 in Europe. See the index resulting of my personal research, online at: http://www.animallaw.info/nonus/articles/art_pdf/arbrellsabine2012.pdf.

¹⁷ Some elements can vary from the nature of the obligations towards animals (positive or negative), to the protected animals (only domestics or even wild, only vertebrates or even some invertebrates) and the degree of protection through sanctions (fines or prison etc.).

“
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common principle shared by the main law systems in the world¹⁸. Therefore, nothing prevents the international community from considering its integration into international law; not only as a non-binding principle, but as a more reliable one from a legal perspective. Since the concept to respect living beings is present in every culture and religion in the world¹⁹, this could be recognized as a universal ethical principle (like in the bioethics field²⁰). However, animal welfare protection is already evident in much domestic laws (at national and European levels) and this constitutes a decisive argument for its incorporation as a new general principle in international law²¹.

Although the "animal welfare" concept has recently appeared in international instruments through the

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OIE standards, this cannot be considered as a principle of international law because of the absence of either established customs or international treaties directly related to it²². Nonetheless, some international environmental law instruments are indirectly referring to some aspects of animal welfare (particularly provisions of the *World Charter for Nature*, the *International Convention for the Regulation of Whaling*, and the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES)²³). Moreover, OIE standards do not fully address animal welfare since they only focus on health issues (recalling the first mandate of this organization to prevent and eradicate epizooties)²⁴. Therefore, other common issues regarding animal welfare protection are not yet considered and can occasionally cause problems in the international community. This is particularly evident in the field of international trade at the WTO where the question of the legality or illegality of bans aiming to protect animal welfare is still not resolved to date²⁵.

Consequently, a framework convention on animal welfare protection should be promoted in order to globally and seriously address this concern in international law. Regarding the content of such a treaty, a consensus could be reached upon already agreed principles on animal welfare by the international community (like the "5 freedoms" and the "3 Rs"²⁶), as well as universal ethical precepts (e.g.: respect of living beings) and existing provisions in domestic laws around the world (general obligations to well-treat and not to ill-treat animals). In such an instrument, individual "animals" would become new subjects of international law (in the same way as "environment" did few decades ago), but general guidance and existing means could be used for its concrete implementation. For example, the "necessity" test through "proportionality" between means and ends would be of particular relevance for conflicts resolution²⁷. In particular, it could be used concerning the general guidance of avoiding animal "unnecessary suffering"²⁸ (not yet addressed by international courts). Besides, animal welfare can certainly find a place in international law. Its success would make the currently emerging universal concern for its protection

¹⁸Generally, the main law systems are the Romano-Germanic, Common-law, Socialist and Traditional law ones. Cf. DAVID, R. and J. E. C. BRIERLEY, *Major Legal Systems in the World Today*, Free Press, 1978.

¹⁹This principle can be found in various wordings in the main religious movements in the world as Catholicism, Protestantism, Orthodoxy, Islam, Judaism, Buddhism and Hinduism. See the "Religious viewpoints" in BROOM, D.M. and al., *Animal Welfare*, Council of Europe editions, 2006, pp. 137-169.

²⁰See the *Universal Declaration on Bioethics and Human Rights*, adopted by UNESCO's General Conference on 19 October 2005.

²¹Cf. BROWNIE, I., *Principles of Public International Law*, Oxford University Press, 4th ed., 1990.

²²Whereas *general principles of law* come from municipal laws and can be transposed in international law (as one of its main sources under the Article 38(1) c) of the ICJ Statute), *principles of international law* come from existing customs and treaties.

²³For example, the paragraph 2 a) of the Annex to the *World Charter for Nature* states: "Every form of life is

unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action"; the Article V (1) of the *International Convention for the Regulation of Whaling* regulates hunting "methods" of whaling and the CITES (Articles III.2(c), 4(b); IV.2(c), 5(b), 6(b); V.2(b) and VIII.3) requires to take "care" of "living" animals and avoid "cruel treatment".

²⁴The original name of the World Organisation for Animal Health (OIE) is the "Office International des Epizooties". OIE standards on animal welfare refer to the transport of animals by land, sea and air; the slaughter of animals for human consumption and disease control purposes; the control of stray dog populations; the use of animals in research and education; and the transport of farmed fish, as well as their stunning and killing for human consumption. See online: <http://www.oie.int/en/animal-welfare/animal-welfare-key-themes/>.

²⁵Those bans could be adopted by some States (like the US to protect dolphins and turtles from fishing methods of tunas and shrimps (see the WTO Tunas-Dolphins & Shrimps-Turtles cases) and the European

Union (like the bans on fur from leghold traps, dog and cat fur from China and recently on seal products, see online index at: http://www.animallaw.info/nonus/articles/art_pdf/aranimalwelfareeuropean.pdf).

²⁶The "5 freedoms" (freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behavior) and the "3 Rs" (reduction in numbers of animals, refinement of experimental methods and replacement of animals with non-animal techniques) are "guiding principles for animal welfare" that are "internationally recognized". See the OIE *Terrestrial Animal Health Code* (Art 7.1.2).

²⁷NUEMANN, J. and E. TÜRK, "Necessity revisited: proportionality in World Trade Organization Law after Korea - Beef, EC- Asbestos and EC - Sardines", *Journal of World Trade*, vol.37, p. 199 s., 2003.

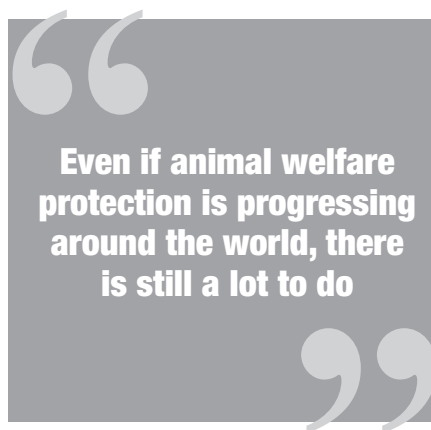
²⁸For a summary regarding the "unnecessary suffering" principle in national laws, see BEKOFF, M., *Encyclopedia of Animal Rights and Animal Welfare*, Greenwood, 1998, p.231.

become a new common objective for the community of States.

Environmental protection became a new branch of international law at the end of the last century, and animal welfare protection is now an emerging concern at the beginning of this third millennium. On the global stage, sustainable development is a well-established objective and animal welfare a brand-new one. Meanwhile, the UN General Assembly already recognized animal welfare as deserving its consideration under the sustainable development goals, if not as a full-fledged priority worthy of consideration in itself for the coming summit.

Even if animal welfare protection is progressing all around the world²⁹, there is still a lot to do. First of all, it is necessary to establish "clear theoretical foundations"³⁰ in order to develop a reliable protection basis in international law. Next imperative would be to adopt positive international instrument(s) to securely improve and globally protect animal welfare world-wide. In this sense, the adoption of the proposed Universal Declaration on Animal Welfare by the UN General Assembly would constitute a preliminary step of fundamental importance to open the way towards a potential international convention on animal welfare. Moreover, it would establish its fundamental basis under the "respect of sentient beings" universal principle.

Obviously, international law is not the panacea to solve every problem in the world - as environmental protection shows, even though strong instruments exist. However, it can



bring to light a shared concern to consider as a common objective to pursue by the whole international community. Being part of the animal community and sentient animals ourselves, all humans can understand animal suffering and there is evidence that almost everybody disapproves it³¹. That is why international law should reflect this universal feeling and discourage unnecessary suffering to better protect animal welfare world-wide.

After having considered animal protection through species conservation (protection against their extinction), it is time for international law to now consider protection of individual animal welfare (protection against their suffering). Finally, this assertion would be compatible with the concept of evolutionary international law as an adaptive system, able to respond adequately to the new preoccupations of the international society.

²⁹For example, new countries as China, Egypt, Honduras, Mexico and Russia are preparing animal protection laws. See TRENT, N., EDWARDS, S., FELT, J. and K. O'MEARA, "International Animal Law, with a Concentration on Latin America, Asia, and Africa", in SALEM, D.J. and A.N. ROWAN, *The State of the Animals III*, chap.6, pp. 65-77, 2005, p.66.

³⁰See "Animal welfare - the way ahead" in BOWMAN M., DAVIES, P., REDGWELL, C. and S. LYSTER,

Lyster's international wildlife law, Cambridge University Press, 2010, p.698.

³¹See FAVRE, D.S., "Movement toward and international convention for the protection of animals", in BLACKMAN, D. E., *Animal welfare and the law*, Cambridge University Press, 1989, p.251: "Almost no one is in favor of the cruelty and suffering of animals".

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What is ALAW?

ALAW is an organisation of lawyers interested in animal protection law. We see our role as pioneering a better legal framework for animals and ensuring that the existing law is applied properly.

We believe that lawyers should, as well as interpreting laws, ask questions about the philosophy underlying them: they have always played a central role in law reform. There is also a real need to educate professionals and the public alike about the law.

Animal cruelty does not, of course, recognise national boundaries and we are building up a network of lawyers who are interested in animal protection in many different countries.

What ALAW will do?

ALAW will:

- take part in consultations and monitor developments in Parliament and in European and other relevant international organisations,
- highlight areas of animal welfare law in need of reform,
- disseminate information about animal welfare law, including through articles, conferences, training and encouraging the establishment of tertiary courses,
- through its members provide advice to NGOs and take appropriate test cases,
- provide support and information exchange for lawyers engaged in animal protection law.

Who can be a member?

Solicitors, trainee solicitors, legal executives, barristers, pupil barristers, judges and legal academics are eligible to join and will receive regular issues of the *Journal of Animal Welfare Law*. Other interested parties can become subscribers to the *Journal* and receive information about conferences and training courses.

How can you help?

Apart from animal protection law itself, expertise in many other areas is important - for example, public law, civil liberties, environmental health, planning law, freedom of information, civil litigation, media law, company law and charity law.

In addition, lawyers have well-developed general skills such as advocacy and drafting which are useful in many ways. Help with training and contributions to the *Journal* are also welcome.