world. Whereas that if true may be reassuring, it is irrelevant because it is merely comparative and says nothing in absolute terms of the effectiveness of British law. A one-off murderer in many respects may be regarded as "better" than a serial killer, but no one would suggest that murder is something of which to be proud.

In absolute terms, therefore, how effective are the UK laws in dealing with ill-treatment of animals?

Certainly there exists legislation that prohibits generally the mistreatment of animals. Whereas this serves to some extent to protect some animals in some circumstances, significant areas of activity or "categories" of animals are excluded from its ambit. Moreover, the laws purportedly designed to regulate the treatment of animals in those excluded areas serve in reality merely to legalise treatment that would be prohibited under the general legislation. As a result:

- of the hundreds of millions of animals slaughtered each year for food, most are raised in factory farms, neither seeing daylight nor breathing fresh air,
- each year millions of animals in laboratories are lawfully subjected to experiments including those in which animals are burnt, blinded, mutilated, irradiated and force-fed chemicals,
- many thousands more animals, for the sport or entertainment of humans, are denied the most basic freedoms for their entire lives.

The reality for animals in the UK thus falls very far short of the myth, and many now believe that UK laws are ineffective in dealing with the ill-treatment of animals not coming within the ambit of protection against cruelty provided by the Protection of Animals Act 1911 or the proposed protection of the Animal Welfare Bill. The recent case of *R (Compassion in World Farming Limited) v Secretary of State for the Environment, Food and Rural Affairs*[1] also highlights in the view of many (see article below) the failure of the courts to protect animals from the worst aspects of commercial exploitation.

The Animal Welfare Bill: an introduction to the philosophy of animal welfare legislation

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The Protection of Animals Acts have, during the course of almost a century, made a major contribution to animal protection, but there is an urgent need to reassess the scope and effectiveness of a legislative regime which in its present form pre-dates the First World War, and whose concepts and language can be traced back further into the nineteenth century.

As a consolidation act, the Protection of Animals Act 1911 was primarily intended to maintain the status quo, and it is therefore not surprising that both it and the Protection of Animals (Scotland) Act 1912 reflect the character of their Victorian and Edwardian predecessors, proscribing various forms of conduct which had previously come to be defined as offences of cruelty, and making miscellaneous provisions in respect of animal fights, impounded animals, use of poisons, use of dogs as draught animals,

[1] [2004] EWCA Civ 1009.

inspection of traps, and the regulation of knackers' yards, all of which had exercised legislators during the nineteenth century. While subsequently the legislation has been subject to limited amendment, its underlying character remains unaltered.

The present unsatisfactory state of the law can be largely attributed to the general absence of enabling powers in both the 1911 and 1912 Acts. In consequence, it has not been possible to introduce changes without recourse to primary legislation. The result is two-fold. First, because of the pressure on the parliamentary timetable, relatively few reforms have been achieved in the years since 1911. Secondly, the changes to the Protection of Animals Acts which have been introduced have been largely ad hoc and piecemeal, and have tended to owe more to the vagaries of parliamentary procedure and the luck of the Private Members' Ballot, than to principle.

Not only is the form of the present legislation unsatisfactory, so too is its substance. Courts in both England and Scotland have complained about the language and the problems this causes. Most important of all, however, the Protection of Animals Acts have been overtaken by events. For while changes to these statutes have been relatively infrequent, there has evolved, especially since the end of the 1960s, a separate, but complementary, body of legislation, the effect of which has been to extend the legal duty we owe to animals beyond simply ensuring that they are not treated cruelly. The problem is that this welfare legislation applies only to animals in specific circumstances, having been introduced in the main to fulfil the UK's obligations under European Community law.

It is legislation of a very different order from that of the Protection of Animals Acts. Traditionally, the law has focused on punishing animal cruelty, broadly interpreted to mean causing an animal to suffer unnecessarily. To inflict such treatment on an animal is self-evidently detrimental to its welfare. To that extent there is a degree of affinity between cruelty and welfare, but the two are far from being synonymous: prejudicing an animal's welfare does not of itself constitute cruelty. The offence of cruelty merely defines the standard below which conduct towards animals becomes unlawful. It imposes no requirement to improve upon that basic benchmark. Crucially, it fails to direct how animals *ought* to be cared for. In consequence, the concept of cruelty is not in itself sufficient to protect animals from inappropriate treatment, since there are many ways in which their standard of care may be less than satisfactory without it amounting in law to an offence of cruelty. This distinction is reflected in the thrust of public policy. On the one hand, the intention is to *prevent* cruel treatment by proscribing particular forms of behaviour. On the other, the aim is to *promote* improved standards of welfare by identifying those matters which are important to animals, and translating these into rules, guidance and advice, to which those responsible for the care of those animals are required to have due regard.

The focus of welfare legislation is therefore significantly different from that of the Protection of Animals Acts, especially by introducing criteria which are no longer defined exclusively by reference to suffering. Rather than being concerned with whether treatment of an animal has fallen below the rudimentary threshold of unnecessary suffering, animal welfare legislation is concerned instead to identify and meet the innate needs of the animal itself, and thereby to secure for it a reasonable quality of life.

Such developments are to be welcomed, but they only serve to highlight the shortcomings of the Protection of Animals Acts, which are cumbersome, outdated, and unwieldy. The combination of various provisions spread across a range of statutes, the anachronistic language and concepts contained in much of the legislation, and the lacuna as regards welfare – especially in relation to companion animals – together represent an unanswerable case for legislative reform.

The Department for the Environment, Food and Rural Affairs launched a draft Animal Welfare Bill last July.[2] It is essential that an organisation such as ALAW, which can contribute to the legislative process from a uniquely qualified and informed position, should be fully engaged in lobbying for change. A Bill is likely to be published after the general election, if Labour is returned to power.

The next edition of the Journal will feature an article examining in detail the provisions of the Bill and its implications for the protection of animals.

Is the Hunting Act just an empty shell?

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Now that their Parliament Act challenge has failed, the hunting community is adopting a three-fold strategy to undermine the Hunting Act – civil (or, more accurately, criminal) disobedience; searching for ways of legally circumventing the law; and a propaganda campaign that the Act is unenforceable and that the police should not waste their time on it.

First, civil disobedience. Forty thousand hunt supporters have signed a declaration that they will defy the law. Civil disobedience is usually deployed in support of causes of rather greater moment than the freedom to use packs of dogs to chase and tear apart wild animals – the campaigns for the enfranchisement of women and against apartheid and British rule in India spring to mind. Nevertheless, preferring one's conscience to the dictates of a law perceived to be unjust has a long and honourable tradition and should be respected.

However, a crucial feature of Gandhian *satyagraha* or passive resistance – on which so many campaigns involving civil disobedience have been built – is that transgressors must accept the authority of the law in question and gladly submit to the prescribed punishment. Few hunters appear willing to do so. Indeed, the Countryside Alliance is careful not to encourage law-breaking. Instead, it is searching for ways around the law, as the second strand of the overall strategy. It has produced a comprehensive handbook suggesting ways hunting with dogs can continue legally. Some have suggested that hunts could kill a fox (by shooting it) and then drag its body ahead of their pack of dogs, an aspect of trail hunting (as distinct from drag hunting). If the dogs should chance upon a live quarry and chase it, this will simply be an "accident" falling outside the new legislation, it is argued.

[2] Command No 6252, 15.7.2004. The Scottish Executive's Environmental and Rural Affairs Department (responsibility for this issue is devolved under the terms of the Scotland Act 1998) is consulting on this issue and will also draw up a bill.