

A-LAW Student Essay Competition winner 2023

Question: William Windham MP, debating the Cruelty to Animals Bill [HC Deb, 13 June 1809, vol 14, col 1030]

'...his first and general objection to the Bill was, that the object of it, however commendable, was not such as to become a fit subject of legislation.'

Discuss the relevance of this statement to modern society.

Winning entry by Elena Casale

As the first attempt to regulate the treatment of animals, it is not surprising that the Cruelty to Animals Bill of 1809 was extremely limited in scope. Covering a small set of animals (horse, mare, ass, ox, sheep, or swine), it sought to ban specific malicious actions such as wounding, beating, or abusing.¹ Despite the specificity of this Bill, it was fervently opposed by William Windham MP, who objected to it on four main grounds: that because no country had yet legislated on the subject, it should be done very cautiously; that to obligate someone to act morally towards animals was to paradoxically strip the act of morality; that the unclear boundaries as to what constitutes cruelty would render the Bill unenforceable; and finally, that to legislate for animal welfare was fundamentally anti-working class.² Underlying these claims, Mr Windham's sentiment was that the treatment of animals was, however brutal, the prerogative of private morality rather than an appropriate subject for law.

To what extent is Windham's view reflected in contemporary British society? Fortunately, the treatment of animals has not remained entirely

confined to the sphere of private morality, and since Windham's speech a number of critical animal welfare laws have been successfully passed. The UK was the first country in the world to pass legislation to protect animals in 1822 with the Cruel Treatment of Cattle Act, which was expanded to cover a broader set of animals including bulls, dogs, bears and sheep through the 1835 Cruelty to Animal Act. The landmark Protection of Animals Act was passed in 1911, and then, around a century later, the Animal Welfare Act 2006, which introduced protections for all kept animals in England and Wales. The last year has seen a flurry of new legislation: The Glue Traps (Offences) Act,³ which bans the use of inhumane glue traps, which are a widely available method of rodent control but can cause immense suffering; the Animals (Penalty Notices) Act,⁴ which imposes fines of up to £5,000 for those who fail to properly care for their pets, zoo animals and livestock, and finally, the Government's Animal Welfare (Sentience) Act,⁵ which established a committee to deliver a report on "whether, or to what extent, the government is having, or has had, all due regard to the ways in which the policy might have an adverse effect on the welfare of animals as sentient beings."⁶

Progress has certainly been made, but contemporary debates on animal protection have found a new faultline in the bifurcation between animal welfare and animal rights.⁷ While an animal welfare perspective seeks to guarantee that animals are not subject to "unnecessary" suffering,⁸

3 The Glue Traps (Offences) Act 2022

4 Animals (Penalty Notices) Act 2022

5 Animal Welfare (Sentience) Act 2022

6 Animal Welfare (Sentience) Act 2022, s 2(2)

7 Saskia Stucki, "Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights" 40 *Oxford Journal of Legal Studies* 3, 534

8 Gary Francione, "Animal Rights and Animal Welfare" (1995) 48 *Rutgers LR* 397

1 Cruelty To Animals Bill 1809

2 HC Deb 3 June 1809, vol 14, cols 1029-32



animal rights activists seek to develop a positive set of animal rights which form the basis for demanding the end of institutionalised animal exploitation. In law, this represents the difference between 'interests' and 'rights': interests ensure the interest holder is able to benefit in some way from protective action, whereas rights are "moral notions that grow out of respect for the individual", which "establish areas where the individual is entitled to be protected against the state and the majority even where a price is paid by the general welfare."⁹ Rights arguably offer more substantial protection, in that they impose a burden that human beings must accept, regardless of the cost or disadvantage, and therefore evade the balancing exercise currently undertaken between human interests and animal welfare.

Though the notion of animal rights is prevalent in activist discourse, animals do not formally have rights in UK law.¹⁰ Even the idea that they

should have so far been resisted in the political sphere. Throughout the debate stages of the recently passed Animal Welfare (Sentience) Bill, for example, lawmakers were quick to affirm the distinction between animal welfare and animal rights, and promote only the former. Lord Herbert concluded that while "we should treat animals humanely, compassionately and properly", "the doctrine of animal rights is unhelpful in guiding us as to how we should treat animals". He consequently criticised the Bill for giving "leverage and power" to the animal rights agenda.¹¹ Finally, Lord Moylan criticised the Bill for being "profoundly anti-human",¹² a phrase that belies the view that animal welfare rights should only be developed insofar as they do not infringe on human interests. Mr Windham's resistance to regulating cruelty to animals in 1809 thus finds its parallel in contemporary resistance to the animal rights movement.

9 Bernard Rollin, "The Legal and Moral Bases of Animal Rights", in Gary Francione, "Animal Rights and Animal Welfare" (1995) 48 Rutgers LR 398

10 Steven Wise, 'Legal Rights for Nonhuman Ani-

mals: The Case for Chimpanzees and Bonobos' (1996) 2 Animal Law Review 179, 179

11 HL Deb 16 June 2022, vol 812, col 1909

12 HL Deb 7 April 2022, vol 820, col 2202

And yet, animal rights are 'fit for legislation': a closer look at existing welfare legislation would indicate that, arguably, animal rights are already indirectly codified in law, and that the incremental positive establishment of animal rights is not so radical as these lawmakers would believe. Saskia Stucki interprets existing animal welfare legislation as encompassing certain "simple" and "fundamental" rights. "Simple" animal rights are characterised as "current, imperfect, weak animal rights" in contrast to "fundamental animal rights" which are "potential, ideal, strong animal rights".¹³ Stucki states that some animal welfare duties can be read as direct duties owed to the protected animals themselves, which makes animals beneficiaries. It is possible to read such "simple rights" into existing animal welfare legislation. For example, the Animal Welfare Act predominantly legislates against unnecessary harm towards animals, which can be read, as Stucki reads it, as the right not to suffer unnecessarily.¹⁴ Hutcheson goes even further to interpret this duty as providing a "right to happiness"¹⁵. The Animal Welfare Act also imposes some positive obligations on animal owners to ensure animal well being: five welfare "needs" that people must provide their animals; namely, a suitable environment, a suitable diet, the ability to exhibit normal behaviour, being housed with, or apart, from other animals, and the being protected from pain, suffering, injury and disease.¹⁶ Stucki characterises "simple rights: "at best imperfect and weak rights that do not provide animals with the sort of robust normative protection that is generally associated with legal rights",¹⁷ but these positive obligations go quite a long way in ensuring animal wellbeing.

The Animal Sentience Act also arguably creates "simple rights". The Act was intended to replace Article 13 of the Treaty on the Functioning of the European Union's statement that "animals are sentient beings" and therefore Mem-

ber States must "pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States".¹⁸ In practice, the Animal Sentience Act describes certain sets of animals (any non-human vertebrate, any cephalopod mollusc and any decapod crustacean) as sentient,¹⁹ but its main purpose is to establish a committee to deliver a report on "whether, or to what extent, the government is having, or has had, all due regard to the ways in which the policy might have an adverse effect on the welfare of animals as sentient beings."²⁰ Many have criticised the limited nature of this provision, as reports will not bind Ministers to any particular course of action, instead leaving them with full agency to judge the right balance between animal welfare and other considerations. The Bill is also unlikely to create a cause of action for judicial review. However, arguably the recognition of sentience is a step towards a rights based protection of animals in law, as the acknowledgement of sentience, argues Kramer, is a prerequisite for viewing an organism as a potential rights-holder.²¹ This potential is what led lawmakers such as Sir Geoffrey Clifton-Brown to be concerned that "sentience confers rights".²² This is a promising first step to creating positive legal rights for animals.

Thus we can see that the animal rights/welfare dualism has begun to collapse in recent legislation, and it is not, as some believe, constituted of mutually exclusive paradigms. Not only are animal rights a fit subject for future legislation; but they are arguably already present, and hopefully further positive animal rights will incrementally be legislated for. As such, and fortunately, Mr Windham's view that the treatment of animals falls solely within the sphere of private morality has been steadily chipped away. But more is still to be done to shift from the prevention of cruelty to guaranteeing a good quality of life for animals. The question is, in the famous words of

13 Saskia Stucki, "Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights" 40 *Oxford Journal of Legal Studies* 3, 544

14 Section 4 AW A

15 Tom L. Beauchamp and R. G. Frey, *The Oxford Handbook of Animal Ethics* (OUP, 2011)

16 Animal Welfare Act 2006, s 9(2)

17 Saskia Stucki, "Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights" 40 *Oxford Journal of Legal Studies* 3, 544

18 Consolidated version of the Treaty on the Functioning of the European Union, 26 October 2012, OJ L 326/47-326/390; 26.10.2012, Article 13

19 Animal Welfare (Sentience) Act 2022, s 5(1)

20 S 2(2)

21 Matthew H. Kramer, "Do Animals and Dead People Have Legal Rights?" (2001) 14 *CJLJ* 36

22 HC Deb 18 January 2022, vol 707, col 250

Bentham “ Can they suffer?”²³ Perhaps the solution is now not just animal welfare, but animal rights.

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23 Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (New York: Prometheus 1789/2012), 311