

# ANIMAL JUSTICE UK

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A publication of the Association of Lawyers for Animal Welfare (ALAW)



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## **NECESSARY SUFFERING?**

Animal Aid's Andrew Tyler explores necessary and unnecessary suffering under the Animal Welfare Act 2006 ([p.2](#))

## **DANGEROUS DOGS**

Student Florence James analyses the Dangerous Dogs Act ([p.16](#)) whilst criminal barrister Noël Sweeney's book on dog law is reviewed ([p.17](#))

## **PROFESSOR HARNAD**

Law student Michael Gold interviews cognitive scientist Professor Harnad about the links between science and animal welfare law ([p.8](#))

Welcome to the second edition of Animal Justice; the Association of Lawyers for Animal Welfare's e-zine for law, politics, social science and veterinary students interested in animal welfare law and policy.

In this edition, Andrew Tyler (Director of Animal Aid) reviews 'necessary' and 'unnecessary' suffering under the Animal Welfare Act 2006, law student Letitia Frome reviews BBC Radio 4's *Unreliable Evidence* and you let us know what you think the future holds for animal welfare in the UK following Brexit in our new 'opinion' feature. ALAW Student Coordinator Sally also attends the launch for the new University of Winchester Centre for Animal Welfare and looks at the courses on offer.

One of the wonderful things about animal welfare work is the range of people who work towards the cause from such a diverse range of fields. At ALAW, we recognise the inter-disciplinary approach that is necessary to improve welfare standards. As such, in this edition we feel very lucky to benefit from cognitive scientist Professor Harnad's wisdom regarding how lawyers and scientists can work together to improve animal welfare standards.

We were delighted to receive so many submissions from you all for this issue of the e-zine. We welcome constructive and critical submissions on any aspect of animal law from students including book reviews, event reviews, news items, case comments and critiques of legislation. This is very much your magazine and so please do let us know if there's anything that you'd like to see. Send any submissions or comments about the e-zine to ALAW Student Coordinator Grace at [studentgroup@alaw.org.uk](mailto:studentgroup@alaw.org.uk).

We hope that you enjoy this edition of the e-zine. Many thanks to all our contributors.

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The Association of Lawyers for Animal Welfare (ALAW) is a charity which aims to bring together lawyers interested in animal protection law to share experience and to harness that expertise for the benefit of the animal protection community, including by securing more comprehensive and effective laws and better enforcement of existing animal protection laws.

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## ANIMAL OF THE ISSUE: HARBOUR PORPOISE



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### Sally Shera-Jones

The harbour porpoise (*Phocoena phocoena*) is described by National Geographic as a shy, elusive mammal. As their name suggests, they prefer shallow waters such as coastal areas and river estuaries, throughout the North Atlantic Ocean.

The harbour porpoise is listed by the International Union for the Conservation of Nature and Natural Resources (IUCN) to be of 'Least Concern'. Notwithstanding their generally large population, subspecies found in the Black Sea are listed as Endangered, with those in the Baltic Sea as Critically Endangered.

While their numbers have stabilised, harbour porpoises still face significant threat from commercial fishing operations, depletion of prey due to overfishing, habitat degradation, and chemical and noise pollution.

At international law, the harbour porpoise is listed under Article II of the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention). Given its relative abundance in the North Sea, and as the only native species inhabiting the Baltic Sea, the harbour porpoise is the flagship species of the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas.

The harbour porpoise is listed under Annex II of the Habitats Directive, which requires Member States to designate sites of Community importance as Special Areas of Conservation (SACs). Once approved by the European Commission, the Member State is required to introduce necessary management measures in accordance with the ecological needs of inhabitant species.

The Whale and Dolphin Conservation reported 90% of the European population of the harbour porpoise is found in UK waters. The UK only has one formally designated harbour porpoise SAC in Northern Ireland and has recently submitted another candidate SAC to the European Commission for a site located off the west coast of Scotland.

Earlier in the year the UK Government announced 23 additional Marine Conservation Zones to extend the 'Blue Belt'. Some argue these steps are insufficient, particularly considering the large number of harbour porpoises in the UK's marine area.

The Commission took this opinion on 29 September 2016 when announcing its decision to refer the UK to the European Court of Justice for failing to designate five other protected areas for harbour porpoises in accordance with its obligations under the Habitats Directive. The move comes after a formal notice sent to the UK government in June 2013, and a reasoned opinion sent in October 2014 – both pre-litigation steps as required by the EU Infringements Procedure.

### LOOK ONLINE

Check out law student Natalie Harney's excellent animal law blog:

[www.animal-law.co.uk](http://www.animal-law.co.uk).

Natalie also runs a twitter account @animallawuk.

If you run an animal law blog or website and would like it mentioned in the next e-zine, email [studentgroup@alaw.org.uk](mailto:studentgroup@alaw.org.uk), c/o Grace Wright.

## ‘NECESSARY’ SUFFERING UNDER THE ANIMAL WELFARE ACT 2006



### Andrew Tyler, Director of Animal Aid

The phrase that is readily deployed to describe a sticky, crowded train journey into work, or the behaviour of a selfish bullying employer is: ‘we were treated like animals’.

But however put-upon a person might feel, animals are in a far worse place. Animals, in law, are not persons but property. They are quasi objects. They can be lawfully traded, multiplied and killed. They can be killed for a particular purpose or for no purpose at all. If a neighbour were to torture and kill your cat, the redress, through a civil action, would be concerned less with the harm done to your cat and more with the harm done to you as the owner: your emotional distress and the cost of buying a replacement animal.

The Animal Welfare Act 2006 does concern itself with the suffering of animals. But the iron principle at its core is that causing an animal to suffer is perfectly legal if the suffering inflicted is *necessary*. What is necessary suffering? It would seem to be suffering that occurs as a consequence

of carrying out an act to benefit people. Animal farming and slaughter are examples. The many cruelties integral to these activities pass the ‘necessary test’ because food for people is the end result.

The same applies to what I regard as the sadistic rite that is vivisection – burning, brain-damaging and poisoning animals, infecting them with lethal viruses ...

The official view (though it is ever more strongly contested on scientific grounds) is that the use of animals in safety testing and disease research benefits human medicine. And so, it too passes the ‘necessary test’. And then there is the use of animals to amuse and distract. In this category are animals held captive in zoos, birds who are purpose-bred to be shot for ‘sport’, and fish who are dragged out of the water on the end of a hook.

The closer the *necessary* versus *unnecessary* dichotomy is examined, the stranger are the anomalies that are thrown up. Blinding cats and cutting out the hearts of healthy dogs would be seen by the courts as a wicked and unlawful act because of the unnecessary suffering caused – but not if the perpetrator is a researcher with a licence issued by the Home Office inspectorate.

Similarly, a gang of nine and 10 year old city kids who shoot birds because they enjoy killing them would be ranked as feral deviants in need of correction. But the same kids can do the same thing a couple of miles away out in the woods if their lethal entertainment is overseen by an adult who has the right paperwork. Then it becomes not just legal but character-building.

What really distinguishes the *necessary* from the *unnecessary* is the ritual and paraphernalia associated with activities that cause suffering but which the authorities allow because of their presumed commercial and cultural value. Thus, we see a festooning of codes, guidance notes, licensing committees, ethical review bodies,

enforcement agencies, stakeholder consultations and the rest. They add up to what I heard an anthropologist describe some years ago as ritual normalisation: the attempt to render acceptable that which isn't.

This certainly is not an argument for deregulation. Rules, together with penalties for breaking them, combined with proper monitoring to ensure compliance, are all essential.

But they must not be used to obscure a violent truth. The use of animals in a manner that is cruel and immoral should be identified as precisely that and robustly challenged.

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Find out more about Animal Aid's work here:

<http://www.animalaid.org.uk/>

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## OPINION: BREXIT AND ANIMAL WELFARE



### **Maria Rumbol**

*Maria is a third year Law student at the University of East Anglia currently completing a year abroad in Rome. Maria is keen to understand how animal protection standards vary across European legal systems and establish a greater sense of how Brexit might impact UK standards.*

Around 80% of the UK's animal welfare laws originate from the EU, with over 30 different laws relevant to animal welfare. So what does this mean for the future of animal welfare law in the UK with no EU as a source of law?

EU legislation only relates to the operation of animals within the single market of Europe. While this might seem limited, it encompasses the regulation of: slaughter, transportation and rearing of farmed animals, consumer information laws, wildlife and trade of endangered species and use of animals in scientific research.

One of the successes of a regional animal welfare legislator is its ability to evolve with the social demand and concerns. There are relatively more advocates for the cause, such as the EuroGroup for Animals and MEP's. The evidence is in the journals; the first animal welfare law passed was in 1974 on the slaughter of animals, and the most recent being the compulsory micro-chipping of dogs coming into effect earlier this year in response to the concerns of the puppy trade. It is still quite dubious as to whether the UK as a sovereign legislator will have the motivation to respond to such concerns which might seem of little priority post-Brexit. While Westminster has been seen to implement its own legislation, such as with the 2006 ban on tail docking, this is, in the same regard, one of few enactments by the UK which specifically related to an issue outside the competence of the EU to implement law. On the other hand, Britain could prove to be empathetic to animals and have them in their regards when legislating, attesting that the EU was not the only source of animal welfare legislation, but simply a secondary one.

Another potential impact relates to monetary funding, crucially, for British farmers. Arguably, our agriculture could be said to be the most hard-hit by the outcome of the referendum. The Common Agricultural Policy (CAP) represented 55% of total income from farming in the year 2014. While this can be replaced by a domestic

funding scheme, or the fund even potentially increased, this is uncertain. In the same way, only time can tell how the UK will handle this issue on a domestic level. However, while some may predict national suicide, and others national triumph, the realistic outcome in the immediate future of a government not well practised in this territory could be shaky.

The UK operates some of the highest standards in animal welfare but it cannot ignore that many of these enactments derive from EU Directives. The UK, however, is seen to be behind on some levels, for example, being one of the few European countries to have no, not even a partial, ban on the use of wild animals in circuses. On the flip side, the general pro-active nature of Britain in its response to these EU Directives could evidence the forward thinking nature of the legislature in acting for those who cannot act for themselves.

In conclusion, Brexit has put British animals into a legislative vacuum where new deals may lead to the same, better or worse terms. But, at least in the interim period, animals will remain protected by the existing legislation, and, due to its success, remain so in the foreseeable future. The long term impact, however, is speculative.

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**Edie Bowles**

*Edie is a solicitor currently working in house for Cruelty Free International, the leading organisation working to end animal experiments worldwide. She is also an ALAW Trustee.*

Whilst the majority of the social justice community is in a state of despair post-Brexit, is there anything positive that can come from something that on the surface looks like a one-way ticket to doom and gloom?

Like most other remainers my gut response to Brexit was a sense of powerlessness and frustration. Why as a society have we decided to take a step back from internationalism and collective responsibility?

In the wake of Brexit it was hard to disconnect from the image of Europe as some sort of heavenly governing body that delivers nothing other than peaceful and loving wisdom and regulations throughout the region. It was easy to forget that the EU is predominantly a supranational free trade agreement.

Yes, the EU might have been born out of a desire to keep peace in the region, but let's not forget first and foremost its means to do this are economic. This in itself is not a bad thing, but wherever the motive is trade and economy everything else will take a back seat; animal protection is no exception to that.

The first reaction in the animal protection world, including my own, was the fear of what will become of the animal protection legislation that derives from Europe. This is a concern, but we must remember that these laws are compromises always falling on the side of economic benefits and trade between member states, above absolute animal protection.

The EU laws surrounding animal transportation may on the surface look like they are protecting the animal whilst in transit, but underneath that is the economic priority of transporting millions of animals huge distances in the name of open

borders in the common market. The animal experiments directive may have the motive of replacing, reducing, and refining these experiments close to its heart, but at its heart is the authorisation of the experiments. Further to that in order not to distort the common market, the animal experiments directive will not allow a member state to go beyond the provisions of the directive and increase animal protection within its country; a clear reminder that fundamentally this is not a piece of animal protection legislation.

Of course this does not mean the alternative of leaving the EU is better for animals, in fact my biggest concern is that a post-Brexit UK may secure inward investment by offering a lesser-regulated alternative to the EU; this will not be good for animals.

However, we do not yet know what shape the Brexit agreement will take and what laws will stay and go. In a post-Brexit UK we as individuals are now far closer to the law-making parliament and can apply pressure on our MPs to ensure that animal protection is at the top of their agenda.



### **Emma Ruttley**

*After studying English & History at university, Emma spent a year volunteering with animal rescue organisations in South America. She is a future trainee solicitor with Tozers LLP.*

Approximately 80% of the UK's animal welfare laws originate from the EU via Directives, Regulations and Decisions. Directives are implemented into existing UK legislation which would need to be overturned if no longer applicable. Those created via EU Regulations or Decisions do not require national implementation, so depending on how the UK exits the EU may either be removed from UK law or be carried over for amendment. Either way, many of the UK's animal welfare laws will be vulnerable.

Taking the example of farming, there are 17 laws covering the production, transportation and slaughter of farm animals, all of which were instigated as a result of the EU. Many 'Leave' campaigners claimed that Brexit would be beneficial to farm animals' welfare. They argued that leaving behind inflexible 'one-size-fits-all' EU regulations would allow the UK government to set its own (potentially higher) standards. In reality, this is unlikely to be the case. Despite leading the way in banning cruel farming practices such as barren hen cages and sow stalls, over the past few years the UK has fallen behind its EU counterparts in this regard and the Conservative government has show little desire to exceed minimum requirements for farm animals' welfare.

The question of trade is often raised with regards to Brexit and whether cruel practices such as live exports could continue. As live animals are considered 'goods' in terms of free movement within the EU, this allows live exportation of animals across the Member States. This often leads to animals being subjected to miserable conditions for multiple-day journeys, with many dying en route as a result. An argument for 'Leave' was the possibility of banning, or at least restricting, this practice and refusing to accept animals subjected to it. However, the likelihood of the UK leaving the EEA altogether is low, meaning that to restrict these imports and exports unnecessarily would be illegal. Even if the UK does leave the EEA, the UK's trade with Member States would still be governed by WTO rules, which

would restrict the UK's ability to place a ban on certain goods.

The remaining 20% of UK animal welfare law covers mainly animal cruelty, hunting, circus animals and fur farming, for instance in the Hunting Act 2004 and the Animal Welfare Act 2006. These UK laws are not directly at risk as a result of Brexit, as they were initiated by the national government rather than the EU.

Whether the current UK government will choose to repeal or amend EU animal welfare law already incorporated into UK law remains to be seen. Until Article 50 is triggered, discussion of the topic is purely speculative, but it is likely that Brexit will have a lasting impact on animal protection legislation in the UK.

## ALAW CAREERS AFTERNOON

ALAW are pleased to announce that we will be hosting our first careers afternoon on 13<sup>th</sup> January 2017.

The event will be taking place at Doughty Street Chambers and will include talks from some prominent leaders in the field, including Hayley Firmin who will discuss working for the RSPCA, barrister Iain O'Donnell who will discuss undertaking animal welfare prosecution work and solicitor David Thomas who will discuss animal-related public law.

The afternoon is a chance for you to hear about how others have carved their career in this area and what their day to day work involves. There will also be a chance for you to ask questions and receive helpful advice. If you are interested in attending please book your ticket at:

<https://www.eventbrite.co.uk/e/animal-law-careers-afternoon-tickets-28759565635>

## MPs call for tougher sentencing for animal cruelty offences



Source: <http://www.gazettelive.co.uk/news/teesside-news/frankish-brothers-case-prompts-redcar-12147679>

On 8<sup>th</sup> November 2016, MPs debated more stringent sentencing options for animal cruelty offences in the House of Commons. Redcar MP Anna Turley led the debate after researching into maximum sentences for animal cruelty offences following a number of animal abuse incidents in her community.

Ms Turley was shocked to discover that the maximum sentence for causing unnecessary suffering to an animal under the Animal Welfare Act 2006 is only six months in custody. The MP expressed her horror that sentences for animal abuse have not been extensively reviewed for over one hundred years:

*“Incredibly, this has not actually changed since the Protection of Animals Act of 1911. Yes, a time when you could see animals at circuses, monkeys on the shoulders of organ grinders on a street corner, the time of a law which was essentially brought in to tackle cock fighting”.*

A Private Members Bill proposing the increase of the maximum sentences for animal cruelty offences from six months to five years in custody is due for a second reading in February 2017.

## LAUNCH OF THE CENTRE FOR ANIMAL WELFARE AT THE UNIVERSITY OF WINCHESTER



### Sally Shera-Jones

On Saturday 21st May 2016, ALAW student coordinator Sally attended the launch of the Centre for Animal Welfare at University of Winchester.

The Centre's launch was marked with notable members of the animal advocacy community, drawing on their experiences in advancing animal welfare. Director Andrew Knight announced the Centre would be initiating projects seeking to advance animal interests, and emphasised the role of collaboration in achieving these goals.

The first guest speaker was Philip Lymbery, the Chief Executive of partner organisation Compassion in World Farming, who recognised University of Winchester as a champion for animal welfare. Philip also discussed the risks associated with factory farming, such as resistance to antibiotics and the environmental impact of intensive farming practices.

Actor Peter Egan followed by highlighting the importance of compassion, and discussed his involvement in the moon bears campaign with Animals Asia. The final speaker was entrepreneur Heather Mills, who stressed the importance of

incremental change in forging sustainable animal protection measures.

During the question and answer session, members raised queries about the illegal trade in wildlife, veganism, and the impact of Brexit on animal protection and advocacy.

The launch closed with the reveal of a bronze beagle by the University of Winchester's artist in residence, sculptor Amy Goodman. The statue is a direct reference to the brown dog statue at Battersea, and in memorial to animals used in vivisection experiments.

### Courses

If you are interested in studying animal welfare, the following two higher education courses are offered at the University of Winchester on either a full or part-time basis:

***BA Hons Animal Welfare and Society***

***MSc Animal Welfare Science, Ethics and Law***

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**More information about the new Centre can be found here:**

<http://www.winchester.ac.uk/research/attheuniversity/FacultiesofHumanitiesandSocialSciences/centre-for-animal-welfare/Pages/centre-for-animal-welfare.aspx>

**See also the Centre's blog here:**

<http://www.winchesteranimalwelfare.org/>

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## AN INTERVIEW WITH PROFESSOR HARNAD



### Interview by Michael Gold

Professor Stevan Harnad is a Professor in the Department of Psychology at the Université du Québec à Montréal and a Professor of Web Science in the Department of Electronics and Computer Science at the University of Southampton. He is currently the Editor-in-Chief of the journal 'Animal Sentience'.

**In 2004 the Court of Appeal referred to animal suffering as being determined by "scientific...value judgements". Given your background in cognitive science, how would you describe the current degree of scientific understanding of animal suffering or well-being?"**

It is certain that cognitive psychobiologists whose research is devoted to understanding how animals think (cognition) and feel (sentience) have extensive knowledge and evidence about what is required for animal well-being. Neither the law

nor the courts have come anywhere near giving this evidence the weight it deserves, in the way it has done for the medical and psychiatric evidence on human well-being.

Notice that I am using ordinary-language terms such as *thinking*, *feeling* and *well-being* rather than abstract technical terms that formalise and desensitise what is really at issue. Another such ordinary-language term that everyone understands is *suffering*. Many current laws allow enormous amounts of suffering to be inflicted on animals - suffering that is evident to anyone who looks and feels, and that does not need "scientific" analyses to "prove" the victims are indeed suffering.

Trying to protect animals from suffering operates under an enormous *logical* handicap, well-known to philosophers: the "other-minds problem." It is logically impossible to know for sure ("prove"), even for scientists, whether and what any entity other than oneself is feeling. Even language is not a guarantor: if someone says "that hurts," they could be pretending, or they could even be a robot - a zombie, that does not feel at all. Logically speaking.

But it is obvious to all who are trying to be honest about the problem of human-inflicted animal suffering that it is disingenuous to invoke the 'other-minds problem' in order to create doubt about suffering in animals *where we would not invoke it in the case of humans*. We know that just about all mammals and birds suffer if they are confined, deprived of access to their kin and kind, or forcibly manipulated. We recognise the mammalian and avian signs of stress, pain, fear and depression; and where we lack personal experience (such as with reptiles, fish or invertebrates), there are not only scientists but lay people — with abundant experience observing and caring for animals — who are highly capable and more than willing guide us.

It would be a shameful pretence to act solemnly as if there were any uncertainty about the vast, obvious amounts of gratuitous and indefensible agony that humans are inflicting on animals in the bred-animal product industries.

“Stress” is a formal, sanitised term for *harm* - both physical and mental, both felt and unfelt - that is incurred by an organism’s body. There do exist some subtle cases of stimulation, manipulation, and background conditions where it is not yet known scientifically whether they are stressful. Those are the ‘unresolved scientific problems’. But the elephant in the room — the countless instances and practices that not only virtually all cognitive psychobiologists but all decent laymen would immediately recognise as suffering — are still so immeasurably widespread, legally permissible, and un-policed today that we are far from reaching cases where there is any genuine uncertainty that calls for scientific expertise.

**In the same judgement it was stated that emergent “evidence...[for] an identifiable deficit in net well-being” caused by restricted feed could give credence to a legal challenge against the practice. Does this type of statement imply courts trailing behind scientific consensus in their reasoning?**

It is very hard, even for a cognitive scientist, to force oneself into the sanitized, almost psychopathic jargon of “restricted feed” and “identifiable deficit in net well-being” when the question really being asked is whether *starving* chickens causes *suffering*.

“Broilers” have been selectively bred to grow from chicks into adult-sized (indeed pathologically oversized and deformed) invalids in an extremely short time. Not only does this put tremendous strain on their bodies and legs (crippling them and sometimes making their legs snap off) but it makes them so ill that they cannot survive till breeding age unless the ones that are to be used

as breeders are systematically starved throughout their short, agonized lives so as to slow the rate of their devastating growth enough to allow their pathological genotype to keep being reproduced.

Of course it causes suffering to be kept constantly on the threshold of starvation. There is hardly the need for the learned opinion of “poultry scientists” to attest to this — unless one is trying to make mischievous or malevolent use of the “other-minds problem” to protect economic interests.

**Is there scope for greater cooperation between lawyers and scientists regarding animal welfare? How do you think this could be achieved?**

Yes, there is enormous scope. And enormous good will as well, especially among the younger generation of lawyers. And “cognitive psychobiologists” are also people -people who know that nonhuman animals, like human ones, are feeling creatures that can be, and are being, made to suffer gratuitously by economics-driven industry, perverted, industry-driven “animal science,” and uninformed as well as misinformed consumer demand. If asked, the impartial experts are well-equipped and eager to inform the public and protect and help promote sentient animals’ well-being. That is the convergence and collaboration that the journal (*Animal Sentience*) is devoted to fostering.

The way we are doing it is through “open peer commentary.” Every “target article” published in the journal is circulated around the world, across all specialities — to zoologists, ethologists, ecologists, evolutionists, psychologists, legal scholars, bioethicists, nutritionists, veterinarians, social scientists and animal activists — inviting them to provide commentary that elaborates, integrates, critiques, supplements or applies the content of the target article. The commentaries are published as formal mini-articles following the target article; the author responds to them.

The journal is online and open access so that the target articles as well as the commentaries can be published as soon as they are reviewed and accepted. The target article by the biologist Brian Key on whether fish feel pain has already drawn over 50 commentaries. Among the target articles currently undergoing commentary are ones by: a philosopher (Colin Klein) and a biologist (Andrew Barron) on insect sentience; an economist (Yew-Kwang Ng) on welfare biology; a law professor (Martine Lachance) on veterinary reporting of abuse; a philosopher (Mark Rowlands) on animal personhood; a cognitive psychologist (Arthur Reber) on the origins of mind, and a psychologist (Thomas Zentall) on *cognitive dissonance in animals and humans* (forthcoming).

Among the signs of progress are the growing number of countries and states where animals are being formally accorded the legal status of sentient beings with biological needs (instead of just property).

Just here in Montreal, the Student Animal Legal Defense Fund of McGill University convened an important and influential symposium on animal law in 2012. (It was this symposium that made me into a vegan!) In the same year, the International Research Group on Animal law of the Université du Québec à Montréal (UQAM) convened an international animal law conference in Paris on Animal Suffering: From Science to Law. Since then both France and Quebec have granted animals sentient-being status. A new course on animal law offered by Professor Alain Roy (specialist in child protection law) at the Université de Montréal was filled with one hundred law students on the very day it was announced.

I will be directing the 7th Summer School in 2018 of the Cognitive Sciences Institute at UQAM, whose theme will be *The Other-Minds Problem: Animal Sentience and Cognition*.

### **You are passionate about pushing for CCTV in abattoirs. What would you like to happen?**

Not just in slaughterhouses. In all locales where animals are commercially bred, confined, or used in any way by humans.

The strategy is in two phases:

#### **Phase I (Public Sensitisation)**

1. Adopt a law that recognises animals as sentient beings with biological and psychological needs.
2. Require, by law, 24-hour, 360-degree audio/video surveillance and recording at all locales where animals are commercially bred, confined, or used in any way by humans in order to monitor and ensure that the animals biological and psychological needs are being met according to existing regulations (which of course are far from adequate).
3. As the enormous volume of surveillance recordings cannot possibly all be inspected by government inspectors, all the recordings must be coded, web-streamed and made permanently open-access online, so that their inspection can be *crowd-sourced* for public inspection: A clear description of the pertinent existing regulations (with which the producers need to comply) has to be made available online for the general public, and relative to those existing regulations, any citizen can then report any observed violation, noting the code of the video on which it occurs and the timing of the violation.
4. Not only will this help immeasurably to ensure that existing (inadequate) regulations are complied with, and thus ensure that what goes on is only that which is allowed by existing law, but it will have the even more important effect of *allowing the public to witness all the horrors that go on that are still allowed by the existing laws* (especially in industrial breederries, transport and slaughterhouses).

5. It is these “authorised” horrors that Ag-Gag laws and lobbying are aggressively trying to prevent the public from witnessing.

6. The hope is that once the public has open access to the full scale of the horrors (especially in industrial breederries, transport and slaughterhouses) the majority of thus-sensitised citizens will exert pressure on their elected lawmakers not only to make existing regulations increasingly rigorous, in the protection of animals’ biological and psychological needs, but also for introducing legislation for a reduction in what is permissible and a transition to alternatives to animal production and consumption:

#### **Phase II (Graduated Taxation on Animal Production and Consumption)**

1. Require, by law, a surcharge on the production, vending and consumption of animal products, available as a rebate to incentivise the production, vending and consumption of non-animal alternatives.

2. The percentage surcharge can be increased with time.

3. The surcharge should be imposed on all three involved parties: the producer, the vendor and the consumer.

4. The rebate should likewise be available to all three parties: the producer, the vendor and the consumer. (The implementation of the rebate will be complicated initially, but *that should not be accepted as an excuse for not imposing the surcharge*. With thought, testing and planning, a fair, efficient rebate system can be developed by the time the graduated surcharge reaches significant levels.)

5. For producers, especially, the rebates will provide strong incentives to produce non-animal alternatives.

6. All surplus in the tax revenues should be used to provide sanctuary for the former production-animals that are liberated by the change in production and consumption patterns. And any left-over from that should be used to invest in the development of non-animal alternatives.

*Michael is a first year law student at Queen Mary University and will be piloting one of ALAW’s first university subgroups (see below).*

### **SALAW LAUNCH**

ALAW is pleased to announce the launch of the Student Association of Lawyers for Animal Welfare (SALAW).

The purpose of SALAW is to provide a forum for advancing animal law and the welfare of animals across the UK through education, campaigning, and lobbying - making the student network the first of its kind in the United Kingdom.

We envisage SALAW activities to include debates, film and lecture seminars, networking, discussion groups, fundraising whilst also facilitating opportunities to contribute to Animal Justice UK and other ALAW projects.

We will actively encourage student members to send through constructive feedback and suggestions for SALAW groups. This places members in a unique position to contribute to the way our student groups might operate in the future.

Students interested in spearheading a SALAW group at their university can get in touch by emailing [studentgroup@alaw.org.uk](mailto:studentgroup@alaw.org.uk), c/o Sally Shera-Jones.

## AN EVENING WITH STEVEN WISE



### Rebecca Clarke

*Rebecca is a third year Law undergraduate from BPP University. She has recently made the change from carnivore to vegan after learning of the plights of farmed animals.*

On June 13<sup>th</sup> 2016 I attended an insightful talk by Steven Wise, President of the Non-Human Rights Project (NhRP).

The NhRP is an organisation currently working towards establishing legal rights for species other than humans, i.e. non-human animals.

Steven opened the talk by describing the legal wall that exists between humans and animals. He discussed how animals are categorised merely as legal property, rather than as legal beings – a key difference in being able to uphold simple needs of these creatures such as the right to bodily liberty and the right to freedom.

Steven stated how it was once the case that certain humans were on the other side of this legal wall, including both slaves and women, demonstrating that change is possible.

He drew to our attention the importance of the *Somerset* case in beginning a civil rights movement to a more equal society and in

particular mentioned Lord Mansfield whom he deemed to be a moral judge. He expressed that what had to be found was a judge that would read the common law in a way that would conform with both rationality and morality instead of mere precedent.

Steven mentioned the significance that the word human is not synonymous with the word person; indeed in other common law countries such as India a book has even been deemed to be a person. This suggests that animals could be deemed to be persons and thus should be attributed more rights, despite not being human.

He then focused on three specific cases – Hercules and Leo, Tommy and Kiko. Keeping in line with legal discussion as opposed to getting entailed in the multitude of moral arguments that exist for the release of these captive chimps, Steven reiterated the importance of choosing the right cause of action under which to bring court action.

He described how he believes that the common law writ of habeas corpus is the best course of action to go forward with, one of the main reasons being that the doctrine of Res Judicata does not apply to the writ of habeas corpus. This means that if the NhRPs' cases were declined by a court this does not prevent them from pursuing their line of argument again albeit in a revised fashion.

However, the very nature of the definition of habeas corpus is not ideal as, by definition, the writ directs a person (in this instance, the institutions holding these chimpanzees captive) to summon the detained individual(s) to court, which is not a practical thing to do when the writ is being filed on behalf of chimpanzees! A writ of habeas corpus was therefore filed through an order to show cause, meaning that the owner of the chimpanzees had to present themselves in court as opposed to transporting the chimps themselves to court.

Steven gave us an update of the current situation with regards to each of these cases. Hercules and Leo were originally detained at Stony Brook University but were subsequently moved to the New Iberia Research Center (NIRC). He explained that they had the option to apply for a preliminary injunction to keep the chimps at Stony Brook and although placing them with the NIRC was still considered as unsatisfactory insofar as the treatment of the chimps was still far from ideal, on balance it was decided that the chimps would be treated better at this location.

I subsequently went onto the NhRP website and discovered that Hercules and Leo are being released to the Save the Chimps sanctuary along with another 218 chimps being held at the NIRC.

Steven disclosed that Tommy has been allegedly moved to a roadside zoo in Michigan, although revealed his specific whereabouts are not known. This has prompted the NhRP to file a request under the Freedom of Information Act in an attempt to find Tommy.

Kiko's case is currently under appeal in the New York's First Appellate Division in Manhattan. At the time of writing, June 2016, a decision is expected any day.

The evening finished with a preview of the docu-film 'Unlocking the Cage', which prompted me to buy tickets when arriving home that very evening.

Steven was a charismatic speaker who demonstrated a great depth of knowledge, determination and steel on behalf of those without a voice.

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**You can learn more about the work done by the NhRP and Steven here:**

**<http://www.nonhumanrightsproject.org/steve-wise/>**

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## **REBLAW UK CONFERENCE NOVEMBER 2016**



ALAW Chairperson Paula Sparks was invited to join a panel discussion on non-human rights at a conference hosted by the University of Law on 12<sup>th</sup> November 2016.

Paula, a barrister at Doughty Street Chambers, made up one of several expert discussion panels covering a broad scope of public law issues. The conference aimed to provide students with the opportunity to learn more about the work done by organisations at the forefront of public interest law.

The event was extremely popular and tickets were sold out. If you were unable to attend, we will include a review of Paula's role in the conference in the next edition of the e-zine so don't worry about missing out.

## **BBC RADIO 4'S UNRELIABLE EVIDENCE – REVIEW**



### **Letitia Frome**

*Letitia is studying the GDL at the University of Law. She also undertakes pro bono work for the National Centre for Domestic Violence.*

As part of its new legal discussion series *Unreliable Evidence*, BBC Radio 4 explored how the law addresses the conflicting interests of human and animals.

Hosted by Clive Anderson, the episode featured four solicitors with differing viewpoints on the legal rights of animals. These guests included Steven Wise, president of the Nonhuman Rights Project and leading animal rights attorney in the US; David Thomas, a solicitor and former chairman of the RSPCA and lawyers Jamie Foster and Christopher Price who had acted for the Countryside Alliance, farmers, the meat industry and even for a lion-tamer. The programme drew attention to many of the central conflicts

surrounding questions of legal protection for animals, including the current case of Seaworld and its treatment of orcas. Generally the lawyers were respectful to each others' viewpoints, but there were several moments where Foster showed derision of Thomas's and Wise's suggestions that animals should be given more legal rights, and nearly equal legal protection from suffering as humans.

Key questions of the debate were whether we, as a society, have legally gone far enough in protecting the rights of the animal kingdom? How well the law reflects our growing scientific understanding of animal intelligence and their capacity to suffer?

Should some more intelligent animals, or all of them, be granted rights to put them on a par with humanity? Anderson understandably queried the economic and social repercussions of legally equalising animals and humans. He offered the castration of bulls and traumatic separation of calves from their mothers – such integral parts of the dairy industry - as examples of everyday animal suffering that would have to be prohibited. Indeed, both Price and Foster, throughout the programme argued that no more legal rights were needed for animals, as adequate legal protections for them are already in place — such as the Animal Welfare Act.

Price argued any suffering that animals endured through slaughter, trade, culling or other industries were 'necessary'. This notion of "necessary" animal suffering was a central point of contention throughout the debate. As the Animal Welfare Act generally only prohibits 'unnecessary cruelty to animals', particularly domestic cats and dogs, the current legal protection afforded to animals is subsequently conditional and open to manipulation and frequent exemptions. David Thomas explained how this conditional nature of animal welfare legislation had caused an increase in animal suffering. Thomas argued legal protection was

only available to animals only if it did not interfere 'with some human interest'. Thomas advocated an 'unconditional' premise within the law, where no harm is allowed to 'be done to the animal in the first place'. He stated that there should exist an 'alignment between human and animal' legal protection, as both have an 'equal capacity to suffer'. He clarified this further, saying that there cannot be an exact alignment as there is need for exemptions such as 'pest control and self defence'.

Steven Wise meanwhile described animals and humans as having a 'master and slave relationship'. Whilst his comparison of animals with slaves was a subject of criticism in the programme, it was an important and sobering reminder of the legal history of rights and the price of one living being's interests being placed above another. An extract from Wise's contentious case — involving an imprisoned chimpanzee and whether it had the legal right to habeas corpus — was also played in the programme. This raised the question of whether legal defences used to protect the liberty and rights of humans should be extended to animals of scientifically proven high intelligence.

The programme was an insightful snapshot into important issues surrounding animal law. It exposed the hypocrisy of how legal protection is granted to pets, but little to animals used in experiments and entertainment. It provided convincing arguments for the need to update legislation so that it recognises the increasing scientific awareness of animal intelligence and their capacity for suffering. The presenter asked if future generations might look back at how we treat animals today in much the same way as we now view slavery. A thought provoking point that encapsulates the need to reassess current legal practices towards animals and whether they should come under the scope of principles enshrined in the rule of law.

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Listen to the podcast here:

<http://www.bbc.co.uk/programmes/b07qcbqg>

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### Essay competition 2016 Launch

Please don't forget to enter our latest essay competition for your chance to win book vouchers and have your work published in ALAW's journal.

For your chance to win please answer the following question:

**'Boycotting dogs bred in puppy farms will increase these dogs' suffering further and therefore cannot be justified. Discuss.'**

All rules can be found on our website at <http://alaw.org.uk/student-group/essay-competition/essay-competition-guidelines/>

## THE DANGEROUS DOGS ACT 1991: FIT FOR PURPOSE?



### Dangerous Dogs Act 1991

1991 CHAPTER 65

#### Florence James

*Florence is a second year LLB student at King's College, London and is working towards a career as a barrister.*

The Dangerous Dogs Act 1991 ('the Act') received the Royal Assent 25 years ago, banning four breeds of dog: Pit Bull Terrier, Japanese Tosa, Dogo Argentino and Fila Brasileiro. The Act has been met with unrelenting controversy since its enactment yet remains firmly in place.

Under the Act it is enough that a dog resembles one of the banned breeds in order to qualify as a banned breed itself. Common dogs such as the Staffordshire Bull Terrier share a likeness to the Pit Bull Terrier and can therefore be wrongly taken and kept from their owner under the Act. Consequently, the Staffordshire Bull Terrier may be destroyed or placed on the Index of Exempted Dogs if a court finds that the animal poses no threat to the public.

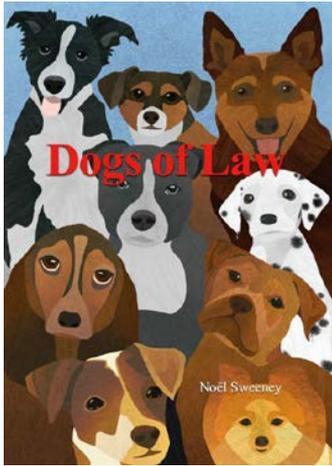
As mentioned, the Act is primarily concerned with the general aesthetic of the dog as opposed to its heritage to confirm it as a banned dog breed. It is at the discretion of the police officer whether or not a dog appears to be a banned breed of dog.

Police officers have little in the way of training in deciphering what a banned breed of dog actually looks like. As ill-thought out as this legislation appears, it only gets worse when we consider that the real problem is that this legislation is breed-specific.

A recent report, 'What's Breed Got To Do With it Anyway?' by Battersea Dogs and Cat Home showed several important facts that undermined any logic that the Act pertains to be based on. When surveyed 74% of Canine Behaviour Experts said that breed was either irrelevant or only slightly important in determining dog aggression levels. 86% of the same experts stated the socialisation coupled with the upbringing of the dog were intrinsic in having a well behaved dog. Evidently, the experts agree that the raising of the dog is what counts as opposed to its breeding.

Battersea Dogs and Cats Home stated that last year alone, they were forced by the Act to destroy 91 Pit Bull Types. Of the now deceased 91 it was believed 71% would have been suitable family pets as a result of their affectionate nature. Needless destruction of wrongly stereotyped animals is the consequence of legislation that has arisen as a response to exaggerated responses and depictions by the media. One of the key failings of the current legislation is that it was formulated in response to the public's clouded conjecture.

The report also stated that of those surveyed 98% believed adding more breeds to the banned list would have no effect in preventing further dog attacks. It seems that the Act is ineffective, as well as poorly executed; in the past 10 years there has been a 76% rise in hospital admissions for dog bites. If dogs are being needlessly destroyed or penalised based on their aesthetics and the public are no safer with the legislation then surely we need to look at re-evaluating this law.



## BOOK REVIEW

### *Dogs of Law* by Noël Sweeney

*Reviewed by Grace Wright – Grace is a pupil barrister at Cornwall Street Chambers.*

A thorough and comprehensive guide on the UK's legislation relating to dogs, this book is recommended to legal practitioners and students alike.

In this in depth study, criminal barrister Noël Sweeney examines the widely criticised Dangerous Dogs Act 1991, charting its development since it was hurried through Parliament in just one day in a panicked response to public outcry over a series of dog attacks. Amendments to the Act are carefully considered, including the most recent amendment by the Antisocial Behaviour, Crime and Policing Act 2014, leading to the well-argued conclusion that the Dangerous Dogs Act fails on every level: ultimately, it fails to protect humans from serious dog attacks and it fails to protect dogs from irresponsible ownership.

*Dogs of Law* uses an easy to follow format, pinpointing key cases and highlighting pertinent excerpts from leading judgments. This structure combined with Noël's refreshingly no-nonsense and concise approach makes *Dogs of Law* ideal for law students interested in learning more about

dog law as well as making this area of law accessible to those from a non-legal background such as vets, charity workers and campaigners.

Noël takes his analysis a stage further by concluding with a series of proposed ideas to build the basis of a new statute. It is argued that a new Act should have as its primary focus point the aim of controlling irresponsible owners rather than a focus on controlling dogs. Few could disagree with this proposal: as Noël argues, the dangerous conduct of a dog is a sign of a failure on the part of his owner. As well as the introduction of a compulsory dog license, it is suggested that more flexible sentencing options incorporating education and owner-dog training classes could work towards tackling the root of the problem. The innovative suggestions of introducing an animal abuse register and an Animal Ombudsman are powerfully linked to the connections that are now known to exist between perpetrators of animal abuse and other violent offenders, including domestic abuse situations.

As a barrister who has lectured widely on animal welfare law subjects, Noël is clearly well-placed to analyse and critique the law in this area. However, what really makes *Dogs of Law* a special book is that the author's genuine love of dogs shines through from the first page when he dedicates the study to his own 'man's best friends'. Noël is a true animal advocate and one sincerely hopes his voice is one that is listened to when the Dangerous Dogs Act undergoes a much-needed review.

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**You can order a copy of this book (or some of Noël's other titles) from 5m Publishing here:**

<http://www.oldpond.com/dogs-of-law.html>

**See also Noël's website for more information:**

<http://www.noelsweeney.co.uk/dogs-of-law-book/>

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## **IN THE NEWS**

### **Australia – Greyhound racing banned in New South Wales**

On 6<sup>th</sup> July 2016 the Premier of New South Wales Mike Baird made the ground-breaking announcement that greyhound racing will be banned in New South Wales from 1<sup>st</sup> July 2017. The move comes after a special commission of inquiry, led by former High Court judge Michael McHugh, found overwhelming evidence of animal cruelty that included live baiting and the slaughter of tens of thousands of healthy dogs.

New South Wales is the first Australian state to make the historic move. The state government has announced the orderly shutdown will be coordinated with industry consultation, which will include a welfare plan for existing greyhounds.

As an alternative to the outright ban, Justice McHugh recommended extensive reform, which included tighter regulation – although this was not without acknowledging a ‘very real risk’ that live baiting would continue.

Greyhound trainers have said they will challenge the ban, while advocacy group Animals Australia are encouraging other Australian states to follow the lead. The special commission was launched after the ABC’s Four Corners programme exposed the illegal use of piglets, possums and rabbits as live bait, and widespread unconscionable activity.

*Edit: Unfortunately, the ban on greyhound racing was overturned before implementation.*

### **Spate of fatal dog attacks**

A mother and grandmother of a baby girl killed in an attack by the family dog have been given custodial sentences (September 2016). Molly-Mae Wotherspoon died in October 2014 following the attack by the American pit bull. Mother Claire Riley pleaded guilty to owning a dangerously out of control dog and grandmother Susan Aucott pleaded guilty to being in charge of a dangerously

out of control dog contrary to the Dangerous Dogs Act 1991. Both received a custodial sentence of two years, of which half will be served in custody and half in the community on licence, along with 10 year bans from keeping dogs.

In August, 52 year old David Ellam died near his home after an attack by a ‘staffy-type’ dog owned by a neighbour. In a further tragedy, Dexter Neal, aged 3, was killed after an attack by an American bulldog, a breed which is not specifically named in the Dangerous Dogs Act. A woman has been charged in connection with the attack and is due to answer bail later this year.

These recent incidents have prompted further criticism of the Dangerous Dogs Act as inadequate in its protection of both people and dogs by failing to effectively tackle irresponsible dog ownership.

### **Denmark - whaling in the Faroe Islands**

The ancient local tradition of hunting pilot whales in the Faroe Islands has seen several hundred whales massacred over the summer hunting season. Situated roughly halfway between Norway and Iceland, the Faroe Islands are a self-governing territory under the sovereignty of Denmark.

Known as ‘grindadráp’ in Faroese, the hunts involve slaughtering whales to provide meat for the community using specially adapted spinal lances to sever the spinal chord.

Campaign group Sea Shepherd Global has announced plans to take legal action against Denmark to halt the hunts. Geert vons, Director of Sea Shepherd Netherlands and campaigns leader against the Faroese hunts, commented: *“We are currently in the process of establishing legal proceedings to take the Kingdom of Denmark to the European Commission and Danish courts”*.

## Humpback whales no longer endangered

Elsewhere, there has been some happy whale news - conservation efforts over the last few decades have succeeded in restoring population numbers.

In September 2016 the United States National Marine Fisheries Service (NMFS) announced that 9 of 14 distinct populations of humpback whale have been removed from the endangered species list. Four populations remain listed as endangered and one population as threatened.

## Slaughterhouse breaches

There were over 4,000 serious breaches of animal welfare regulations over the past two years at British slaughterhouses, data released by the government's food watchdog under freedom of information laws has shown.

The data, including reports by vets and hygiene inspectors, shows numerous occasions of unnecessary pain caused to animals, such as difficulties slaughtering chickens in accordance with the law and problems with transportation from farms to abattoirs. The data also reveals how faulty equipment and poor procedures in place in abattoirs have contributed towards thousands of animals suffering needless distress.

Government veterinary surgeons and meat hygiene inspectors reported 9,511 animal welfare breaches to the Food Standards Agency (FSA) between July 2014 and June 2016. However, few of these breaches resulted in successful prosecutions.

## Scotland – wild animal ban in circuses

The British Veterinary Association (BVA) and BVA Scottish Branch have welcomed the Scottish government's announcement of its intention to ban the use of wild animals in travelling circuses.

The UK has been urged by campaigning groups including PETA to follow Scotland's lead. The BVA released the following statement in response to First Minister Nicola Sturgeon's pledge:

*"As the leading representative body for vets, we have long campaigned on this issue.*

*"The welfare needs of non-domesticated, wild animals cannot be met within a travelling circus in terms of housing nor being able to express normal behaviour. While this specific issue may not affect a great number of individual animals in the UK, we nevertheless believe it is emblematic of the way we treat all animals under human care.*

*"We are pleased to see the new Scottish government not only identifying opportunities to improve animal health and welfare in Scotland, but taking hold of these opportunities with both hands – and we would urge other UK governments to follow their lead."*

We are keen to have more contributions for our news page. If you would like to contribute to the news section please email your submissions (no more than 150 words long please) to [studentgroup@alaw.org.uk](mailto:studentgroup@alaw.org.uk).

*With many thanks to Andrew Tyler, Professor Stevan Harnad, Noël Sweeney, Paula Sparks, Edie Bowles and Sally Shera-Jones for their help with this edition.*

*Many thanks also and well done to all of our student contributors: Letitia Frome, Maria Rumbol, Emma Ruttley, Rebecca Clarke, Florence James and Michael Gold.*

*All views expressed are those of each respective author and are not necessarily the views of ALAW.*

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