

## Informed debate: the contribution of animal welfare science to the development of public policy

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### Abstract

The development of animal welfare science has had a fundamental influence on the development of public policy towards the treatment of animals, not only in individual countries such as the United Kingdom, but also within the institutions of the European Union. This has led to a new body of legislation which is intended to promote welfare and to complement the traditional prohibition on causing cruelty. If this process is to continue, however, it is important that conducting research should not be regarded as the sole function of animal welfare scientists. It is essential that they are also fully engaged in ethical debate, policy formulation, regulatory mechanisms, and their enforcement.

**Keywords:** animal protection, animal welfare, cruelty, legislation, public policy, regulation

### Introduction

It is commonly recognised that the evolving discipline of animal welfare science has provided the impetus, the justification, and the basis of contemporary public policy towards animals in the United Kingdom, and the European Union generally. As such, the importance of its contribution to the improved treatment of animals cannot be over-emphasised.

Before the development of the concept of welfare, state protection in the United Kingdom was based almost exclusively on the concept of cruelty, which can be generally encapsulated in the notion of 'unnecessary suffering' (For example, Protection of Animals Act 1911, s 1(1)(a); Protection of Animals (Scotland) Act 1912, s 1(1)(a); Abandonment of Animals Act 1960, s 1). Subject to this test, issues about quality of life were ignored. While cruelty continues to make an essential contribution to the protection of animals, it is in itself insufficient to ensure an acceptable quality of life. Indeed, the origins of welfare science are to be found in the limitations inherent in cruelty. The lacuna was exposed during the 1960s when the nature of intensive agricultural production involving animals — factory farming — was initially revealed to a horrified public, most notably in Ruth Harrison's seminal book, *Animal Machines* (1964). The problem was that, in general terms, unless it could be demonstrated that, first, the animals involved suffered and, second, such suffering was unnecessary, there were few restrictions on the way in which farmers could choose to treat their livestock. In practice, this test could be met only in relatively limited circumstances. Furthermore, its shortcomings in relation to farming can only be fully

appreciated when it is understood that, on the one hand, intensive methods had been introduced specifically because of the increased rates of production it made possible and, on the other, high rates of productivity were widely regarded as a reliable indicator that the animals involved were healthy and thereby, according to the assumptions of the time, were being kept in an entirely suitable and acceptable manner.

### The development of the concept of welfare

It was only with the deliberations of the Brambell Committee, established largely as a result of the public reaction to Harrison's book, that the existing entrenched assumptions about the needs and experiences of agricultural animals were challenged in the public policy arena. The importance of the Brambell Committee's contribution lay in the combination of its terms of reference and its members' readiness to interpret them broadly. These charged the Committee 'to examine the condition in which livestock are kept under systems of intensive husbandry and to advise whether standards ought to be set in the interest of their welfare and if so what they should be' (emphasis added). Crucially, such an undertaking necessitated the Committee giving consideration to what it understood by this relatively novel term, 'welfare'. (Again this background and in the context of the present proceedings, we should therefore recognise the foresight displayed by Charles Hume when, in 1926, he decided to name his newly established organisation the University of London Animal Welfare Society [which was later renamed the Universities Federation for Animal Welfare], some forty years before the term 'welfare' was adopted by public policy makers).

The final report of the Brambell Committee should continue to be required reading for all those with an interest in animal welfare, for it provided the foundation not only of the regulatory regime that we have today, but also its intellectual and evidential basis (Brambell, 1965). In short, the Committee recognised ‘welfare’ to be ‘a wide term that embraces both the physical and mental well-being of the animal’ and concluded that any attempt to evaluate it ‘must take into account the scientific evidence available concerning the feelings of animals that can be derived from their structure and functions and also from their behaviour’ (para 25). This short statement contains three significant components: the emphasis on scientific evidence; the subjective test to be applied (‘the feelings of animals’); and the need to pay attention not only to animals’ anatomy and physiology, but also to their feelings. The latter in particular challenged two deeply entrenched assumptions: that productivity could be regarded as an accurate measurement of an animal’s state; and that the test of whether an animal’s treatment was acceptable turned on whether it could be shown to have suffered — suffering being interpreted in what we would now regard as a crude and simplistic way, being largely restricted to injury and pain. Indeed, the Committee observed that its view of welfare involved paying ‘special attention to the possible cumulative effect on the animal of the long continuance of conditions which might be tolerable or even acceptable in the short term’, but which if they caused prolonged stress, discomfort or deprivation may be of ‘much more significance for the total welfare of the animal than more acute, but transitory suffering’ (para 29). Furthermore, the Committee expressly rejected as ‘oversimplified and incomplete’ the view that an animal’s productivity could be taken as ‘decisive evidence’ of the state of its welfare (para 30).

The Committee laid down the fundamental principle that an animal’s welfare was affected by a combination of its physical environment, its opportunity for companionship, the adequacy of its diet, the avoidance of what were described as ‘undesirable habits which can arise because of confinement’ such as fighting, feather pecking, and tail and ear biting, and the ability of the animal being able to engage in its natural behaviour (see generally, paras 31–45).

While recognising that confinement could be advantageous to an animal, in providing shelter and protection, the Committee cautioned that the advantages must be weighed against the inherent disadvantages. In determining whether particular situations were acceptable, it suggested two factors should be taken into account. First, the degree to which the animal’s behavioural urges were affected; and, second, the duration of the confinement: ‘In principle we disapprove of a degree of confinement of an animal which unnecessarily frustrates most of the major activities which make up its natural behaviour and we do not consider such confinement or restraint permissible over a longer period unless the other advantages thereby conferred *upon the animal* are likely to be very substantial’ (emphasis added). At the very minimum, the Committee considered that the

animal should have ‘sufficient freedom of movement to be able, without difficulty, to turn round, groom itself, get up, lie down, and stretch its limbs’ (paras 36 and 37).

The approach of the Brambell Committee had two important consequences. First, its emphasis on the long term effects on the animal of its environment and treatment, and the animal’s ability to engage in natural behaviour, led to a need to develop our understanding of the nature of these factors. ‘Welfare is a wide term that embraces both the physical and mental well-being of the animal,’ the Committee pronounced, and any attempt to evaluate it ‘must take into account the scientific evidence available concerning the feelings of animals that can be derived from their structure and functions and also from their behaviour’ (Brambell 1965, para 25). According to the Committee, this involves ‘paying special attention to the possible cumulative effect on the animal of the long continuance of conditions which might be tolerable or even acceptable in the short term’, but which if they caused prolonged stress, discomfort, or deprivation may be of ‘much more significance for the total welfare of the animal than more acute, but transitory, suffering’ (Brambell 1965, para 29). Most significantly, especially in relation to livestock production, the Committee rejected as ‘oversimplified and incomplete’ the view that an animal’s productivity could be taken as ‘decisive evidence’ of the state of its welfare (Brambell 1965, para 30). This gave impetus to the development of what we would now describe as animal welfare science.

Second, it recognised that the findings of the scientists needed to be translated into a regulatory framework, thus leading to enactment of specialised animal welfare legislation. Indeed, as a direct consequence of the Brambell Committee’s report, the term ‘welfare’ was embodied for the first time in animal protection legislation in Britain, and many of the factors which Brambell identified as being important to an animal’s welfare have since been incorporated into legislation and official guidance (see, for example, the Welfare of Farmed Animals (England) Regulations 2000, SI 2000/1870; Home Office 2000).

### Why anti-cruelty laws are not enough

The importance of this body of animal welfare law is that it provides an essential complement to the pre-existing anti-cruelty legislation (Protection of Animals Act 1911, as amended and supplemented; Protection of Animals [Scotland] 1912, as amended and supplemented). The offence of cruelty remains a vital element in the armoury of animal protection, but it is not in itself sufficient. While the notion of cruelty is essentially negative in character — laying down what one may not do to an animal — the concept of welfare is positive. It defines how an animal *ought* to be treated. Most importantly, prejudicing an animal’s welfare does not of itself amount in law to cruelty, but there are also other significant differences. An animal may or may not become the victim of cruelty during the course of its life, but *every* animal can be said to have a state of welfare, which persists for the duration of its existence and will vary according to the circumstances which confront the animal,

together with its response to those circumstances (Broom 1986; Broom and Johnson 1993, p 75). Welfare is therefore inherent to the individual, albeit influenced by external factors, whereas cruelty is something which is inflicted upon an animal as a result of the act or omission of a human being. Furthermore, cruelty is defined as much by reference to the attitude and behaviour of the perpetrator, and his objective, as it is by the effect upon the victim, while welfare is concerned exclusively with assessing the state of the individual animal (Radford 2001, chapters 9, 10 and 11). This involves taking account of influences which may be either positive or negative, while cruelty is concerned only with treatment which results in suffering. 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 the animal, and translating these into rules, guidance, and advice, to which those responsible for their care are required to have due regard (Compare, for example, the nature of the Protection of Animals Act 1911, s 1, with the Welfare of Farmed Animals (England) Regulations 2000, SI 2000/1870).

### The incorporation of welfare into legislation

The first such legislation in the United Kingdom (introduced as a direct result of the Brambell Committee) was the Agricultural (Miscellaneous Provisions) Act 1968. Still in force, this empowers Ministers to introduce (legally binding) regulations to make ‘such provision with respect to the welfare of livestock for the time being situated on agricultural land as they think fit’ and to prepare welfare codes ‘for the guidance of persons concerned with livestock’ (sections 2 and 3). Following this initial reference to ‘welfare’ in UK legislation, detailed provisions have been introduced applicable for example to animals used in scientific procedures, kept in zoos, on the farm, during transport, at market, and at slaughter (see further, Radford 2001, chapters 12 and 13). Most significantly, the source of the majority of animal welfare legislation has been the European Union, which has not only agreed a range of measures in the form of regulations and directives, the terms of which are binding on all Member States, but has also amended its founding treaty. On the basis that they desire ‘to ensure improved protection and respect for the welfare of animals as sentient beings’, Member States have agreed that:

In formulating and implementing the Community’s agriculture, transport, internal market and research policies, the Community and Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage (Protocol on the protection and welfare of animals, annexed to the Treaty of the European Community by virtue of the Treaty of Amsterdam, which came into force on 1 May 1999).

### The impact of animal welfare science

It is incontrovertible, therefore, that the development of animal welfare science has made a major impact on public policy and thereby also on legal regulation. Furthermore, the fact that this process is based on *science* is of considerable significance. First, science has an international perspective; its findings are applicable throughout the world. Second, politicians (and judges) are more likely to adapt their decisions in the light of scientific evidence on the basis that it rises above mere emotion. Third, the greater insight into the needs and experiences of animals which has been gained through research has had a profound effect on the ethical debate about our relationship with other species and the manner in which we keep them. Put simply, whether one finds the argument on notions of either animal rights or human responsibilities, the fact is that the more sophisticated our understanding of the effect which our treatment has on animals, the greater is our moral obligation to ensure so far as possible that those animals benefit from a high standard of welfare. Throughout human history animals have been abused by man. For most of that time such conduct may be excused on the basis that the perpetrators simply did not understand the consequences of their actions. The development of animal welfare science has fatally undermined any such mitigation.

However, while acknowledging the degree to which science has served animal welfare, it must be recognised that science is not in itself the final determinant of how animals ought to be treated. There are also moral, economic and social issues to be taken into account. Moreover, the nature and present state of development of animal welfare science is not such as to be able to provide definite and categorical answers to every question. Perhaps it will never be able to do so. Consequently, we are still confronted with the need to make policy decisions based on incomplete or ambiguous data. This does not, however, detract from the duty on us to confront the relevant issues. For human beings have control over other species and, furthermore, we are moral agents, capable of at least some understanding of the consequences of our actions. As such, we have a duty to take all reasonable steps to understand the effect our treatment of other species has upon them. At the very least, assuming that evolution has equipped them to cope adequately with their natural environment, we are under a moral obligation to consider how removing them into an alien environment or altering their genetic makeup affects them. This is, first and foremost, a scientific issue, and there cannot be informed debate or policy development without an understanding of the relevant science.

### Animal welfare implications — whither animal welfare science?

The contribution of animal welfare science has been immense. However, without in any way belittling the progress which has been achieved, it may be argued that animal welfare science has reached something of a watershed. In view of the commercial realities — especially the impact of the World Trade Organisation — there may

well be increasing opposition to introduction of further regulation to control commercial activities involving animals. Clearly, research must continue, but research should not be regarded as the sole function of animal welfare scientists. At an international level, there is a need for the science to be translated into a form which is easy to understand by decision-makers from countries which do not have a tradition of regulating the way in which animals should be treated, and the moral implications of the science should also be spelt out. It is also timely to ask whether the way in which the concept of 'welfare' is interpreted remains appropriate, and how it can best be translated effectively into a regulatory framework. Furthermore, both internationally and domestically, the science of animal welfare needs to be given a higher profile in veterinary education and, in the meantime, the achievement of a veterinary qualification should not automatically be equated with expertise in welfare matters. Within England and Wales, the prospect of an overarching Animal Welfare Act raises important issues about the role of animal welfare scientists and the application of their work and is also relevant to deliberations about the future regulation of the veterinary profession.

Many scientists working in this field are engaged in activities far beyond their laboratories. It is a trend which must continue. Understanding the physiology and ethology of other species can never be regarded as an end in itself. As the speakers at this Symposium have demonstrated, in order to pursue the implications of their work, there is an urgent and continuing need for animal welfare scientists to engage in ethical debate, and policy formulation, and regulatory mechanisms, and their enforcement.

## References

- Abandonment of Animals Act 1960**
- Brambell F W R** Chairman 1965 Report of the Technical Committee to Enquire into the Welfare of Animals Kept Under Intensive Husbandry Systems, Cmnd 2836 (London: HMSO)
- Broom D M** 1986 'Indicators of Poor Welfare'. *British Veterinary Journal* 142: 524
- Broom D M and Johnson K G** 1993 *Stress and Animal Welfare*. Chapman and Hall: London, UK
- Council Directive 86/609/EEC** of 24 November 1986 on the approximation of laws and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes [1986] OJ L358/1
- Council Directive 93/119/EEC** of 22 December 1993 on the protection of animals at the time of slaughter and killing [1993] OJ L340/21
- Council Directive 95/29** of 29 June 1995 on the protection of animals during transport [1995] OJ L148/52
- Council Directive 98/58/EC** of 20 July 1998 concerning the protection of animals kept for farming purposes [1998] OJ L221/23
- Council Directive 1999/22/EC** of 29 March 1999 relating to the keeping of wild animals in zoos [1999] OJ L94/24
- Council Directive 1999/74/EC** of 19 July 1999 laying down minimum standards for the protection of laying hens [1999] OJ L203/53
- Harrison R** 1964 *Animal Machines*. Vincent Stuart: London, UK
- Home Office** 2000 *Guidance on the Operation of the Animals (Scientific Procedures) Act 1986*, HC 321. Stationery Office: London, UK
- Protection of Animals Act 1911**
- Protection of Animals (Scotland) Act 1912**
- Radford M** 2001 *Animal Welfare Law in Britain. Regulation and Responsibility*. Oxford University Press: Oxford, UK
- Treaty of the European Community** Protocol on protection and welfare of animals
- Welfare of Farmed Animals (England) Regulations 2000**, SI 2000/1870

## Accessing legislative material

Legislative material originating from the European Union can be accessed at <http://europa.eu.int/eur-lex/en/index.html>.

UK legislation can be found at <http://www.legislation.hmsso.gov.uk/legislation/uk.htm>.

See also:

<http://www.eurogroupanimalwelfare.org/legislation.htm>

<http://www.defra.gov.uk/animalh/welfare/default.htm>

<http://www.homeoffice.gov.uk/comrace/animals/legislation.html>