

737. Broom, D.M. 2019. Welfare, sentience and law: an international perspective. *Proceedings of the Australian Veterinary Association Annual Conference, Perth*, 81-82. St Leonards, NSW: Australian Veterinary Association, ISBN: 978-0-9946434-8-3.

Pre-publication copy

Welfare, sentience and law: an international perspective

Donald M. Broom

Department of Veterinary Medicine, University of Cambridge, Madingley Road, Cambridge CB3 0ES, U.K. and St Catharine's College. dmb16@cam.ac.uk

Most of the public think that it is important to use sustainable systems for all activities and that, whenever animals are used, their good welfare is an important aspect of sustainability and product quality. Consumers exert pressure on food retailers and governments to ensure that the worst practices do not continue. Animal welfare science has developed rapidly so scientific evidence can be used in codes and laws.

Laws relating to animal welfare generally refer to sentient animals that have the capacity to have feelings. Human opinion as to which individuals are sentient has changed over time in well-educated societies to encompass: firstly all humans instead of just a subset of humans, and then also: (a) certain mammals that were kept as companions, (b) animals that seemed most similar to humans e.g. monkeys, (c) the larger mammals, (d) all mammals, (e) all warm blooded animals, (f) all vertebrates and (g) some invertebrates. New knowledge about brain function and welfare has tended to show that the abilities and functioning of non-human animals are more complex than had previously been assumed so there should be some re-appraisal of which animals should be protected¹.

EFSA reports are commissioned before changes in E.U. legislation and have pioneered objective review of animal welfare issues using risk and benefit analysis. The sequence of procedures during the analysis of risks or benefits is: first to list factors (hazards if negative), second to calculate exposure, third to estimate uncertainty. The analysis may be quantitative if sufficient numerical information is available, or qualitative if it is not. The inclusion of risk analysis in scientific reports and opinions produced by EFSA and other organisations has helped decision makers to take appropriate action, for example to minimise animal disease and improve animal welfare^{2,3}.

What do we need from animal welfare law? Most people would say that the law should prevent people from causing poor welfare in animals: pain, fear, other suffering, severe disease, distress caused by environments which do not meet the animals' needs, or distress caused by the genetic selection used in breeding. In reality, the way that a law might do this is principally by acting as a deterrent. People who disobey the law are punished and this becomes known. Laws should provide guidance, not just a mechanism to punish⁴. Key points of the U.K. Animal Welfare Law 2006 are that it refers directly to animal welfare and that it refers to people having a duty of care to the animals covered by the law. The effectiveness of laws and codes depends on the attitudes of people to them and on the efficacy of enforcement.

Whale welfare can be assessed using many of the measures that are used for other animals⁵. Whales are sentient, good at learning and have a pain system. In relation to the whale hunt, studies of welfare should consider the effects of: the disturbance resulting from the approach of humans in boats, chasing by boats, a harpoon entering tissue, pulling on the line attached to the harpoon, tissue damage by an explosive harpoon and procedures during capture of individuals after they

have been pulled to the whaling ship. After these matters had been discussed in the informal meetings, animal welfare was placed on the agenda of the I.W.C.

The rules of the World Trade Organization (W.T.O.) do not specify that animal welfare is an accepted ground for restricting trade but they do specify public morality as such a ground. The European Union banned trade in seal products on animal welfare grounds because of public pressure about how young seals were killed for their fur. Seals can be killed humanely, for example by a veterinarian in a laboratory or zoo. Seals on ice floes are often not humanely killed when they are clubbed or shot and, in these conditions, it is not possible to be certain of doing so. Some will be conscious, some will be unconscious and some will be dead but identification of unconsciousness and death is difficult. Without bleeding by cutting a major blood vessel, death cannot be certain. Skinning a conscious animal will cause extreme pain. The W.T.O. found that the E.U. seal law does not violate the Technical Barriers to Trade (TBT) agreement because it fulfils the objective of addressing E.U. public moral concerns on seal welfare. The E.U. ban on seal products was found not to violate the general Agreement on Tariffs and Trade (GATT). This ruling has consequences for other animal welfare issues⁶.

References

¹Broom, D.M. 2014. *Sentience and Animal Welfare*. Wallingford: CABI.

²Berthe, F., Vannier, P. Have, P., Serratos, J., Bastino, E., Broom, D.M., Hartung, J. and Sharp, J.M. 2012. The role of EFSA in assessing and promoting animal health and welfare. *EFSA Journal*, 10, s1002, 19-27.

³Broom, D.M. 2017. *Animal Welfare in the European Union*. (pp 75). Brussels: European Parliament Policy Department, Citizen's Rights and Constitutional Affairs. ISBN 978-92-846-0543-9 doi: 10-2861/891355.

⁴Radford, M. 2001. *Animal Welfare Law in Britain: Regulation and Responsibility*. Oxford: Oxford University Press.

⁵Broom, D.M. 2013. The science of animal welfare and its relevance to whales. *Animal Welfare*, 22, 123-126.

⁶Broom, D.M. 2016. International animal welfare perspectives, including whaling and inhumane seal killing as a public morality issue. In *Animal Law and Welfare – International Perspectives*, 45-61, (eds) D.Cao and S. White. Springer International Publishing, Switzerland. Book DOI 10.1007/978-3-319-26818-7.