Updating the British Cruelty to Animals Act of 1876: Can the Center Hold?

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Long experience with unsuccessful attempts by British animal welfare groups to promote private members' bills for reform or replacement of the *1876 Cruelty to Animals Act* (*Vict. C. 77,* 1876) has convinced reformists that achieving this kind of change by lobbying Parliament may be impossible. It was for this reason that a small reformist group—spearheaded by the ex-chairman of the Labour Party, Lord Houghton, and an eminent surgeon, the late Lord Platt—was formed and drafted reform proposals in a document widely known as the Houghton/Platt Memorandum (paper submitted to the Home Secretary, 1976). This report called for a substantial tightening up of controls already established under the 1876 Act. All of these modifications, the report noted, could have been effected by administrative action alone.

Subsequent to the co-operative effort made by animal welfare societies during Animal Welfare Year (1976) (see Hollands, 1981), five joint consultative bodies were established to coordinate the activities of animal welfare societies in regard to their major areas of concern. One of these, the Committee for Reform of Animal Experimentation (CRAE) was set up to work specifically for reform of the 1876 Act. This committee, which incorporated the earlier Houghton/Platt Group, is made up of politicians, scientists, and spokespersons from animal welfare societies who serve on it as individual citizens, not as representative of their respective societies. This policy leaves the Committee free to engage in political lobbying.

Since 1975 the animal welfare reform movement has steadily been gaining impetus. Events that were important in this increase in awareness included the public outcry raised in response to exposure of ICI's "smoking beagles" in the British Sunday press, the militant activities of the newly formed "Animal Liberation Front," and the publicity focused on the subject of animal rights after the publication of Richard Ryder's popular book, *Victims of Science* (1976).

Largely because of this public pressure, the more moderate reformist group, CRAE, was able to abandon its efforts to achieve reform through Parliament and, instead, exerted pressure via the "back door": deliberations were initiated with the senior Home Office officials who administer the 1876 Act. In 1977, CRAE members met with the then Home Secretary, Merlyn Rees, and agreed upon a number of reforms that could easily be effected administratively.

This, the first meeting of its kind since World War II, was a historic event in the reform movement. No Home Secretary would ever have agreed to meet with representatives of any single society, since this would have opened the door to an endless series of such meetings. But he *was* willing to meet with a joint consultative body that was seeking moderate and practicable reforms. Since that time, CRAE has held regular meetings with senior Home Office officials and has worked to achieve a productive dialogue.

But by the late 1970's, it was becoming clear that the reformist campaign

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was also gaining political influence. However, judging by some of the comments made about its activities in the popular scientific press (Vines, 1976), the scientific community was becoming worried about the increasing influence of the campaign and the resultant escalating public controversy. Attitudes seemed to be polarizing in a fashion that was remarkably similar to the pattern noted in 1875, just prior to the passage of the Act of 1876, which had followed discussions before the First Royal Commission on Vivisection.

As political campaigning stepped up during the run-up before the 1979 General Election, polarization increased. Among other developments, this year saw the formation of the general election co-ordinating Committe Campaign for Animal Protection (GECCAP), whose sole purpose was "putting animals into politics." GECCAP, a committee drawn from 65 animal welfare bodies under the Chairmanship of Lord Houghton, sought to obtain commitments from the three major political parties that they would take action on animal welfare issues after the election. This was a major shift in strategy: the reform movement had at last recognized that animal welfare legislation was too complex and too controversial to be left to the hazardous process of the private member's bill.

It was, perhaps, not the £104,210 spent during the campaign, but rather the collaborative nature of the effort that led to its success. All three major parties did make the requested commitment to animal welfare legislation. The Labour Party, in particular, published a short book, *Living Without Cruelty* (1978), a comprehensive policy statement on the major animal welfare issues, which was the first clear statement of animal welfare policy ever made by a British political party. The Conservative Party, subsequently elected, outlined in its manifesto a statement of intent to update the 1876 Act, thereby pledging that the British government would enact new legislation pertaining to regulation of animal experimentation during the current parliamentary session.

In its manifesto, the Conservative Party had also committed itself to reconstituting the Home Office Advisory Committee on Animal Experimentation, which advises the Home Secretary on the administration of the 1876 Act. In May 1980 the party honored this pledge; for the first time, two animal welfare representatives became part of the Committee (the author, and T.D. Field Fisher). In addition the Committee was placed under the chairmanship of Mary Warnock, an Oxford philosopher.

The Government Stalls, While the Council of Europe Deliberates

However, the government has not been quick to act on its pledge to update the law. It first maintained that it could not take such action until the finalized version of the draft document, *European Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes,* currently being drawn up by an ad hoc committee of experts at the Council of Europe in Strasbourg, had become available. This Committee had been set up in 1971, after the failure of radical proposals set out in Council of Europe Recommendation 621, which were intended to promote the humane treatment of laboratory animals and the development of "alternative" techniques.

The Convention as it is presently worded contains proposals for regulating the use of laboratory animals that should be a part of the national code of every member country that ratifies it. However, the Council of Europe has no power of enforcement over the activities of its 21 newer member countries. Since the governments of many of these

countries have little or no statutory control over animal experimentation at the present time, it was never likely that any generally agreed-upon Convention could contain animal welfare proposals that were even as strong as those that have been in force in Great Britain since 1876.

Indeed, from the viewpoint of animal welfare, the Committee's document has been progressively weakened at every meeting. It now makes only superficial reference to the promotion of alternative techniques, an issue that was originally felt to be of prime importance by the Parliamentary Committee of Ministers that set up the ad hoc Committee. Further, a provision for setting up a permanent Standing Committee to monitor the implementation of the Convention's proposals has now been deleted, and the Committee has yet to discuss the central issue of control over pain in experimental animals.

Given the fact that this Convention — if and when it is finally agreed upon — is unlikely to contain provisions that will please either the scientific community or the reform movement, neither side sees any reason why the British government should delay any longer in enacting its own national legislation. Indeed, both sides have become impatient. The reform movement in particular has become skeptical that the government will honor its election pledge before the dissolution of the current Parliament, given the reality that the European Convention is unlikely to be finalized by then.

Meanwhile, the activist element of the humane movement has gained support. One example of their growing influence is the success of the campaign against the Draize test last year, which was spearheaded in Britain by the grass roots organization Animal Aid. This group, along with the larger British antivivisection societies, will not be satisfied with any less-than-radical legislation that simply tightens controls over existing practices. The scientific community, on its part, is anxious to diffuse the public controversy stirred up by militant animal rights groups by collaborating with the more moderate reformists, to achieve what its members feel will be a workable Act. These scientists therefore hope to convince the public that animal experimentation can responsibly be controlled by humane legislation.

Return to the Tactic of Private Member Bills

In late 1979, disillusionment with the government's inaction led to the introduction of two private members bills, one in the Lords and one in the Commons. Both were aimed at prompting the government to action. The stronger of the two, from the viewpoint of animal protection, was the *Protection of Animals (Scientific Purposes) Bill* introduced by Peter Fry (MP). This bill incorporated provisions suggested by the RSPCA. However, the bill was largely unworkable, although it could have been improved in Committee. But the Committee itself was constituted such that it was inevitable that the bill would never attain a truly workable form. The bill was consequently withdrawn by Fry while it was still in the Committee stage.

A more interesting fate befell the *Laboratory Animals Protection Bill,* which was introduced into the Lords by Lord Halsbury, President of the Research Defence Society. The aim of this bill was to diffuse some of the heated emotion about animals in experiments, by demonstrating that the scientific community was capable of putting its own house in order. In its original form, its provisions would not have satisfied even the most moderate animal protectionists, but it was totally rewritten in a Select Committee of the Lords. This Committee, under the very able and unbiased Chairmanship of Lord Ashby, contained among its

members representatives of both sides of the controversy. It included some distinguished scientists, as well as some disinterested lay members. Making a strong case for reform was Lord Houghton, who was by now acclaimed by many as the "Grand Old Man of the animal welfare reform movement." For the other side, Lord Halsbury advanced an equally strong argument for protecting the interests of the research community.

Compromise in Committee

What seems remarkable, given the apparently polarized viewpoints of its members, is that this Committee, through diligent analysis of the issues, was able to reach a general consensus. Accompanying the 80-page digest of evidence received by the Committee was a 26-page report explaining the evidence and logic that lay behind the new bill that the Committee had drafted.

The significance of the new approach that is offered in this bill has not been grasped by many of those who are concerned with animal welfare in Britain, but it is certainly germane to the current situation. The Select Committee, incorporating as it did a high level of expertise from both sides of the issue, recognized the impossibility of laying down a rigid set of rules in the statute. Not only would it be impossible for all interested parties to agree, at a stroke, about what the specific rules should be, but it was also clear that the rules would have to be flexible enough to accommodate change as new scientific knowledge (for example, relating to alternatives) was gained. Indeed, the 1876 Act has remained workable for 105 years only because the Home Office, in the course of administering it throughout changing circumstances, has stretched its interpretation of the language of the Act far beyond what was originally intended when it was first drawn up.

The Primary Issues — Is Compromise Possible?

In 1876, only about 300 experiments in animals were conducted in Great Britain. In the main, these involved surgical procedures and addressed fundamental problems in physiology. Today, some 4.5 to 5 million experiments are carried out each year, and only a fraction of these entail surgery. Most of the procedures cannot truly be described as "experimental" at all if considered in the light of the 1876 Act. One example of this type of use of animals occurs in the vast field of toxicological testing.

Thus, the two central issues that must be considered now are issues that were far less important in 1876. First, there is the question of how much regulation should be placed on the degree of suffering that can be inflicted in experiments. The second question relates to justification of the purposes for which experiments are carried out. These issues were addressed by CRAE in its memorandum submitted to the Lords Select Committee, *Proposals for Change in the Legislation Governing the Use of Live Animals in Research, Experiments and Other Laboratory Purposes* (1979), which summarized the main reform proposals as expressing the need to:

- Restrict pain
- Ensure a substantial reduction in the number of animals used
- Develop and use humane alternative methods of research
- Ensure public accountability.

Some animal rights groups cannot accept the idea that experimentation can be effectively controlled by *any* legislative measures. However, CRAE believes that any new law that might become acceptable to the general public should at least consider these four issues very seriously and come as close to achieving the goals set out in its Reform document as is possible at the present

time. A mere cosmetic tinkering with the wording of the law is unlikely to satisfy anyone at all.

Limiting Pain in Animal Experimentation

Restriction over pain is the most crucial of the issues under consideration and one of the most difficult to deal with. All the British Animal Welfare groups, without exception, are unequivocably opposed to the infliction of pain upon laboratory animals, and CRAE has submitted a proposal for a "No Pain Clause" to be introduced into the new law. Those campaigning for reform do, however, recognize the complications of the issue. For many years the 1876 Act has incorporated, as an administrative feature, a Pain Clause that prohibits the infliction of any "severe" pain that is "likely to endure." However, these two definitions must, of necessity, be subjective, although the Home Office has maintained that the clause has been workable in the past.

But those in the reform movement remain unconvinced. They cite, for example, certain toxicological tests in which animals do experience, and even die in, pain that is both severe and enduring. The added complication here is that many of these tests are actually prescribed in safety testing laws and regulations, both nationally and internationally.

The RSPCA adopts, as part of its policy statement, a stance of total opposition to painful experiments, while at the same time taking a pragmatic approach to the definition of pain and suffering. The Society recognizes that any definitions of these sorts of terms must be subjective, but it does not believe that it is impossible to establish meaningful benchmarks for assessing severity of pain. One animal ethologist has already outlined some useful approaches to the problem (Dawkins, 1981). At a recent symposium, a research scientist defined as unacceptable any degree of pain inflicted upon a laboratory animal that the researcher would not be prepared to endure himself (Kerr, 1981).

The RSPCA has taken the view that an essential first step toward dealing with the problem is identification of the specific areas of research that have a high probability of involving appreciable animal suffering. The Society is currently conducting a fact-finding research project toward this objective, in co-operation with research scientists. At the same time, the Home Office Advisory Committee is also looking into this question.

The Ethics of Justifying Experiments in Animals

The other principal area of public concern is that of the justification of animal experiments, many of which are, in any case, carried out with public money and ostensibly in the name of public protection. In recent years many people have become increasingly concerned about the ethics of certain areas of research; one particular example includes the sorts of studies carried on in the behavioral sciences. And there is no onus upon researchers working under the 1876 Act to justify the value of their work; this is a feature that the majority of the scientific community would undoubtedly oppose.

The Lords Select Committee did, however, feel that this problem should be addressed, and it suggested that a "chain of accountability be established," which would stop at the Home Secretary. He or she would be required, in the annual Report to Parliament, to "justify" licenses granted under the Act. For purposes of setting precedents, a statutory Advisory Committee would be established, with Statutory duty to keep under continuous review the extent to which animals are used for scientific work, the means whereby their use may be limited, the procedures which should be allowed under the Act, and the state of public

opinion concerning matters which came under the Act.

Who Should Be Responsible for Justifying Experiments?

The Current Advisory Committee, in framing its suggestions to the government for new legislation, also felt that experiments need to be justified, although it did not recommend that the Advisory Committee should be granted executive powers, since this move might be prohibited by expense. The Committee did, however, draw heavily on the approach already offered by the Lords Select Committee and concluded — after considerable debate on the matter — that the public would not be satisfied with any new law that did not put the onus of justification firmly on the shoulders of those administering the new Act — ultimately, the Home Secretary (Advisory Committee on Animal Experiments, 1981). Of course, the Home Office will probably be reluctant to accept this kind of responsibility readily, and the scientific community will certainly oppose this measure on the grounds that it will hamper scientific freedom.

It is a great pity that the more extreme animal activists, in criticizing both Committees for not going far enough, have failed to recognize the significance of this new approach, since it does at last provide a mechanism for attaining what the Royal Commission of 1875 sought to achieve in drafting its legislation, namely, that "the progress of medical knowledge [be] compatible with the just claims of humanity" (Departmental Committee on Experiments in Animals, 1965).

CRAE has recognized that this goal can only be attained through administrative means and that, at the same time, any new law must be flexible enough to permit progressive strengthening of its provisions as the need arises. This objective of a balanced view toward animal experimentation can be achieved if government, scientists and the reform groups continue to work together as they have for the last 2 years. But if these attempts fail, the militants can be expected to become more vociferous, polarization will deepen, the productive dialogue of the "middle ground" will die, and the goal of workable new legislation will be lost as the controversy becomes increasingly heated.

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