EASE Working Paper Series
Volume 2

# Animal Criminology

Edited by Jessica Gröling

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**Suggested citation for the full volume**

Gröling, J. (ed.) (2024). *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter.

**Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group**

The EASE working group brings together academics and postgraduate students from diverse disciplinary backgrounds across the University of Exeter (including anthropology, philosophy, sociology, geography, bioscience, psychology, animal behaviour and computer science), whose research and teaching interests explore and address human interactions with other living things.

EASE was founded in 2016 following a generous philanthropic donation to support the development of our existing teaching provision and research expertise in Anthrozoology (conceived broadly here as the multi-disciplinary, cross-cultural study of human interactions with other animals).

**Reframing Anthroozology as Symbiotic Ethics**

The principal contention of the working group is that the recognition of other animals as ethically significant beings is both a necessary part of a sound understanding of these interactions and a moral imperative. Our particular model of qualitative Anthrozoology places emphasis on (i) an empathetic 'living with' (symbiosis) or alongside other animals (either physically, for example with companion animals, or indirectly, for example through ethical consumerism), (ii) a respect for them as autonomous subjects, (iii) an attempt to grasp, wherever possible, their perspectives as well as those of our human subjects, and (iv) a holistic understanding of the context within which interactions occur. Moreover, we suggest that (v) academic research concerned with understanding these trans-species interactions should have some meaningful, practical application and ultimately improve the lives of our research subjects. Consequently, we propose that Anthrozoology should be reframed as Symbiotic Ethics, to acknowledge the intextricable connections we share with other life forms at a time when our collective futures hang precariously in the balance.

**EASE website**

https://sociology.exeter.ac.uk/research/ease/

**Anthrozoology as Symbiotic Ethics blog**

https://anthrozoologyassymbioticethics.wordpress.com/

Exeter Anthrozoology as Symbiotic Ethics

University of Exeter

# Contents

# Volume editor's foreword: Animal criminology as zoozemiology

*Jessica Gröling*

ANIMAL CRIMINOLOGY IS A FIELD OF STUDY that lies at the intersection between the established academic fields of Anthrozoology (the qualitative study of human–animal interactions) and Criminology (the study of crime and how it is defined, motivated and dealt with by society). The particular version of Animal Criminology taught on the MA Anthrozoology at the University of Exeter frames Animal Criminology through the lens of Zemiology (from the Greek *zemia,* meaning harm), a field that I have labelled *Zoozemiology*. The zemiological lens acknowledges that other-than-human-animals (henceforth animals) are largely disenfranchised in the anthropocentric socio-legal sphere and that legalistic definitions of crime involving animals more often frame them as property, criminals, hazards and tools to be exploited than as victims of anthropogenic harms.

Zemiology is the study of social harms, where crime and harm are acknowledged as social constructs and criminological theory is recognised as the product of a particular context and value framework. *Zoozemiology* rejects a criminological enterprise based on value-freedom and asserts that the only way to escape a fundamentally anthropocentric framing of the study of crime and to centre animals and their moral worth is to focus on the study of harm: how harms are codified, how they are embedded within harmful social structures, and which policies and practices either reproduce or challenge them.

In doing so, *Zoozemiology* borrows from other harm-based discourses and related fields, notably Green Criminology (Beirne and South, 2007; Lynch and Stretesky, 2003; 2014; Sollund, 2015), Nonspeciesist Criminology (Beirne, 1999; Cazaux, 1999) and Wildlife Criminology (Nurse and Wyatt, 2020), all of which call for a study of harms irrespective of their legal categorisation, thus broadening Animal Criminology to include the study of socially and legally accepted harms perpetrated by the various components of the Animal–Industrial Complex, as well as the legal but harmful/violent practices of animal consumption, wildlife management, sport-hunting, pet-keeping, and so on.

## Contributions in brief

The papers in this volume highlight the need for this zemiological lens. Some call for it explicitly, while others expose the pitfalls of a more traditional focus on crime defined in legalistic terms. The volume begins with two papers about breed-specific legislation (BSL) in UK (**Mills**) and US (**Malone**) contexts. **Mills** evidences the failures of the UK *Dangerous Dogs Act* by way of a series of case studies of dogs who are caught up in it, whose fate "has become entangled with the fate of their guardians, regulated by distinctions of social and economic capital"

(p.11). Mills outlines the role of the media in whipping-up moral panic around bull breeds, explains the harm done by breed assessments and draws attention to the social harm of stigma. Malone examines how BSL in the US context perpetuates the myths surrounding pit bull-type dogs. She outlines how they have been labelled dangerous according to biological essentialisms and profiled according to phenotypic identification, and how BSL has far-reaching consequences for dogs and their guardians, not only in jurisdictions that have implemented BSL but elsewhere as well. Both authors reject the Lombrosian logic underlying the criminalisation of particular dogs based solely on their physical characteristics and highlight the physical and cultural harms of BSL, before outlining concrete recommendations and alternatives. This is particularly pertinent in light of recent legislation announced in the UK to control so-called XL Bullies.

(Other-than-human) primate pet-keeping is another area that is currently undergoing legal changes in the UK, with the announcement of a new licensing system that will require primate pet-keepers to offer zoo-level standards of care. **Sharma's** paper in this volume questions the ethics of primate pet-keeping, arguing that it is harmful to the primates themselves, as well as to their human caretakers. Sharma lists factors that have contributed to the popularity of primate pet-keeping and outlines how the regulatory framework which is currently still in effect in the UK is too ambiguous and insufficiently enforced to offer primates any real protection, which also raises concerns around the likely impact of new regulations. **Musser's** paper similarly gets to the heart of what drives the demand for bobcat pet-keeping in the US and argues that the existing law is inconsistent and poorly enforced. Musser calls on zoos and sanctuaries to lead by example and not entice the public into keeping wild animals as pets. **Kong** discusses the risks of unregulated cat-keeping in animal holding facilities in Hong Kong, including animal shelters, cat cafés and home breeding facilities, arguing that many facilities in this heterogeneous environment could fall through the gaps if licensing systems and codes of practice are not sufficiently inclusively worded, thus perpetuating existing harms.

The following five papers focus on harms involving wildlife. **Mulford's** paper outlines the peculiar legal liminality of pheasants in the UK, reviewing several recent legal challenges to their status. He discusses the harms involved in the release of pheasants into the countryside and makes a case against it on the basis of environmental impact. **Byrne** continues the focus on the UK shooting industry with a paper about raptor persecution and driven grouse-shooting in North Yorkshire. Her paper illustrates some of the failures and promises of partnerships working to tackle this issue and draws attention to the problems of tackling wildlife crime in the absence of a proper understanding of the extent of it. She concludes by advocating for education and awareness-raising to reduce tolerance for raptor persecution, as well as an emphasis on greater deterrence through stiffer penalties and more prosecutions, not only of the direct perpetrators but also of their enablers. **Sprechler** turns to the persecution of wolves in Norway. She argues that Norwegian authorities exhibit bias in their interpretation of the *Bern Convention's* stipulated obligations to promote conservation. Taking a close look at the wording and interpretation of legislation, Sprechler highlights how it continues to permit the killing of critically endangered wolves and ultimately calls into question the weight of the Convention. **Haratt-Slinn's** paper examines the case for legalising the trade in rhino horn as a means of tackling the ongoing poaching crisis. A controversial proposal that is fraught with uncertainties around how different human stakeholders might respond, it also requires the evaluation and weighing of different harms when it comes to the rhinos themselves. Continuing with a discussion of the interrelations between the legal and illegal trade in wildlife products, **Querini's** paper examines boar hunting in Italy, looking at the effects of recent legal changes and arguing that they facilitate exploitation and abuse, as well as a form of 'meat laundering'.

Moving on to examine the harms involved in the animal farming industry, **Cowan's** paper focuses on what she regards as the deliberate vagueness of UK legislation governing farmed animal welfare, specifically in relation to the concept of unnecessary suffering. She adopts a zemiological and anti-speciesist

approach and outlines how diverse actors interpret this concept. She argues that "[t]he extent to which the concept of unnecessary suffering is imbued with human self-interest means that reducing animal suffering is achieved only to the limited extent that it is profitable for business, affordable and desirable for the consumer and inoffensive to the industry and the public" (p.134). **Matsaert** goes on to discuss Carol Adams' feminist–vegan theory and praxis and the extent to which it could be used to argue for the criminalisation of animal consumption. Proposing that Adams' theory could be seen as an improved and more intersectional version of the link theory (the suggestion that animal abuse is a proverbial canary in the coalmine for interhuman violence) in the way that it draws connections between varied forms of human and animal oppression, she concludes that it *could* be used to defend the criminalisation of non-vegan dietary practices. However, she draws attention to the risk of perpetuating a carceral mindset. In the following paper, **Stevens** "seeks to examine how the situational forces of the industrialised, profit-driven slaughterhouse industry (particularly in the US) legitimise the abuse of animals" (p.150). Criticising link theory from a situationist and anti-speciesist perspective, she reviews existing research into the correlations between slaughterhouse work and inter-human violence. Although she notes that these studies cannot conclude that slaughterhouse employment *causes* psychopathological impacts (as opposed to attracting individuals with existing propensities for harm), she advocates for greater attention to the ways in which the situational forces in the slaughterhouse desensitise workers to the act of harming other animals. **Gerberich** uses an explicitly green criminological approach to critique industrial animal agriculture in the US on the grounds of its contribution to global warming and the lack of accountability taken for this harm by the industry, the harms inflicted on humans employed in the industry, as well as the 'inherent criminality' of the slaughterhouse. She states that "[t]he reality is that most anti-cruelty laws do very little to address the misery and suffering that factory farmed animals endure" (p.163).

The penultimate paper in this volume turns to the way in which the animal–industrial complex has cracked down on activists working to highlight the harms of industrialised animal agriculture and the use of animals in laboratories. With a focus on the advent of ag-gag legislation and the discursive construction of anti-vivisection activists as ecoterrorists, **Buck's** paper shows how "[t]he law has been weaponised and politicised against activists, as a fluctuating toolkit to continue the commodification and exploitation of animals by quashing subversion and radical effective activism on behalf of animals" (p.178). **Walker's** contribution wraps up this volume by reiterating the distinction between the law and morality. Evaluating Sea Shepherd Conservation Society's (SSCS) direct action campaign to protect marine life in the Southern Ocean, Walker argues that whereas SSCS had no legal authority for its campaign, it did have sufficient moral authority. He concludes by questioning "if the law is insufficiently backed by moral imperative, how should individuals and potential activists relate to it?" (p.191)

## About the EASE Working Paper Series

This volume is a thematic special issue of the Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Paper Series, which was founded as a platform for postgraduate researchers and early career academics to engage with the EASE aims and ethos. The EASE Working Group reframes Anthrozoology as Symbiotic Ethics to acknowledge the inextricable connections humans have with other lifeforms at a time when our collective futures hang precariously in the balance.

Specifically, the EASE Working Group's model of Anthrozoology places an emphasis on:

(i) an empathetic 'living with' (symbiosis) or alongside other animals,
(ii) a respect for other animals as autonomous subjects,
(iii) an attempt to grasp, wherever possible, the perspectives of our other-than-human research subjects, as well as those of our human subjects,
(iv) a holistic understanding of the context within which interactions occur,

(v) and promotion of academic research concerned with understanding these trans-species interactions that has some meaningful, practical application and ultimately improves the lives of our research subjects.

More can be read about the EASE ethos and the aims of the Working Paper Series in the introduction to its inaugural volume (Hurn and Stone, 2023).

I am indebted to a wonderful team of peer-reviewers who contributed their time and expertise in helping to shape the papers that make up this volume, specifically Paul Keil, Kate Marx, Molly Sumridge, Kristine Hill, Brian Rappert, Andrew Mitchell, Jes Hooper, Louise Hayward, Robin Fiore, Nathan Stephens-Griffin, Yancen Diemberger, Nigel Pleasants, Katja Guenther, Alex Badman-King, Fenella Eason, Emily Stone and Sam Hurn.

## About the editor

Dr Jessica Gröling is a Lecturer in Anthrozoology at the University of Exeter, whose primary research interests are united by the theme of transgression: transgressive other-than-human animals (concepts such as hybridity, pestilence, invasiveness, liminality and moral panic) and humans whose transgressive actions harm or advocate for other animals. She has a particular interest in the role of data and evidence in wildlife crime policing and has worked with a range of partners, including Badger Trust, Natural England and ICF, on projects to do with wildlife crime reporting and mental modelling of human–wildlife conflict. Jess is herself a wildlife crime monitor and has served as a witness for a number of successful prosecutions in recent years. As a scholar-activist, she is also passionately committed to methods of crime prevention that don't rely on the fraught legal system. On the MA Anthrozoology at Exeter she convenes modules on animal criminology, human–wildlife conflict and representations of other animals. She is also a member of the EASE Working Group.

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# Have the promises of breed-specific legislation been borne out? A critical evaluation of the Dangerous Dogs Act 1991

*Penny Mills*

***Abstract:*** *This paper uses case studies to examine the effectiveness and impact of the UK Dangerous Dogs Act 1991. It argues that the Act has failed in its aim of reducing the number of dog bite injuries and has instead led to the unwarranted destruction of many dogs, one thousand in the first five years of the Act coming into force alone, often based solely on their appearance and the characteristics of their guardians. The use of breed-specific legislation is argued to be punitive, operating in an arbitrary manner and out-dated, following recent changes in breed guardianship trends and dog bite statistics. Given the well-evidenced failure of the Act, the paper concludes that it should be repealed and replaced with legislation and educational programmes based on behaviour rather than breed and concentrating on the human end of the lead rather than the canine.*

THE UNITED KINGDOM DANGEROUS DOGS Act (hereafter DDA or the Act) was passed in 1991 as a response to a number of well-publicised dog (*Canis familiaris*) attacks on humans, including one child fatality (Goodwin, 1991), and growing media attention to the 'problem' of out-of-control and dangerous dogs causing fear and alarm in the UK (Joyce, 1989; Schoon, 1990). The Act was drafted and passed rapidly, taking only six weeks to become law (McCarthy, 2016). The Conservative government of the time, in their third term in power, were led by John Major. The political and social climate was one of unrest, widespread unemployment and economic turmoil, with certain groups feeling victimised and harassed. Discourse around benefit scroungers, underclasses and feckless youth was prominent (Brindle, 1989; Dodd, 1990; Thompson, 1989). Some commentators view these particular social conditions as a catalyst for the Act, with the designation of certain dogs and guardians as dangerous and animalistic as a continuation of Victorian concerns, bound up with the need to control the working classes (McCarthy, 2016). The Act included breed-specific legislation (BSL), making certain breeds of dog illegal to own.

This paper will look at the impact of the DDA on subsequent dog attack rates and the consequences of BSL for the dogs involved, as well as for their guardians, using case studies to illustrate the structure of the Act and its enforcement. For consistency, the term 'guardian' will be used throughout the paper to indicate the human who has a primary relationship with and assumes responsibility for the dog, except when making direct quotes from other authors or citing legislation.

## The Act and its breed-specific provisions

Section 1 of the Act made breed-specific provision relating to "dogs bred for fighting", originally listed as the Pit Bull Terrier (henceforth PBT) and the Japanese Tosa, with the Dogo Argentino and Fila Brasileiro added by statutory instrument in August 1991 (*The Dangerous Dogs [Designated Types] Order 1991*).

Under Section 1 of the DDA:

(2) No person shall –

a) breed, or breed from, a dog to which this section applies;
b) sell or exchange such a dog or offer, advertise or expose such a dog for sale or exchange;
c) make or offer to make a gift of such a dog or advertise or expose such a dog as a gift;
d) allow such a dog of which he is the owner or of which he is for the time being in charge to be in a public place without being muzzled and kept on a lead; or
e) abandon such a dog of which he is the owner or, being the owner or for the time being in charge of such a dog, allow it to stray.

(*Dangerous Dogs Act 1991 c.65 Section 1*)

The legislation made it an offence to be in possession of one of the named breeds, and destruction orders could be issued to all such dogs found. Exemptions were introduced following widespread concern over these blanket measures, via an amendment to the Act in 1997 (*Dangerous Dogs [Amendment] Act 1997*). The exemptions allowed courts to use discretion and guardians to retain their dogs if certain conditions were met (Clayson, 1997). Dogs could be exempted if they passed an assessment of temperament, the legal guardian was considered 'a fit and proper person', they were neutered, muzzled, kept on a leash in a public place and covered by third party insurance (*Dangerous Dogs (Amendment) Act 1997*).

This paper will now look at a number of case studies chosen to illustrate the enforcement of the Act and its effects on dogs and their guardians. Where photographs have not been used, the names of the dogs have been changed to respect the anonymity of the dogs and their guardians. Similar examples can be seen on many animal welfare organisation websites.

## Otis

Otis (figure 1) was seized shortly after the Act was passed and his case set a precedent for future interpretation and enforcement of the Act. Otis was seized from the back of his guardian's car in December 1991, following a routine traffic stop, as one of the officers felt he looked like a banned breed (DDA Watch, 2023). His guardian was charged with having a banned breed of dog unmuzzled and unleashed in a public place. In July 1992 Otis was found to be 'of type' in a magistrates' court and a destruction order was issued. His guardian was found guilty of an offence under Section 1 of the *Dangerous Dogs Act 1991*.

The fight for Otis continued but repeated judgments did not grant his freedom. In 1993 the Court of Appeal ruled that for the purposes of the DDA the back seat of a car on a public highway could be considered a public place, making the initial seizure of Otis lawful (London Criminal Courts and Solicitors' Association, 1993). A judicial review held in June 1994 ruled that it was not necessary for the prosecution to provide any evidence of breed. This confirmed Section 5(5) of the Act, which reverses the burden of proof relating to the dog's type. In addition, the case of *Brock v DPP* established that a dog was a pit bull:

> […] so long as its characteristics substantially conformed to the standard set for the breed by the American Dog Breeders Association (ABDA), even though it did not meet the standard in every respect, (R v Crown Court at Knightsbridge ex parte Dunne; Brocke v Director of Public Prosecutions [1993] 4 AII ER 491) (The Crown Prosecution Service, 2021).

This made the DDA unprecedented in UK legislation, as it reversed the presumption of innocence. In January 1996, the European Commission further found that the ruling was in keeping with the European Convention on Human Rights (EHRLR, 1996).

From a lay perspective, the seizure of Otis, a dog peacefully sleeping in a car, may seem bizarre, but Cohen's (2002) work on folk devils and moral panics is useful in analysing such events. Following Cohen, the DDA contributed to the categorisation of

certain types of dogs and their guardians as dangerous and threatening. The attacks were newsworthy in a number of ways: they represented bad news and the impact was high on both those attacked and on the local communities involved (Galtung and Ruge 1965; Harcup and O'Neill, 2017). The attacks were surprising in the context of dogs being viewed as domestic family pets but also contributed to the discourses of the time, linking gang activity, dog fighting and a growing underclass that potentially threatened social stability (Harding, 2012).

There were calls for action from both media and politicians, with certain types of dogs and guardians becoming folk devils and the generation of moral panic requiring state intervention in the form of legislation and criminalisation. This was achieved by the DDA. In this case, though, the very existence of some animals was being questioned, alongside a continued focus on young men as a cause of moral panic and site of pervasive threat (Cohen, 2002).

However, both Harding (2012) and Maher and Pierpoint (2011) point out the positive aspects of dog guardianship for marginalised groups and the downplaying of these in discourses surrounding dangerous dogs. Maher and Pierpoint (2011) argue that young men also gain companionship and a focus for socialising with their dogs. They describe the evidence linking bull breed ownership with criminality as vague and inconclusive, with dogs potentially providing social capital for their guardians within their own social groups.

Researchers such as McCarthy (2016: 565) view the DDA as the latest in a long tradition of targeting and labelling of the working classes as lacking and degenerate, particularly in reference to young men:

> Constructions of dangerous dogs have also filtered into the conduct of the owners, who as a consequence of owning a certain breed of banned dog can be subject to punishment by the state.

I agree with McCarthy (2016: 566) that the government of the day were keen to ensure the 'Green Welly Brigade' were not affected by the legislation being applied to their family companions or working dogs. The notion of the Green Welly Brigade is taken from a comment made by the then Home Secretary, Kenneth Baker, when the legislation was being developed (Hallsworth, 2011: 401). The phrase encapsulates Baker's aim to introduce legislation which targeted undesirable dogs and their guardians whilst leaving uncensored those seen as legitimate animal guardians and allowing the continuation of their activities and lifestyles unquestioned. It has been argued that this desire to leave some sections of society untouched by the Act was responsible for the reluctance to introduce mandatory registration (Goodwin, 1991; Sage, 1991; Schoon 1990). Podberscek (1994) points out that PBTs were recent incomers to the UK and thus less supported by pedigree Kennel Club affiliation and working history than breeds such as German Shepherds.

Hallsworth (2011) continues this argument, pointing out the lack of voices to speak up for PBTs and viewing the legislation as part of a wider class war, with echoes of the unrespectable poor. He sees the Act "as direct expression of the disproportionate and unequal power relations that humans exercise over animals in their care" (Hallsworth, 2011: 401). He goes further, accusing the UK government of attempting a canine genocide, stating that "[t]he victim here is a dog that has found itself subject to a staggering degree of inhumanity on the part of society that has lost all moral bearings in relation to its relations with non-humans" (2011: 392).

It seems then that Otis may have been one of the first casualties of a politicised and media-driven panic concerning the dangerousness of certain dogs and their guardians. Otis was killed on 8th February 1996 after four years of solitary confinement and multiple legal arguments (DDA Watch, 2023).

## Tyrone

Tyrone provides an example of the arbitrary yet rigid nature of the Act. Tyrone featured in *The Dog Rescuers*, a Channel 5 programme that followed the work of RSPCA officers (BBC, 2014). Following his rescue, Tyrone was assessed and accepted as a trainee police dog by the Avon and Somerset police force. Unfortunately, the force's Dog Liaison Officer identified Tyrone as a PBT-type and he was returned to the RSPCA kennels and killed (BBC, 2014).

Assessment of type is usually carried out by Dog Liaison Officers working for the local police or council, with independent assessors sometimes employed where there is doubt or disagreement. Assessment of seized dogs centres around a series of

measurements and ratios, taken from a 1972 American breed type leaflet, the *Pit Bull Gazette* (What Do They Know, 2019). DEFRA guidance for enforcers states that while "the law does not require a suspected PBT to fit the description perfectly, it does require there to be a substantial number of characteristics present so that it can be considered 'more' PBT than any other type of dog" (DEFRA, 2009: 14).

The identification guidelines provide no guidance for the assessment of temperament, despite this being a central component of the American *Pit Bull Gazette* breed description on which the UK guidelines were based (What Do They Know, 2019). An assessment of temperament is usually made alongside assessment of type, with the outcome of one potentially affecting the outcome of the other and the recommendations made. For Tyrone, despite having a second chance at life and the potential to act as an ambassador for bull breeds, his life was ended based on his physical measurements. He was killed for his physical attributes, despite having behaved impeccably.

This case also highlights another common issue: the difficulty faced by both guardians and authorities in knowing whether a dog may be considered a PBT. Webster and Farnworth (2019) found that the ability to identify banned breeds of dog was very low amongst the UK public, with even those working with dogs struggling at times to identify PBT dogs correctly. Hoffman et al. (2014) produced similar findings in their comparison between the abilities of UK and US shelter workers in identifying PBTs, highlighting that in the UK dogs were more likely to be classified as Staffordshire Bull Terriers than PBTs by shelter workers than in the US. They also noted that shelter staff would often categorise dogs as another similar breed, rather than PBT, in an effort to improve chances of rehoming.

This uncertainty and subjective assessment of breed type is particularly unsatisfactory when applied to very young puppies, with organisations such as the RSPCA (2023) pointing out the damage done to puppies seized and held in kennels for long periods at a crucial time for their development and socialisation. They, along with others, have also raised concerns around the welfare of dogs in police kennels and the ability of such kennels to meet the dogs' needs, pointing to the potential conflict between the DDA and the *Animal Welfare Act 2006*. Some dog behaviourists have called for an independent inspection regime (Howell, 2023). In other cases, vets have highlighted the inability of kennel staff to distinguish between behavioural issues and neurological illness requiring urgent treatment (Shepherd, 2010).

Lack of knowledge about the Act in general was noted by Oxley et al. (2012) in their study, which contacted UK dog guardians and interested parties via online forums and convenience sampling in locations commonly used for dog walking. They found that 21.4% of those questioned could not name a single banned breed and that 81.9% felt that the Act should be improved and more information be made available. This finding supports my contention that for many PBT guardians their dog is a family companion rather than a PBT. The situation of PBTs as mixed-breed, non-pedigree dogs means that many are available at relatively low cost from local or accidental litters and with potentially no indications at birth that they may grow to be an illegal breed. This could be argued to feed into the political and class-based aspects of folk devil narratives, with guardians of PBT-type dogs judged as being of lower income and living in more economically-deprived areas (McCarthy, 2016: 565).

## Tyson: An exempted dog

Tyson's (figure 2) story highlights the difficulties faced by exempted dogs and the rescue organisations trying to preserve life and rehome those caught in this legislative web. Tyson is an exempted dog who, due to a legal change in 2015 (*The Dangerous Dogs Exemption Schemes [England and Wales] Order 2015*), can now be rehomed with a new keeper, provided they can meet the exemption conditions and prove their involvement with the dog prior to the transfer of guardianship (The Crown Prosecution Service, 2021). Proving exemption and complying with the requirements may incur considerable expenses for legal fees, independent assessments and veterinary costs for neutering and insurance. For dogs who are allowed home, they and their guardians may face considerable stigma due to the requirements for the dog to be muzzled and on lead in all public spaces.

Patronek, Twining and Arluke (2000) studied the stigma associated with PBT guardianship in the US. Stigma, as conceptualised by Goffman (2009), provides another way to frame the experiences of PBTs and their guardians under the DDA. Goffman (2009: 14) proposes three different types of stigma:

> First there are abominations of the body – the various physical deformities. Next there are blemishes of individual character […]. Finally there are the tribal stigma of race, nation and religion.

For the PBT, all three of Goffman's stigma types seem to be present, with defects of character and membership of an undesirable class ascribed purely on their physical characteristics. Patronek, Twining and Arluke (2000) found several methods used to try and manage breed stigma, including passing the dog off as another breed, debunking adverse media, use of humour, restricting behaviour perceived as breed-typical and becoming breed ambassadors. These methods bear comparison with the excusing tactics used by guardians when their dogs fail to meet behavioural expectations, as described by Sanders (1990). However, in the case of the PBT there has been no rule-breaking or boundary-crossing other than their existence. Of course, what is stigmatising for one group may be viewed positively by another. Some find satisfaction and advantage in the guardianship of a large, powerful breed of dog, in much the same way as others do by owning a pedigree breed (Harding, 2012). For others, the vilified position and vulnerability of the pit bull may lead to empathy and a desire to protect and positively represent the dogs. Since the introduction of the Act, many groups have appeared, advocating, offering advice and calling for the end of BSL on behalf of banned dogs and their guardians, exhibiting what Goffman (2009: 137) describes as "in-group alignment".

For Tyson, life goes on, albeit in a restricted and uncertain way. However, the fuzziness of the BSL PBT boundaries also leads to the branding of many large cross-breed dogs, accompanied by guardians with little observable social capital (Bourdieu and Wacquant, 2013), as dangerous, with sometimes fatal consequences for the animals involved.

## Mel and Midge

Mel and Midge were not direct victims of BSL but are an example of the inappropriate invocation of the DDA, the danger of overzealous enforcement and the subjective nature of judgements surrounding dogs in the UK today. Mel and Midge (hereafter M&M) were shot by armed police officers following reports of an altercation between them and another dog whose guardian was injured. The case caused a social media storm, followed by a burst of mainstream media criticism of the killings and protests from activist and animal welfare groups (Animal Rising, 2023; Jolly, 2023; Price and Prosser, 2023; Prosser, 2023). Video footage emerged (Burn, 2023) which showed the other dogs and their guardian uninjured, and M&M seemingly showing no aggressive behaviour, being led back to their boat by their guardian. They were followed by police who eventually killed both dogs and charged their guardian with an offence under the DDA.

The case of M&M illustrates the arbitrary and subjective nature of assigning breed type and characteristics based only on a spontaneous assessment of both dog and guardian by officers on the ground. This potentially leads to a whole cohort of dogs who are "not considered a useful dog in society" (Podberscek, 1994: 239). Podberscek argues that dogs such as these exist on a tightrope, with attacks on humans perceived as extreme forms of betrayal by a companion animal considered a family member. This theme fits with Mouton et al.'s (2019) contention that attacks by dogs are often reported as deviancy on the part of both animal and guardian rather than a health issue. There are indicators of this in the reporting of the M&M case, with the guardian's homelessness being reported but unexplored, along with previous conflicts with other dogs and a disqualification from guardianship. We are reminded that the guardian does not quite fit the 'responsible' stereotype. This point is illustrated in DEFRA (2009) guidance on dangerous dogs, where the association of breed choice and criminality are made explicit:

> Enforcers should be aware that often there is a link between people involved in the irresponsible ownership of dogs or illegal breeding and selling of s1 prohibited dogs and other anti-so-

> cial or criminal behaviour or activities. Therefore the police service is best placed to investigate allegations and suspected offences under this Act.

A further example of this is the requirement for the guardian of any banned breed to be a fit and proper person. Qualities suggested by the Sentencing Council (2016) may include the absence of criminal convictions or penalty notices, suitable premises and no previous breaches of court orders. This is an example of the conflation of human behaviour with that of the other-than-human animal and a feature of the tendency to portray these dogs and their guardians as dangerous and criminal.

Coverage of cases such as M&M's also illustrates the capacity of social media to challenge dominant discourses. Where van Dijk (1993: 249) highlights "the role of discourse in the (re)production and challenge of dominance", as imposed from above and resisted from below, social media storms can be seen as challenges to top-down discourse (Araujo and van der Meer, 2020). The case of M&M certainly shows the power of social media to circulate stories widely. It also illustrates the importance and influence of language and discourse in defining the issue. However, like mainstream news, social media moves on quickly, and as Cohen (2011: 240) states, "serious issues [are] now surrendered to the aesthetics of Twitter – sporadic, mindless and staccato yelps rather than the heavy, doom-laden and protracted howls of the classic moral panic".

Thus, whilst social media may represent the democratisation of media (Chadwick, 2017), its impact on eventual outcomes may be negligible due to the speed with which attention moves on. It may be that the power of the M&M story was its illustration of the unseen aspects of the enforcement of the Act, highlighting that judgement and life or death decisions could be made purely on appearance. It shone light on the speed with which dogs can be destroyed based on subjective assessment at a high stress moment. M&M did not appear to be monsters in the videos that were circulated, but even when video footage seems irrefutable, outcomes may differ widely depending on the perceived circumstances of the individuals concerned and their ability to frame events to be supportive, requiring access to social capital and knowledge (Bourdieu, 1989; Bourdieu and Wacquant, 2013).

## Has it worked?

Based on all the measures presented here, the Act has not succeeded. Early on, Klaassen et al. (1996) compared hospital attendance rates for dog bites at an urban Accident and Emergency department for the years 1991 and 1994, finding that the Act had no impact on attendance rates. A more recent study by Tulloch et al. (2021: 9), which examined hospital episode data for the years between 1998 and 2018, found the following:

> The Incidence of dog bites in children has stayed consistently high over twenty years, whilst incidence in adults has tripled. Despite sustained education and preventative campaigns across large parts of society, the issue of dog bites continues to grow.

In a separate study, Tulloch et al. (2023) found that deaths from dog attacks had remained stable between 2001 and 2021, with 81% of bites resulting in death inflicted within the home. The authors acknowledge methodological issues related to the use of hospital data, calling for improved methods of recording data on dog bite incidents. It should be mentioned that deaths from dog bites have shown a marked increase during 2022, including 10 fatalities (Tulloch and Westgarth, 2023), although it is too early to know whether this is a trend that may continue. Banned breeds are also not dying out, with 3595 dogs on the exempt register according to DEFRA (2022), a number not decreasing despite mandatory neutering.

## The way forward: Responsible guardianship

The failure of the DDA to reduce dog bite rates and a recent increase in attack-related fatalities has led to calls for a change in approach in recent years (British Veterinary Society, 2022; The Blue Cross, 2023; The Kennel Club, 2023). The All-Party Parliamentary Dog Advisory Welfare Group (APDAWG) has been meeting since 2018 and commissioning research into ways of reducing dog bite rates (Nurse et al., 2021). Results from these activities, alongside observation of approaches in other countries, such as those described by Mouton et al. (2019), have led

to calls for a move away from BSL towards responsible dog ownership. The APDAWG-commissioned report (Nurse et al., 2021) calls for greater public education, dog registration, improved recording and greater use of preventative enforcement measures. Other suggestions include further regulation of those who provide training to dogs and guardians and a statutory duty to be placed on authorities in relation to enforcement. Parkinson, Herring and Gould (2023) follow a similar pattern, highlighting the limitations of the DDA but also the underlying perceptions and discourses surrounding canine behaviour and the lack of consensus and potential over-confidence of dog guardians in their belief that their dog would never be aggressive. Both studies call for better education and public information, along with an end to BSL.

The Calgary approach (The City of Calgary Newsroom, 2021) to reducing dog bites, which also places responsible ownership at its heart, has been recognised as having value. There are pilot programmes, such as *Taking the Lead* (Merseyside Police, 2023), currently underway that are based on education and empowerment rather than censure and prohibition. As an extension of or replacement for BSL, in an effort to decrease dog bite rates, the concept of responsible guardianship is an attractive one. It carries echoes of good citizenship and social contracts. There is a danger, however, that it becomes another slogan, devoid of practical application and precise meaning, or that it reinforces the differential application of sanctions against the 'wrong sort' of dogs and their families. Westgarth et al. (2019) question the very concept of responsible dog guardianship, pointing out that in their study most guardians self-identified as responsible whilst simultaneously exhibiting a wide range of behaviours in relation to their companions.

It seems, then, that the fate of some dogs, bull breeds in particular, has become entangled with the fate of their guardians, regulated by distinctions of social and economic capital (Bourdieu and Wacquant, 2013). Kenneth Baker (1993) succeeded in producing legislation that enables the tight control and punishment of a wide range of dog guardians whilst not disrupting the activities of the Green Welly Brigade. Some argue that the protection of this group is also the reason behind the sudden recent withdrawal of the proposed *Kept Animals Bill* (Swinford, 2023) and is reflected in different legal outcomes for defendants from different social groups (Murray, 2023; Press Association, 2013). If responsible guardianship is to create change then it needs to encompass dogs of all types and their guardians, families and trainers, recognising the huge variations in individual characteristics and cultural approaches that can exist, whilst retaining a central aim of the protection of all animals from human harm.

## Conclusion

The *Dangerous Dogs Act 1991* has not succeeded in its aim of reducing the number of dog attacks. It continues to be a contentious piece of legislation that I argue owes as much to a desire to regulate certain sections of the human population as to achieving lasting change in the way dogs are both controlled and cared for in the UK. The position of PBTs, having no official breed recognition or affiliation, and their association with criminality and low social status, helps to render them targets for control and elimination via the Act (Hallsworth, 2011).

The lack of definition applied to these dogs pushes them beyond the borders of acceptability, outside the usual boundaries of society and beyond the social contract. BSL helps to create as 'other' a whole class of dogs, who are, as McCarthy (2016: 567) states, "guilty unless proven safe and under control" as soon as they are born. The requirement to destroy any PBT found homeless deprives them of even the status of a rescue dog, deeming them unworthy of both companion animal and even property status and rendering them killable waste.

Interventions to reduce rates of dog bites or attacks need to consider the health of the dogs concerned as a primary outcome, alongside the wellbeing of the humans with whom they share their lives. Sadly, despite the current work on more effective approaches to reducing levels of dog bite injury in the UK, the Prime Minister announced on 15th September 2023 that another breed would be added to the DDA. This has already led to protests and widespread expression of concern from animal welfare groups and dog owners (Dogs Trust, 2023; RSPCA, 2023; The Blue Cross, 2023). It is again the case

that these dogs have no breed standard, meaning that identification may remain subjective and any large bull breed dog may be made a target of control. On past evidence, it seems unlikely that this approach will lead to a rapid reduction in dog attacks but will instead result in the loss of lives and loving relationships between humans and canines who have committed no crime but to look a certain way.

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***Acknowledgements:*** *I would like to thank Dr Jessica Gröling, Professor Samantha Hurn, Dr Fenella Eason and Dr Alexander Badman-King (University of Exeter) for sharing their considerable skills and knowledge, providing feedback and guidance and resisting the temptation to reject work for failure to format even the simplest reference correctly. I would also like to thank all those who publicly shared stories of their much-loved companions and the difficult memories associated with their loss and members of DDA Watch for allowing me to use images from their webpages.*

***Suggested citation:*** Mills, P. (2024). Have the promises of breed-specific legislation been borne out? A critical evaluation of the Dangerous Dogs Act 1991. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 5–15.

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## Figures

Figure 1. Photograph of Otis.
Reproduced with kind permission from DDA Watch (2023).

Figure 2. Photograph of Tyson.
Reproduced with kind permission from DDA Watch (2023).

# Dangerous dogs? Pit bulls and breed-specific legislation in the US

*Mariah Malone*

***Abstract:*** *Regulation of dog ownership according to breed, referred to as breed-specific legislation (BSL), has become increasingly controversial in recent years. Ostensibly implemented to reduce the rate of dog bite-related injuries and fatalities in humans, the efficacy and ethics of breed-discriminatory policies have come into question as BSL has become more prevalent. Although there is significant divergence in the exact parameters of BSL, breed-discriminatory policies overwhelmingly label pit bull-type dogs as dangerous, resulting in the criminalisation of dogs that align with the pit bull phenotype, regardless of their behaviour. This perpetuates the mythology surrounding pit bull-type dogs. This breed-based approach to the identification and prosecution of dangerous dogs is unsubstantiated and has proven ineffective. Breed-neutral approaches can successfully mitigate dog bite-related injuries and fatalities without targeting and punishing dogs due to their appearance alone.*

THE TERM BREED-SPECIFIC LEGISLATION (BSL) refers to any legislation which regulates the ownership of certain dogs on the basis of breed alone. Known alternatively, and perhaps more accurately, as breed-discriminatory legislation, BSL places restrictions or even prohibitions on certain breeds and breed mixes which are considered dangerous or potentially dangerous (National Canine Research Council, NCRC, 2020a). First enacted in the United States during the 1980s, the ostensible intention of breed-specific legislation is to reduce the incidence of dog bite-related injuries and fatalities in humans (Jones, 2017). Currently, while it is not federally enforced and thus not established nation-wide, breed-specific legislation is implemented in many states, counties and cities across the US (DogsBite.org, 2021; NCRC, 2020b).

The imposition of breed-specific legislation is highly controversial. In recent years, many organisations, including the American Society for the Prevention of Cruelty to Animals (ASPCA, 2022), the American Veterinary Medical Association (AVMA, 2022), the American Veterinary Society of Animal Behavior (AVSAB, 2014) and the Humane Society of the United States (HSUS, 2023), have publicly denounced BSL due to concerns regarding both the efficacy and ethics of breed-discriminatory policies. Nevertheless, some prominent non-profit organisations, including People for the Ethical Treatment of Animals (PETA, 2023) and DogsBite.org (2023), are vocal advocates for breed-specific policies, exhorting their necessity. These opposing narratives are infinitely reiterated, with conflicting opinions saturating the media and permeating American culture (Iliopoulou, Carleton and Reese, 2019).

This paper will examine the realities of existing breed-specific legislation within the US context: exploring inconsistencies in how dangerous dogs are defined and identified, exposing inherent bias by analysing how ambiguous and sensationalist language criminalises and mythologises pit bull-type dogs, deconstructing problematic assumptions and

misconceptions behind common justifications for breed-based approaches, investigating the consequences of BSL, and finally proposing breed-neutral alternatives for the mitigation of dog bite-related incidents.

## Breed-discriminatory policies

Analysing breed-discriminatory policies is a complex issue. Since breed-specific legislation is not implemented nationally, the exact parameters diverge considerably between areas of enforcement, which means there are a significant number of variables to account for when evaluating across contexts. In many places, BSL constitutes an outright breed ban. In other words, the specified breeds or mixes may not be kept for any reason within the boundaries of the enforcing city, county or state. In some instances, prohibited breeds are even restricted from travelling through areas with BSL (Walden, 2012). Alternatively, BSL may entail particular regulations surrounding the included breeds and mixes. Dogs may need to be sterilised by a certain age, kept leashed and muzzled in public and have a form of permanent identification (such as canine tattoos or microchips); owners may be compelled to obtain special permits or liability insurance; and properties containing 'dangerous' dogs (which can be required to meet precise confinement specifications) may have to be posted with warning signs (NCRC, 2020a; Walden, 2012). Some policies also establish age minimums for ownership or handling of the specified breeds and mixes and incorporate mandatory training for owners and their dogs (NCRC, 2020a). Disparity also exists across the penalties for violations. Offending owners may simply be fined, or they may face criminal prosecution and incarceration, dogs may be seized, impounded or even euthanised if determined to be of a designated 'dangerous' breed or mix, and if owners cannot present evidence to the contrary (or ensure their ability to swiftly and permanently relocate the dog), they may not be able to recover their companion (Walden, 2012).

## Describing 'dangerous dogs'

In addition to these policy discrepancies, breed-specific legislation exhibits variation in the classification of 'dangerous' dogs. While there is no standard list of breeds included in BSL, there are severa breeds and breed types which are commonly specified: wolf hybrids and wolf-like breeds, working and guardian breeds, mastiffs and bully breeds (Jones, 2017). Often, mixes or apparent mixes of these breeds are also included, as are a number of other informal breeds within these categories that are not officially recognised by kennel clubs, such as the American Bandogge, Catahoula Bull Dog, Fila Brasileiro, Presa Mallorquin and Wolfhound (NCRC, 2020a). However, pit bulls are overwhelmingly the primary targets of breed-specific legislation (Barnett, 2017). The term 'pit bull' refers not to an Individual breed but rather to a type. It incorporates several defined breeds: predominately the American Pit Bull Terrier, the American Staffordshire Terrier and the Staffordshire Bull Terrier (Jones, 2017). These three breeds are related, but a number of other similar breeds are often labelled as pit bulls and this ambiguity is not always clarified in breed-specific legislation (Walden, 2012). Additionally, breed-discriminatory policies often rely on vague phrasing to incorporate mixed-breed dogs into their definitions (Barnett, 2017). The *Sparta Municipal Code*, for Sparta, Tennessee, defines the pit bull as "[a]ny dog which has the appearance and characteristics of being predominantly of the breeds of bull terrier, Staffordshire bull terrier, American pit bull terrier, American Staffordshire terrier, and any other breed commonly known as pit bulls, pit bull dogs or pit bull terriers; or a combination of any of these breeds".

Reference to American Kennel Club (AKC) and United Kennel Club (UKC) standards is also commonly utilised, with any dogs that 'substantially conform' to the established breed standards for American Pit Bull Terriers, American Staffordshire Terriers, and/or Staffordshire Bull Terriers, or which "[display] the majority of physical traits" of one or more of those breeds (*The Municipal Code of Council Bluffs, Iowa*; *Independence, Missouri, Code of Ordinances S3.03.006*) in that they are 'partially' identifiable as such (*Enumclaw, Washington, Municipal Code*; *Wheeling, West Virginia, Municipal Code*), qualifying as pit bulls. This wording casts a significantly wider net: according to the official breed standards, all three breeds are muscular, with short, smooth coats (most colours and markings are al-

lowed) and collectively they range in size from approximately 24–70 pounds (AKC 2022a; 2022b; UKC, 2017). Numerous other recognised breeds exist within these parameters and innumerable mixed-breed dogs meet these criteria. Nevertheless, some breed-discriminatory policies expand their definitions further, noting that "deficiencies in the dog's conformance to [these] standards […] shall not be construed to indicate that the subject dog is not a pit bull terrier" (*Melvindale, Michigan, Municipal Code*; see also *Miami-Dade County, Florida, Municipal Code*). Thus, virtually any dog could be considered a pit bull under such legislation.

## The 'pit bull' phenotype

By focusing solely on physical characteristics, breed-specific legislation reduces pit bulls to an imprecise set of physical attributes, essentially criminalising the pit bull phenotype. In practice, this results in the prosecution of dogs based on appearance alone, regardless of their temperament and behaviour. This is clearly evidenced in the BSL of Wheeling, West Virginia (*Wheeling, West Virginia, Municipal Code)*, where a "vicious dog" is defined as any dog that has either killed or caused injury to a person or domestic animal, or one which merely "belongs to the breed that Is commonly known as a pit bull terrier" (defined as any American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier or apparent mix of those breeds), regardless of whether they have ever been involved in an incident resulting in injury to a person or other animal. The designation of pit bull-types as automatically vicious is especially egregious considering that police dogs in the same jurisdiction, including those which are deliberately trained to attack humans, are exempt from classification as vicious, irrespective of breed, and even if they have killed a person in the line of duty (*Wheeling, West Virginia, Municipal Code*). Such exemptions are not uncommon and emphasise the focus on appearance over behaviour.

This phenotype profiling is not entirely distinct from breed-based discrimination, as breeds are largely defined by conformation. However, while inter-breed disparities in canine behaviour make breed alone an unreliable predictor (Hammond et al., 2022; Morrill et al., 2022), purebred dogs are at least intended to exhibit certain temperament and behavioural tendencies consistent with their breed. For example, the formal standards for American Pit Bull Terriers, American Staffordshire Terriers and Staffordshire Bull Terriers (the same standards often referenced in BSL) include established temperament and behaviour traits: all three breeds are supposed to be exceptionally friendly towards humans (both adults and children, whether strangers or familiar individuals), so much that either shyness or aggression towards people is considered a fault (AKC, 2022a; 2022b; UKC, 2017). Suggesting that "any canine (purebred or hybrid) which exhibits [the] phenotypical characteristics" of pit bull breeds poses an "unacceptable risk" to public safety (*Melvindale, Michigan, Municipal Code*) implies that those characteristics are somehow indicative of temperament and behaviour. Specifically, it suggests that they are predictive of aggression towards humans.

Some municipalities also attempt to rationalise breed-discriminatory policies by arguing that the physicality of pit bull breeds poses a greater risk to public safety (i.e., pit bull types have the ability to cause greater harm according to their physique) (Barnett, 2017). However, rather than being empirically supported, this justification is rooted in the mythology surrounding pit bull-type dogs. It has been claimed that they are impervious to pain, have special teeth and locking jaws and can even exert a bite force in excess of 1000 pounds per square inch (psi), despite the fact that the average bite force of domestic dogs is between 200–450 psi (Delise, 2007). Though these assertions are unsubstantiated and have in fact been disproven, they are still referenced in existing policies (Swann, 2010). The breed-specific legislation in Melvindale, Michigan, cites the pit bull's "massive canine jaws", which can purportedly "crush a victim with up to 2,000 pounds of pressure per square inch […] making [their] jaws the strongest of any animal, per pound" (*Melvindale, Michigan, Municipal Code*).

## Determining propensity and capacity for harm

Since breed-discriminatory policies are primarily concerned with physical characteristics (consistently targeting both purebred dogs and mixed-

breed dogs according to appearance rather than behaviour), arguments for breed-specific legislation can only be founded on the assumption that either (i) physical characteristics can be used to anticipate propensity to cause harm or (ii) physical characteristics can be used to anticipate capacity to cause harm. Once misconceptions of preternatural physicality have been refuted, logic dictates that according to the latter (though dogs of any size can potentially cause harm to humans of any size), any number of larger breeds should also be included in breed-specific legislation: certainly a 70-pound Labrador Retriever has substantially more capacity for harm than a 25-pound Staffordshire Bull Terrier.

However, breed-discriminatory policies do not classify dangerous dogs according to size: pit bull-types, which are virtually ubiquitous in breed-specific legislation, are medium-sized dogs, smaller than many large breeds such as Labradors and Golden Retrievers, which are not categorised as dangerous. If, then, breed-specific legislation is founded on the former assumption (that physical characteristics, particularly those associated with the pit bull phenotype, predict aggressive behaviour towards humans) then it is vital to assess the evidence supporting this premise.

Advocates for breed-discriminatory polices often cite the supposedly disproportionate rate of dog bite-related injuries or fatalities attributed to "pit bulls and their mixes" (DogsBite.org, 2022). However, this appeal to dog bite statistics is flawed for several reasons: (i) there is no national record of dog bite-related injuries across the United States (meaning these statistics are often extrapolated from small samples); (ii) not all dog bite-related injuries are recorded, and those that are may not detail bite severity (meaning low- and high-level bites are not distinguished); (iii) there is typically no adjustment for breed prevalence (meaning popular breeds may appear to have higher bite rates) (Bradley, 2005). This last point has particular relevance for pit bull-types, as they are often represented as one demographic in bite statistics (Barnett, 2017). Thus, any dog bite-related injuries attributed to American Pit Bull Terriers, American Staffordshire Terriers, Staffordshire Bull Terriers or any of the numerous other breeds and mixes with a similar appearance are all categorised under 'pit bull' and directly compared to the statistics for individual breeds such as Labrador Retrievers. Naturally, the summed bite totals of multiple breeds and their mixes are likely to exceed the total of any individual breed, regardless of popularity.

## Identifying 'dangerous dogs'

Rampant misidentification also contributes to skewed bite statistics. Though this issue concerns all breeds, it is of particular concern for pit bull-types. There is significant variation even within each of the three predominant pit bull breeds. When considered collectively, they span a wide range of sizes, shapes and colours (Barnett, 2017: 252–256). A considerable number of other breeds resemble these three and countless mixed-breed dogs fit within the parameters of the pit bull phenotype (Swann, 2010).

In most cases, dogs involved in incidents are identified by victims or witnesses who have no knowledge of breed characteristics. Even when performed by experts who have a high degree of familiarity with various breeds, visual identification is extremely unreliable (Voith et al., 2009; 2013). This is especially relevant for mixed-breed dogs, as only a small portion of a dog's genome contributes to their physical appearance (Boyko et al., 2010; Rimbault and Ostrander, 2012). Less than one per cent of approximately twenty thousand genes control external morphology (Voith et al., 2013). Correctly determining the component breeds of even first-generation mixes with purebred parents is unlikely, and "multigenerational mutts" (Dickey, 2016: 60) have a more complex heritage (Gunter, Barber and Wynne, 2018).

Ambiguous mixed-breed dogs are frequently designated as pit bulls by animal professionals, an assessment which, according to DNA analysis, is incorrect more often than not (Hoffman et al., 2014; Olson et al., 2015). Despite this, breed-specific legislation generally only requires a visual identification to classify any dog as a pit bull, sometimes from an apparent expert such as a "veterinarian, zoologist, [or] animal behaviorist", regardless of whether they specialise in domestic dogs (*Miami-Dade County, Florida, Municipal Code*), but often simply from an animal control officer who has, for example, "observed

pit bull terriers in the past" (*Melvindale, Michigan, Municipal Code*).

This indiscriminate classification of pit bulls is facilitated by the inexplicit definitions present in breed-discriminatory policies and visual confirmation is rarely challenged despite the advent of canine DNA testing (though some jurisdictions have begun to utilise so-called 'breed identification' tests as they have become increasingly accessible) (Jones, 2017). Existing tests cannot discern which genes came from which breeds, nor can they guarantee ancestry. Results only indicate statistical probability based on comparison to the characteristic genetic markers of select breeds within the company's database (meaning different tests may provide conflicting results for the same dog) (Animal Farm Foundation, Inc., 2024; Dickey, 2016; Pistoi, 2019). However imperfect, genetic analysis does offer a more scientific means of evaluating breed. Continued reliance on visual identification, which is demonstrably inaccurate, further reinforces the idea that the term 'pit bull' serves only to describe a phenotype, functioning as "shorthand for a general shape of dog" (Dickey, 2016: 12).

Over-identification of pit bulls by the public is also influenced by sensationalised representations of pit bull-type dogs in the media (Barnett, 2017; Cohen and Richardson, 2002; Delise, 2007), which cement the idea promoted by breed-discriminatory policies that 'pit bull' and 'dangerous dog' are practically synonymous. This circular definition (pit bull=dangerous dog=pit bull) has predictably proven to be insufficient. Although dog bite-related injuries and fatalities appear to be in decline overall (Jones, 2017; Tuckel and Milczarski, 2020), this reduction is not exclusive to municipalities which have implemented breed-specific legislation. In fact, there is no evidence to suggest that breed-discriminatory policies effectively reduce dog bite-related injuries or fatalities (Barnhard, 2018; Patronek, Slater and Marder, 2010). Increasingly, breed-discriminatory policies are repealed or amended as this inefficiency is recognised (Barnett, 2017; Bradley, 2014) and many states have even outlawed breed-based discrimination (Wisch, 2021). Since, as outlined above, there is no empirical evidence that pit bull-type dogs have a higher propensity or capacity to cause harm than any other breeds or types, the failure of BSL is unsurprising.

## Consequences of breed-discriminatory policies

Although breed-specific legislation fails to successfully combat dog bite-related injuries and fatalities, it does have other effects. The criminalisation of pit bull-type dogs has significant ramifications, with the dogs facing the most severe consequences. A substantial portion of shelter dogs are arbitrarily categorised as pit bull-types, albeit often incorrectly (Hoffman et al., 2014; Olsen et al., 2015; Voith et al., 2009). This determination has a profound impact on outcomes: in jurisdictions with breed-bans, pit bull-type dogs may not be eligible for placement, meaning they are euthanised according to their appearance and non-governmental shelters may be required to surrender "or receive permission to destroy" any pit bulls that come into their care (*Independence, Missouri, Code of Ordinances, S3.03.006*).

For pit bull-types in shelters or rescues within more lenient jurisdictions or those without breed-discriminatory policies in place, BSL still impacts outcomes. Dogs labelled as pit bulls are perceived more negatively by potential adopters and are most likely to be returned multiple times, resulting in correspondingly longer shelter stays (Gunter, Barber and Wynne, 2018; Powell et al., 2021), and ultimately they still face higher rates of euthanasia (Svoboda and Hoffman, 2015). Prospective adopters who live in areas with breed restrictions may not have the ability or motivation to meet the requirements of their jurisdiction, which are often extensive and expensive (Walden, 2012; *Enumclaw, Washington, Municipal Code*; *Denver, Colorado, Municipal Code*; *Melvindale, Michigan, Municipal Code*; *Miami-Dade County, Florida, Municipal Code)*. Even in places where breed-discriminatory legislation doesn't exist, the ownership of pit bull-type dogs is disincentivised. Many insurance companies refuse to provide coverage for individuals with dogs they classify as potentially dangerous (ubiquitously including 'pit bulls') and many landlords exclude tenants for the same reason, making housing a challenge (Cunningham, 2005).

In addition to the practical constraints, owning a banned or restricted breed or mix can have social

implications. There is significant stigma attached to pit bull-type dogs, which is often frustrating for owners to manage (Twining, Arluke and Patronek, 2000). The problematic stereotypes associated with pit bull ownership also generate some provocative commentary regarding the criminalisation of pit bull-type dogs as both a reflection of perceptions of their owners and as proxy for the criminalisation of them. Within this framework, BSL is a means of controlling certain people as much as certain dogs (Alonso-Recarte, 2020; Cohen and Richardson, 2002; Guenther, 2020; Rosenburg, 2011; Tarver 2014; Weaver, 2021).

It Is also worth noting that the designation of pit bulls as dangerous and prohibited may in fact make them more appealing as status or weapon dogs, a phenomenon increasingly recognised in the UK (Harding, 2010; 2012; Hughes, Maher and Lawson, 2011; Maher and Pierpoint, 2011) where pit bulls have been banned since the implementation of the *Dangerous Dogs Act* in 1991 (Hallsworth, 2011) This effect directly contravenes the justification for breed-discriminatory legislation as a public safety measure. The UK has in fact experienced an epidemic *increase* in dog bite-related hospitalisations since the Act came into effect (Tulloch et al., 2021). Additionally, it may also place these dogs at greater risk of abuse (Harding, 2012; Maher and Pierpoint, 2011). As well as potentially encouraging irresponsible ownership, breed-specific legislation also creates barriers to responsible ownership. A breed ban does not ensure that people will not keep dogs of the specified breed or mixes but it does make it less likely that they will seek appropriate medical care and training for their dogs, thereby increasing rather than decreasing the public safety risk (ASPCA, 2022).

Finally, the detrimental effects of breed-specific legislation also extend to dogs who do not belong to a breed or mix labelled as dangerous. Often, municipal shelters are required to hold the purportedly dangerous dogs that have been seized under the stipulations of BSL during the pendency of legal determinations (*The Municipal Code of Council Bluffs, Iowa*; *Independence, Missouri, Code of Ordinances, S3.03.006*). These processes are often quite lengthy, and mandating that dogs be impounded for the duration not only introduces welfare concerns for the dogs in question (Marston and Bennett, 2003; Tuber et al., 1999) but also negatively affects others coming into the shelter, who may be euthanised due to the lack of space (ASPCA, 2022).

## Breed-neutral approaches

Though research suggests the public majority is increasingly opposed to breed bans, many still feel that dog bite incidents present a significant public health concern (Kogan et al., 2022). If breed-based approaches aren't the answer, the question remains: how can dog bite-related injuries and fatalities be effectively and ethically reduced? The alternative to a breed-based approach is a breed-neutral approach, which accounts for both the human and the canine elements involved in dog bite incidents. Instead of making assumptions based solely on breed (or phenotype), breed-neutral legislation can identify dangerous or potentially dangerous dogs individually, according to their behaviour (history of human injury or fatality) and associated risk factors.

Most dog bite-related fatalities are characterised by preventable factors unrelated to breed (Patronek et al., 2013), and the majority of dog bites to humans involve identifiable risks. Bites from intact dogs of both genders are more common than from sterilised individuals, with intact male dogs being involved in the majority of bite incidents, and dog bite incidents more frequently involve pet dogs that are familiar to the victim than strays or unfamiliar dogs, and dogs that are unvaccinated and chained/tethered are more likely to bite (AVMA Task Force, 2001; Gershman, Sacks and Wright, 1994; Overall and Love, 2001; Patrick and O'Rourke, 1998; Shuler et al., 2008).

Victim demographics can also provide some information to help mitigate risk: men incur more bites than women, and children under the age of fifteen (especially from ages five to nine) have the highest risk (Gershman, Sacks and Wright, 1994; Overall and Love, 2001; Patrick and O'Rourke, 1998; Shuler et al., 2008; Smith, Meadowcroft and May, 2000). In addition, it is estimated that as many as 30–90% of dog bites are in some way provoked by the victim (Smith, Meadowcroft and May, 2000).

By accounting for these risk factors, breed-neutral strategies can utilise supplementary protocols to reduce bite risk: combining support for responsible

dog ownership with interventions for irresponsible ownership and by facilitating programmes to educate the public on how to safely interact with dogs. Effective breed-neutral policies should ideally promote humane care, custody and control (Barnhard, 2018) by incorporating a combination of the following strategies: enhanced enforcement of both (i) dog licensing and leash laws and (ii) animal cruelty and fighting laws; graduated penalties for dogs and owners, with civil and criminal liability imposed on owners for recklessness and/or negligence; prohibitions against unreasonable confinement (including chaining and tethering); widely available, low-cost sterilisation services; community programmes to encourage (i) public education on dog behaviour and safe dog–human interactions and (ii) appropriate training, socialisation, and veterinary care for canine companions (ASPCA, 2022; Bradley, 2014; NCRC, 2020a). Many professional organisations, including the ASPCA (2022) and the AVMA (2022), have stated their support for the breed-neutral approach and a variety of comprehensive breed-neutral polices have successfully been adopted in numerous municipalities with promising results (Replace Denver BSL, 2024).

## Conclusion

There is substantial evidence demonstrating that breed-discriminatory policies are both ineffectual and unethical. Successfully reducing the incidence of dog bite-related injuries and fatalities requires a more inclusive, multifaceted approach. Ultimately, any dog has the potential to cause harm. Totally eliminating the risk of dog bite-related injuries and fatalities would require totally eliminating dogs. However, breed-neutral strategies can effectively mitigate these incidents without prosecuting innocent dogs based on their appearance alone.

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***Suggested citation:*** Malone, M. (2024). Dangerous dogs? Pit bulls and breed-specific legislation in the US. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 17–25.

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# Primate Code of Practice: A world with no more monkey business?

*Karishma Sharma*

***Abstract:*** *The Code of Practice for the Welfare of Privately Kept Non-Human Primates (CoP) is a regulatory framework in the UK aimed at safeguarding other-than-human primates (apes and monkeys) kept as pets by private individuals. However, this study reveals that the CoP falls short in protecting primates due to its ambiguity and lack of enforceability. Despite the recognition that primates have complex needs unsuitable for captivity, primate caretakers persistently fail to meet the CoP standards. As a result, the paper argues that the CoP should be reviewed and potentially replaced to align with evolving perspectives on exotic pet-keeping and to promote higher animal welfare standards. This research highlights the need for improved regulations to ensure the wellbeing of primates kept as pets and addresses some of the long-standing issues associated with primate ownership.*

THE EXOTIC PET TRADE IS A MULTIBILLION-dollar industry in which we see live, exotic other-than-human animals (henceforth animals) sold and traded, fated for a life inside human homes and gardens. Whilst 'exotic' may be a relative term, in this instance it is used to refer to a companion animal or wild animal from a species that is not endemic to the UK and not traditionally kept as a companion animal. In recent years, there has been an Increase in demand for, and consequently trade in, these exotic animals (Hall, 2019). Although some of this trade is legal, there are many instances where animals are captured from the wild illegally or bred illegally to supply the demand for exotic pets, often in violation of the few laws that do exist for animal protection. This is the illegal wildlife trade, a form of wildlife crime involving the illicit sales of live animals. It is also a multibillion-dollar global black market (Hall, 2019). Recent research suggests that wildlife crime is the fourth largest type of international crime (Norconk et al., 2019). Although not a main factor for this paper, it is important to understand that the legal exotic pet trade is considered a facilitator of the illegal pet trade and consequently the illegal wildlife trade (Elwin, Green and D'Cruze, 2020). Warwick and Steedman (2021a: 66) suggest that humans choose to buy, steal or have such animals as "companions, curiosities or adornments". With the demand for exotic animals as companions increasing, the industry is larger than ever before (Hall, 2019).

Halliday (2016) claims that there has been a rising critical interest in animal studies globally since the mid-1990s. Research acknowledges both the positives (such as enhanced physical and psychological health and wellbeing, Hosey and Melfi, 2014) and negatives (such as zoonotic diseases, Lappan et al., 2020) of animal companionship for human caretakers, but there are also effects on animal welfare, species conservation, ecological stability and agriculture (Warwick and Steedman, 2021a), which are not always considered. This paper focuses on other-than-human primates (henceforth primates) as companion animals. It focuses on why they might be popular and how they are obtained, as well as

assessing the regulatory frameworks that are in place to protect companion primates, particularly the Code of Practice for the Welfare of Privately Kept Non-Human Primates (DEFRA, 2009), considering how it could be improved for the protection of primates kept as pets.

## Monkeying around: Why are primates kept as companions?

> Primates should not be considered pets in the accepted sense of the word: they are not species that can be treated as part of the family in the way that a cat or dog might be. They are wild, undomesticated animals that cannot be house-trained or fully tamed. (Department for Environment, Food and Rural Affairs, DEFRA, 2009)

In 2012, the RSPCA estimated that there were 2,485–7,454 primates in UK homes (Wild Futures and RSPCA, 2012). It is suspected that many of them were and still are living in inappropriate conditions, such as in bird cages inside human homes (Born Free Foundation, 2014). However, evidence of primates as companions can be dated back 4,800 years ago to the Iranian urban settlement, Shahr-i-Sokhta. A rhesus macaque (*Macaca mulatta*) was buried in the settlement's cemetery in the same manner as the human children found there (Minniti and Sajjadi, 2019). According to Minniti and Sajjadi (2019: 538) the macaque's femurs were 'pathological', which indicated that the macaque was inadequately cared for, "kept in captivity" (likely a small cage) and "died due to physical stress". As macaques are not endemic to Iran, it was assumed that the macaque had been imported specifically to be kept as a companion (Minniti and Sajjadi, 2019). The same report by Minniti and Sajjadi (2019) suggests that between the fourth and second millennium BC, primates were seen as luxury animals and symbols of power and often exchanged as gifts amongst the elite.

Although much has changed since this period, wanting a primate as a companion clearly has not, given the aforementioned UK figures. So, why are primates still sought-after animal companions? Perhaps primates have been alluring as companions now and throughout history as they often behave in ways that seem familiar to humans (Hall, 2019) and may be viewed as funny or cute (Norconk et al., 2019). Primates may be tempting to have as companions because their physical characteristics and often their nursing, expressions of physical affection, anger and joy are reminiscent of our own. Is this the "animal mirror" that humans polish "to look for ourselves" (Haraway, 1991: 21) in action?

Primates are often anthropomorphised. They are given the attribution of human thoughts, motivations, feelings, physical appearance and perhaps even beliefs (Merola, 2010: 650). Marks (2002: 24) argues that anthropomorphism is a "fetishism in which one over-identifies with animal Others and allows oneself to be fascinated by non-human Others", suggesting that humans draw meaning where it may not exist. With this in mind, we can argue that anthropomorphism poses a potential danger to all animals it is applied to. Anthropomorphising animals may lead to an inaccurate understanding of the natural world and the biological processes that it consists of, therefore leading human caretakers to misunderstand the needs and requirements of their animal companion, particularly for primates, who are some of our closest biological relatives but also exceptionally distinct from us. If having a primate as a companion animal is due to anthropomorphism of primates, this favours Mitchell's (2017: 89) words, that anthropomorphism has a dangerous "conceptual seduction" which encourages naivety, distortion and sometimes even misunderstanding of the animal other at the expense of their welfare.

Primatologists have often expressed that as primates are wild and not domesticated (Nijman et al., 2023), they have a complex set of needs that cannot be fulfilled in a captive home environment (Nijman et al., 2011). Some of these complex needs include diet and social needs. Primates require specialist diets, which for those housed in zoos and rescues are artificially reconstructed through detailed academic research and veterinary advice (Talbot et al., 2023). Primates also have complex social needs that primatologists are still learning more about, which are species-dependent and may include social grooming, interactive play, communal resting and food sharing (Hosey, 2005; Talbot et al., 2023;). Due to such needs and more, it is the universal opinion of primatologists, zoologists and veterinarians that primates do not make good companions and that

primate ownership is indeed harmful to the primates themselves as well as to their human caretakers (British Veterinary Association, 2014; Nijman et al., 2011; Nijman et al., 2023; Soulsbury et al., 2009). They have not been carefully and selectively bred over multiple generations for particular behavioural or physical traits, like our more common domesticated companion animals, and are considered inappropriate for private ownership (Soulsbury et al., 2009). As sentient beings, primates have a capacity for pain, suffering and distress. Caretakers are unlikely to have sufficient understanding of their companion or how to care for them, which is likely to result in primate behavioural disorders, deficiencies and injuries. Primates in captivity are known to be aggressive, destructive and injurious to their caretakers, especially as they mature and reach adulthood (Wild Futures and RSPCA, 2012). There is also a chance that zoonotic diseases can be spread between caretaker and companion (Lappan et al., 2020).

## Monkey business: Where are pet primates coming from and what protections are they afforded?

This demand for exotic companions in the 21st century in general is largely attributed to the internet, particularly social media platforms and e-commerce websites (Dalton, 2020). The documented trade in live primates is lucrative and complex, involving the capture and movement of hundreds of thousands of individuals per year (Norconk et al., 2019). Social media and the internet have provided platforms for humans to advertise the sale of live animals, as well as popularising having exotic animals as companions. Social media platforms have made this fashionable, with celebrities and other influencers posting photos of their wild animals, seemingly justifying many of our anthropomorphic mindsets by perpetuating the same beliefs. For example, a set of videos of slow lorises (family Lorisidae) being tickled in captivity, originally posted in 2009 (Nekaris et al., 2013), was re-posted to YouTube in 2015 (Hall, 2019) and subsequently went viral. The most popular video that exists is of Sonya the slow loris being 'tickled' by her human companion and holding her arms in the air above her head, making eye contact with the person tickling her. Labelled 'cute' by many commenters (Nekaris et al., 2013) because of Sonya's large eyes and human-associated reaction, many experts and primate enthusiasts quickly took to the comments to explain that Sonya's response was one of defence. When lorises raise their arms, venom is secreted from a gland inside their elbow. Before intending to bite a predator, lorises mix this venom with their own saliva to create a potentially fatal concoction (Nekaris et al., 2013; Nekaris et al., 2016). The bite may cause anaphylactic shock or even death in humans (International Animal Rescue, 2023). The literature that exists surrounding this video clearly states that Sonya's reaction was one of stress, fear and defence but it is the anthropomorphising of her reaction that led to the video going viral (Nekaris et al., 2016). If Sonya had bitten her human companion and that was the video posted online, one can only wonder what the fate of slow lorises would have been instead. Although Hall (2019) directly states that they believe this set of resurfaced videos increased sales of slow lorises, what feels and seems more likely is that videos such as these encourage the illegal trade of slow lorises and many other primate species (International Animal Rescue, 2023).

The total number of primates In the exotic pet trade steadily increased from 1995 to 2008 (Nijman et al., 2011). In 2012, the primate trade volume was US$98 million but in 2015 this increased to US$138 million (Norconk et al., 2019). Although the sale and keeping of primates in England is legal at present, it is subject to certain restrictions, as particular species require a licence to be kept under the *Dangerous Wild Animals Act 1976* (DWA). Lemurs (family Lemuroidea*)* are reported to be the most commonly kept species that require a licence, followed by capuchins (family Cebidae) and macaques (family Cercopithecidae). However, approximately half of companion primate incidents that are recorded by the RSPCA were regarding marmosets (family Callitrichidae), who carry no licensing requirements under the DWA (Wild Futures and RSPCA, 2012).

A companion primate may be acquired through several means. These include via import, breeders or dealers, zoos, adverts in magazines and other publications, adverts on the internet and pet shops. Private breeders or dealers are considered a major source of companion primates but their location, li-

censing and numbers are generally unknown (Soulsbury et al., 2009). Pet shops, on the other hand, are a major legal source.

The UK's Department for Environment, Food and Rural Affairs (DEFRA) have created laws and codes relating to primates as companions in a bid to protect them. These are:

- the *Animal Welfare Act 2006* (AWA), which makes it an offence to cause any unnecessary suffering to an animal or failure to meet their welfare needs;
- the *Pet Animals Act 1951* (PAA), which requires any human who owns a pet shop to be licensed by their local authority, whereby the local authority may inspect the shop and must be satisfied that the animals' welfare needs are met;
- the *Dangerous Wild Animals Act 1976* (DWA), which entails veterinary inspection followed by licensing (if inspection is successful) for some species of animals listed in the Act that are considered dangerous, including some primates;
- and the *Code of Practice for the Welfare of Privately Kept Non-Human Primates 2010* (CoP), which is a regulatory framework that exists under Section 14 of the AWA for the protection of companion primates (DEFRA, 2009).

## We don't give a monkey's: CoP or copout?

The CoP is a guide to the steps a private caretaker of primates is advised to take in order to meet the needs of their primate(s) as required by Section 9 of the AWA and the Five Needs. Section 9 states that an animal's needs in the context of the AWA include:

- their need for a suitable environment;
- their need for a suitable diet;
- their need to be able to exhibit normal behavioural patterns;
- their need to be housed with, or apart from, other animals;
- and their need to be protected from pain, injury, suffering and disease.

The CoP was created by DEFRA in 2010 and only covers primates that are kept in private ownership by individuals and some corporate bodies. It does not cover any research establishments or zoos, which are instead regulated under the *Animals (Scientific Procedures) Act 1986* and the *Zoo Licensing Act 1981*, respectively (Born Free Foundation, 2014; Wild Futures and RSPCA, 2012).

The CoP is divided into two sections but begins with a brief and superficial summary, describing the complex social and behavioural needs that primates have, grouping all primate species into one category and not providing species-specific guidance. Section 1 covers aspects of natural and atypical primate behaviour and Section 2 covers how to facilitate expression of natural behaviours, addressing more practical aspects of primate care. Both sections combined, and therefore the CoP itself, are essentially a broken-down explanation of what the Five Needs are, centred around primates. The CoP expresses that "poor welfare can also lead to repetitive behaviours, which can be misinterpreted as endearing individual characteristics" (DEFRA, 2009: 4).

Although the CoP encourages the caretaker, whom they consistently refer to as the 'keeper' of the animal, to understand the needs of their primate companion, it is too general to be effective. It uses words such as 'suitable', 'sufficient' and 'appropriate' without defining what those words specifically mean in this context. For example, "[i]ndoor and outdoor enclosures should be of a suitable size, and should also include sufficient vertical space appropriate to the size and social needs of the species" (DEFRA, 2009: 12). In light of the lack of detailed, species-specific guidance and the risks of guidelines being open to individual interpretation, it would be beneficial to review and expand the CoP to ensure key parts are appropriately clarified and any ambiguity is removed.

In his monumental work, *The Language of Law* (1963), David Mellinkoff expresses that ambiguity causes misunderstandings that are sometimes irresolvable but suggests that with the assistance of a linguist the law could become clearer to all. However, DEFRA considers their words a "reasonable and essential step" (DEFRA, 2009: 1) towards better welfare standards for primates kept as pets. Furthermore, language such as 'keeper' only perpetuates the notion of animals as property and not

as individuals with intrinsic value. Perhaps if the language was changed to 'caregiver' or 'caretaker', it may encourage potential primate caretakers to understand their role and relationship with their companion primates differently. It may help them to better understand and respect their companions as having their own wants and desires, therefore respecting them as autonomous individuals and consequently raising welfare standards (Regan, 1983).

There are various other concerns surrounding the CoP, the majority of which lead to the notion that the CoP is not sufficient and does not actually protect primates. This is particularly important, as breaching any part of the CoP is not an offence in itself. However, it should be noted that if prosecutions are carried out under the AWA, the court may consider the degree to which the suspected offender has complied or not complied with the CoP when determining whether the caretaker has committed an offence or not. Furthermore, while the CoP covers the basics of animal welfare, it does not cover health and safety as it relates to the public or the caretaker, nor does it cover the risk of zoonotic disease transmission between caretaker and primate. Given the coronavirus pandemic in 2020 and the precedent of zoonotic disease transmission between humans and other primates, precautions should be taken for zoonotic disease, particularly as research suggests it is both the legal and illegal trade and consumption of wildlife that can lead to zoonotic disease spread (Bezerra-Santos et al., 2021; Doody et al., 2021; Nijman, 2021).

To highlight how the CoP does not protect the welfare of primates, we can also look at a notable investigation by the Born Free Foundation into pet shops selling primates in 2014. During this investigation, Born Free discovered that 21 pet shops in the UK had a licence to sell primates, according to their own local licensing authorities. 19 of those shops were contacted via telephone and Born Free found the following:

- 6 shops reported that they had primates available in stock or were able to source them;
- 2 shops kept primates on site during the time of the investigation;
- marmosets were commonly offered for sale (with several shops suggesting sourcing tamarins [family Callitrichidae] instead);
- and only 3 shops advised that research was necessary before purchasing a primate or cautioned against owning primates as companions.

Through their research, Born Free discovered that the majority of pet shops licensed to sell primates in the UK currently do not, which in turn raises questions and concerns around the accuracy of their licensing status, alongside questions around how regularly the establishments are inspected. By leaving primates on the schedule of a shop licence, it may encourage the shop to consider selling primates and in some cases enable them to sell primates without the attention of their local authority. Furthermore, local authorities should ensure that inspections conducted by them at their local pet shops are carried out regularly to check that the expected standards are met and in order for shop licences to be kept under review and maybe even revoked, if necessary. If selling primates, establishments should encourage future primate caretakers to research the complexities of having a primate as a companion animal.

Born Free also discovered that there was a significant risk of failure to meet the CoP after purchase. For example, many shops were reported to be ignoring the basic need "to be housed with, or apart from, other animals" (*Animal Welfare Act 2006*; Section 9) by selling single primates and providing "inconsistent or unsound advice" (Born Free Foundation, 2014: 4) to potential buyers, which is likely to have serious welfare implications for primates if purchased. The same investigation also notes that there were welfare concerns for some primates kept in the pet shops, once again rejecting the Five Needs and subsequently the CoP. This further highlights the insufficiency of the CoP, as well as the current system of regulation, as it cannot guarantee the good-to-excellent welfare of primates sold by and kept in pet shops, as well as those housed with private individuals. The sanctuary Monkey World, a place for neglected and abused primates, stated that many of the primates they

rescued from companion homes arrived with rickets and mobility problems or were malnourished and psychologically damaged (zoochosis), due to living in solitary confinement inside human homes (Dalton, 2020). They have taken in 78 primates in the past 10 years but have a waiting list of over 100 more (Dalton, 2020).

## No more monkeys jumping on the bed: What comes next?

Although the CoP might be an adequate framework for preparing prosecutions, it is otherwise inadequate. Several of the reasons why have already been discussed, but in addition to those, if existing legislation is rarely enforced, it makes sense that there is a low level of compliance with the CoP (Born Free Foundation, 2014; Wild Futures and RSPCA, 2012), given that breaching the CoP is not an offence in itself. Since the CoP was introduced in 2009, it has not delivered any improvements in companion primate welfare (Born Free Foundation, 2014; Wild Futures and RSPCA, 2012). Furthermore, there has not been an observed reduction in the practice of keeping primates as companions. Instead, there is evidence that shows the domestic trading of companion primates is increasing (DEFRA, 2020).

Primate needs are complex and specialised. It is extremely unlikely that their welfare needs could be met in private ownership. Regulation and legislation must get stronger to adequately protect captive primates. Ultimately, to improve their welfare, a ban with a strict penalty for primate possession should be implemented. Journalists, scientists, veterinarians and members of the public support the idea of a ban (Born Free Foundation, 2014; Dalton, 2020; Nijman et al., 2011; Norconk et al., 2019; Seabock and Cahoon, 2021).

Bans on primates as companion animals have been introduced in several European countries, including Denmark, Sweden, the Netherlands and Belgium (Warwick and Steedman, 2021b). Belgium's government have not only banned primates but created a 'positive list' of mammals which are legal to keep as companions. Any mammals not mentioned are considered illegal to have. This legislation is effective in Belgium and there is a high level of compliance, as it is clear which animals are legal and illegal (Toland et al., 2020). Due to this clarity, the general public are usually alert and report any breaches to their local authorities (Toland et al., 2020; Warwick and Steedman, 2021b).

In 2021, the UK Government did express plans to ban companion primates in the *Animal Welfare (Kept Animals) Bill*. The bill would have made it illegal to keep or trade companion primates in the UK. However, it was shelved in 2023. Instead, in March 2024, a new licensing system was announced, which is due to come into effect in April 2026 and will require "zoo-level standards" of welfare (DEFRA, 2024), which the RSPCA have stated "is practically impossible to do in a household, domestic environment" (RSPCA Head of Public Affairs, David Bowles, cited in DEFRA, 2024). It remains to be seen whether this will spell the end for primate petkeeping or whether loopholes will be found and exploited and lax enforcement will continue to be an issue.

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***Acknowledgements:*** *Thank you to the academic team on Exeter's MA Anthrozoology course for creating an inspiring and thought-provoking course that encourages most to continue feeling compassion, empathy and respect for all living beings.*

***Suggested citation:*** Sharma, K. (2024). Primate Code of Practice: A world with no more monkey business? In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter. pp. 27–34.

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# When kindness turns cruel: Keeping bobcats (*Lynx rufus*) as house cats in the US

*Claire Musser*

***Abstract:*** *In the US, the demand for owning unusual or wild animals is increasing. While ownership of large cats such as tigers is now restricted under the Big Cat Public Safety Act, smaller wildcats, including bobcats, are exempt. As private ownership of large cats comes to an end, we need to address the possibility that the demand for smaller wildcats will increase exponentially. Bobcat ownership is glamourised across social media, yet the legality of owning bobcats varies. The law alone is not enough and it's important to also understand the allure of owning bobcats. I argue that when wildlife rescuers find themselves taking care of discarded pet bobcats, they have a responsibility to hold themselves to the same standards they expect from the public. Wildlife rescuers need to be mindful of the images they share of their staff interacting with habituated wildlife and break the cycle of people emulating what they see.*

WILD ANIMALS HAVE BEEN KEPT CAPTIVE throughout human history but in recent years there has been a notable increase in demand for more unique other-than-human animals (henceforth animals), also known as 'exotic pets'. In the US the term 'exotic pet' refers to pets other than domesticated cats (*Felis catus*) or dogs (*Canis familiaris)*. These less traditional animals include but are not limited to lizards (Lacertilia), ferrets (*Mustela furo*), rabbits (*Oryctolagus cuniculus*), livestock and wildcats (*Felis silvestris*) (American Veterinary Medical Association, AVMA, 2018). The exotic pet trade, which includes the illegal wildlife trade, is a multi-billion-dollar-a-year industry (Hall, 2019). It is now easier than ever before to buy exotic pets online, leading to greater access to dangerous species by untrained people who do not understand the long-term care implications of owning exotic pets (Dylewsky, 2016). Over 13 per cent of American households own exotic pets (AVMA, 2018). To put this into perspective, there are now more exotic animals living in homes than in zoos (AVMA, 2018; Slater, 2014) and more tigers (*Panthera tigris*) living in American homes than are found in the wild (Animal Legal Defense Fund, 2023; Irvine 2008).

While tiger ownership has made international news, driven in part by the Netflix documentary *Tiger King* (Nuwer, 2020), smaller wildcats such as bobcats (*Lynx rufus*), servals (*Leptailurus serval*) and caracals (*Felis caracals*) are increasingly highly desired as exotic pets (Wildcat Sanctuary, 2022). I interviewed Tammy Theis, the Executive Director of Wildcat Sanctuary in Minnesota. Over the last five years, she has seen an increase in surrendered small wildcats, which she describes elsewhere as the Small Exotic Cat Crisis (Theis, 2022):

> The issue we have is huge, […] fuelled by social media, the caracals and servals are becoming the poster cat for this crisis.

Tammy says:

> People consider servals and caracals cool to have as pets. Bobcats are cheaper to buy and not as exotic-looking. I can find homes in sanctuaries for servals but it is almost impossible to find space for bobcats. There isn't one sanctuary [in the Big Cat Sanctuary Alliance, 2023] that currently has space to take in bobcats. Most sanctuaries just house a few. We have over 20 bobcats right now and 13 pending seizure from a breeding facility.

Bobcats (figure 1) are highly adaptable wildcats ranging in the wild across North America, Canada and parts of Mexico. Adult bobcats are significantly larger than domestic cats, weighing between 6.8kg and 9.6kg (figure 2). They are solitary cats who in the wild tend to avoid human conflict (Riley et al., 2010).

As a volunteer at Southwest Wildlife Conservation Center (SWCC), a wildlife sanctuary in Arizona, I was always surprised at the number of bobcats in our care. Some of these bobcats were taken from the wild as kittens, with others seized or surrendered after being kept as illegal pets. It soon became apparent that this is much more than a local phenomenon. To conduct this research, I have spoken with staff and experts that have experienced the Small Exotic Cat Crisis first-hand and are working tirelessly to care for an overwhelming number of seized and abandoned small exotic cats. I have found the reason for their desirability as pets is a complex web of desire, misguided animal rescues and conflicting messaging from wildlife rehabilitators. This led me to the question: What can we do to protect our indigenous wildcats?

## Wildcats are pets, not companion animals

A pet is an animal that is kept in a domestic setting for the pleasure, personal interest and entertainment of their human owner (Bush, Baker and MacDonald, 2014; Irvine, 2008; Laufer, 2011; Siev, 2022). In contrast, the American Society for the Prevention of Cruelty to Animals (ASPCA, 2023) defines companion animals as "domesticated or domestic-bred animals whose physical, emotional, behavioral and social needs should be met in the home". In the US, the law considers animals as property, belonging to the person who owns them, or for wild animals, the state in which they are found (Francione, 1996). For these reasons, I will continue to refer to captive wildcats as 'exotic pets' rather than as companion animals, and their human caregivers as 'owners' rather than guardians.

Occasionally, bobcats have been referred to as domesticated (Johnson, 2018). For an animal to be considered domesticated, they should be notably different from their wild ancestors (Larson and Fuller, 2014). Others may claim the size of bobcats alone makes them "literally a house pet" (Freedman, 2016). Both assumptions confuse their suitability as a pet, as unlike domestic animals there is little available information on the specialised care required for exotic pets (Grant, Montrose and Wills, 2017). These concerns have been identified by the scientists and veterinarians behind EMODE, an algorithm developed to educate potential pet owners about the challenges of exotic pet ownership. Exotic pets are classified as easy, moderate, difficult or extreme, based on the challenges associated with keeping them as pets (EMODE Pet Score, 2023; Warwick et al., 2018). Caring for a bobcat requires a high level of specialised knowledge and a great deal of time, money and space compared to domestic cats. I interviewed Deb Quimby, a staff educator at Big Cat Rescue (BCR) in Florida (BCR, 2023a). She says, "the breeder advertises them as cute kittens, but they are terrible pets". Bobcats may appear tame when they are young but they grow up to be unpredictable and fearless wild animals, exhibiting natural behaviours such as spraying, scratching and biting, which are inappropriate for living alongside humans in a home environment (For Fox Sake Wildlife Rescue, 2021). The EMODE report also states that providing appropriate care for a bobcat is unrealistic, nearly impossible for most people and is even challenging for zoos (EMODE Pet Score, 2023). Tammy has seen many surrenders from private owners. She says, "they are just not prepared and are of the belief that if you love something enough, they will love you back, and this just isn't the case".

Alex the bobcat was kept as an exotic pet. He was declawed and socialised but his owners still found him too difficult to handle. They decided to surrender him to a rescue centre, but since Alex was both

habituated and clawless, he was unable to be released (Exotic Feline Rescue Center, 2023). Owners may decide to declaw their cats because they want to prevent scratching and damaging of household items. Declawing is a painful procedure where the cat's toes are amputated at the last joint, removing the nail and part of the bone. This procedure can result in long-term complications such as arthritis and lameness (Paw Project, 2023). Declawing cats is only illegal in the states of New York and Maryland (Humane Society of the United States, HSUS, 2022), with some cities passing bans at a local level (Bales, 2019). Since 2006 the *Animal Welfare Act* (AWA) and the AVMA no longer allows declawing, unless it is for medical paw or teeth problems. Failure to comply can result in a citation for noncompliance with the AWA and end in enforcement action (US Department of Agriculture, USDA, 2006). Declawing also has other consequences. Deb says, "when you declaw them [bobcats] they just bite and spray more. They find a way to defend themselves". Yet for owners that are part of the group Responsible Exotic Animal Ownership (REXANO), wildcats are considered personal property and they have the right to declaw their pets (REXANO, 2023). Tammy has seen many surrendered declawed bobcats over the years, with a bobcat called Luna even having her canines cut off at the gum lines and exposing all her roots (Wildcat Sanctuary, 2017). She says, "how can you say you love your bobcat when you do this to them?"

Bobcats also pose a risk to public safety due to zoonotic diseases such as rabies (Institutional Animal Care and Use Committee, Washington State University, 2023). Bobcats may sometimes appear affectionate and playful but, regardless of their temperament, they are still wild animals. Bobcats can be easily spooked, and when their natural predatory instinct is triggered, they can become aggressive, unpredictable and even attack small dogs (Pet Blog, 2021). A Texas couple with two bobcats discussed how their bobcats had bitten, scratched and broken bones in their hands by playing too hard (Aldersley, 2018). In Texas all animal bites require reporting to the local rabies control authority and the animal is required to be quarantined or euthanised (Texas Department of State Health Services, 2020). The Center for Disease Control does not license any parenteral rabies vaccines for use in wild animals or hybrids. As a result, the AVMA also recommends that these animals should not be kept as pets (Center for Disease Control, 2023).

## Legislation for bobcat ownership

Unfortunately, recommendations alone are not sufficient to prevent ownership of small wildcats. There are no overarching federal laws that prohibit the ownership of these species. The *Animal Welfare Act* is governed by the USDA, the organisation responsible for setting federal standards for the humane care of certain animals used commercially. This includes wildcats sold as pets, exhibited to the public, used in research or transported commercially. The USDA does not inspect animals kept in private ownership and therefore enforcement responsibility falls to the individual state level (USDA, 2022). Each state can have different laws and statutes regarding the private ownership of dangerous, exotic and indigenous animals. These measures vary greatly in efficacy and include outright bans, licensing, permits and general guidelines (Miller and Shah, 2005). Laws and statutes are enforced inconsistently and agencies often suffer from a lack of motivation and resources to protect wildcats (Miller and Shah, 2005; Turpentine Creek Wildlife Refuge, 2023).

The *Lacey Act* of 1900 is a federal law that protects specific species of flora and fauna. The Act has since been amended several times and now protects a broader number of species by combating illegal trafficking and regulating the trade of flora and fauna both domestically and internationally (US Fish and Wildlife Service, USFWS, 2023a; Wisch, 2003). In 2014 a man in Colorado was charged under the *Lacey Act* with a felony for selling a US$350 bobcat and sending them across state lines. If convicted, this charge carries a prison sentence of up to five years and a US$250,000 fine (Mitchell, 2019). Yet, killing a bobcat carries no penalties, as bobcat hunting is legal in Colorado (BCR, 2022). Bobcats have also been listed on the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) Appendix II since 1977 (Association of Fish and Wildlife Agencies, n.d.). As an indigenous and

furbearer species, the trade in bobcat fur is regulated and offers wild bobcats some protection. In Nevada, for example, there are no restrictions on keeping a tiger as a pet (Turpentine Creek Wildlife Refuge, 2023). However, because bobcats are indigenous, they do require a permit (BCR, 2022). Yet, there are few laws concerning fur farming and in some states these are not regulated by the USDA (Peterson, 2010). Tammy has seen first-hand how fur farms have been able to use their game farming licence to sell bobcats as pets across the US:

> They can go from selling pelts for $200 to bobcats for over $2000… They keep the bobcats in rabbit hutches and as a fur farm they are not even meeting USDA standards because they are exempt in the state of Minnesota. Native species laws differ from state to state.

The *Captive Wildlife Safety Act* (CWSA) was signed in 2003 to address concerns over public safety and big cats. This law amends the *Lacey Act* amendment of 1981 by adding stricter regulations on the import, export, buying, selling, breeding, possession and transportation of big cats across state lines (USFWS, 2007). However, for some the CWSA did not go far enough to address public safety regarding the private ownership of big cats. As a result, Congress passed the *Big Cat Public Safety Act* (BCPSA) in April 2021 and it was enacted in December 2022 (USFWS, 2023b). The BCPSA is an interim rule and amends the CWSA by addressing the practicalities of big cat ownership and aims to offer consistency and a common-sense solution to address the risks involved. The Act addresses issues including but not limited to the suffering of big cats in backyard and basement imprisonment and cub petting. It aims to put an end to the cycle of big cat exploitation by preventing the breeding, acquiring or selling of big cats where violators could face fines of up to US$20,000 and five years in prison.

The BCPSA includes tigers, cougars (*Puma concolor*), jaguars (*Panthera onca*), cheetahs (*Acinonyx jubatus*), leopards (*Panthera pardus*) and any hybrids, but excludes small wildcats such as servals, caracals and bobcats (USDA, 2000). We can argue, however, that small wildcats are also subjected to similar treatment as other big cats when kept in private ownership. Deb says:

> People have them when they are cute kittens. As soon as they reach maturity, they are wild and fierce… That's when they are usually discarded and end up in sanctuaries or roadside zoos.

Some states consider bobcats to be dangerous animals and will restrict ownership on this basis, but these decisions are often met with confusion. In 2016, the Ohio Department of Natural Resources refused to renew a long-time bobcat owner's annual licence. The bobcat in question is a captive-bred bobcat named Thor who is declawed and lives inside the house. The owner's lawyer argued that the 2012 law on bobcat ownership does not explicitly identify bobcats as a dangerous wild animal and called Thor "literally a house pet". The courts agreed and the owner was able to keep Thor as a pet (Freedman, 2016). A family in Illinois had a different outcome from owning a dangerous cat. The family had a permit to own their declawed pet bobcat called Capone. Capone was seized by the Illinois Department of Natural Resources and taken to a wildlife rehabilitator. The owner was ticketed for unlawful possession of a dangerous animal and unlawful possession of a dangerous species. This charge is a misdemeanour, with a penalty of up to thirty days in jail (AP News, 2018).

Owning a bobcat in Arizona requires a licence that is only granted to zoos and animal rehabilitation centres (Animal Legal and Historical Center, 2023). The licence, however, does not deter people seeking captive-bred bobcats from outside the state or from illegally poaching them from the wild (Ames, 2016; Hanson, 2004). In 2019, an Arizona resident was found to be illegally keeping bobcats in his backyard. His neighbour sounded the alarm after the owner shared his plan to trap another bobcat so that they could mate with the others. It was never reported if the owner faced any fines or jail time for being caught with restricted wildlife (Crenshaw, 2019).

As illegal pet owners, others choose to hide their bobcats from public view. A press release from SWCC (2015) highlighted the story of a bobcat called Bubba (figure 3), who sadly passed away in 2021. Bubba was an interesting character, a vocal cat usually found lounging inside a big blue tube within his enclosure. He was purchased from an

out-of-state breeder and then declawed. Realising that bobcats are illegal to own in Arizona, the owner kept him hidden indoors and confined him to a small metal crate. He became obese and three of his legs became caught in the crate. He struggled to free himself, in the process breaking his hind legs and one front leg. He was also fed a poor diet and ended up with metabolic bone disease, a condition that causes weak bones when cats are fed calcium-deficient diets (USFWS, 2019). Bubba did not receive proper veterinary care for his broken bones and had also suffered head trauma. By the time the owner surrendered Bubba, he was severely disabled and required daily medication. Unfortunately, due to his condition he was never able to go outside and socialise with other bobcats. It is unknown if the owner was prosecuted for animal cruelty.

It took over a decade of campaigning before Congress passed the BCPSA (Amundson, 2023). Advocates of private pet ownership used the arguments that a federal bill would "set a dangerous precedent, as any species could be added on later to micromanage U.S. citizens' personal pets at the federal level" (REXANO, 2012: 1). Advocates of the bill, Tammy and Deb, both feel that extending the BCPSA to smaller wildcats is highly unlikely. Yet the BCPSA has opened the door to the *Animal Welfare Enforcement Improvement Act*, which strengthens the enforcement of the *Animal Welfare Act* and at the very least will ensure violators are held accountable and unable to work with animals through a different business name or business partner (Fishman, 2023).

## The allure of wildcat ownership

Without a federal small wildcat law, bobcats are at the mercy of a patchwork of state regulations. Stricter enforcement of existing state wildlife laws, more robust penalties and cross-agency reporting could help reduce bobcat ownership (Miller and Shah, 2005). However, public opinion and the demand for exotic pet ownership should also be a consideration. By attempting to understand the allure and anthropocentrism of exotic pet ownership, perhaps we can look for ways to reduce demand for exotic pets (Hausmann et al., 2023). The growing trend in exotic pets can in part be attributed to the increase in social media and e-commerce, making it much easier to promote and sell exotic pets online (Hall, 2019; Moloney et al., 2021), with social media encouraging younger generations to be even more interested than older generations in owning rare and exotic pets (Cronin et al., 2022).

Bobcats can be purchased from online breeders, exotic animal pet exhibitions or directly from local breeders. At the time I started this research in 2021, the average price of bobcats from online breeders was US$1800, while it has increased recently to US$3500. The pet breeding industry is based on biological cycles. This is called the Cobweb Model of Economics, which explains price fluctuations in the pet breeding industry: when supply cannot keep up with demand, the cost of bobcats increases (Shah and St John, 2021).

Perhaps some people desire to keep exotic pets because they want to stand out in society. Vail (2018) identifies this personality type as 'the Individual'. Just like the shoes we wear or the car we drive, owning an exotic bobcat is a symbolic extension of the owner's personality (Berry, 2008). Perhaps this person wants to reinforce or elevate their image or status with an exotic pet and use them to partially validate their own vanity (Berry, 2008; Gunter, 1999). Deb has seen this behaviour from bobcat owners and says, "it's a showing off thing. Look at this exotic cat I can own!" Some may even consider the owners of these bobcats to be daring, exciting, unique or a person of privilege, with the public display of their pet bobcat attracting attention and social interaction (Berry, 2008; Gunter, 1999; Laufer, 2011; Veevers, 1985).

When owning an exotic pet becomes too much, these owners are more likely to abuse or neglect their pets (Vail, 2018). Could this have been what happened to a vocal and attention-seeking bobcat called Rocky? His owners bought him from a breeder for US$2500 but later lost him after failing to produce the proper licence. Rocky's owners said they would put the paperwork in order and then return but they never did return to claim him. Rocky now lives at the sanctuary with his roommate Alex and enjoys resting in his hammock (Exotic Feline Rescue Center, 2023). It appears the Individual that purchased Rocky was not prepared or concerned about the long-term commitment needed for owning a bobcat. As a sanctuary volunteer, I have heard

many stories of people who have surrendered wild animals and yet still visit and provide financial support for their ongoing care. For Rocky this was not the case. Leaving him at the sanctuary without visiting or providing financial support suggests Rocky was purchased for their personal interests and not because they cared for Rocky.

A search of 'bobcats as pets' on social media will show bobcats being stroked by strangers at grocery stores and bobcats on a leash, with captions about how owning bobcats is 'cool'. These images glamorise bobcat ownership and can falsely legitimise the exotic pet trade. A study by World Animal Protection (2020) confirmed the degree to which social media can influence the decision to buy an exotic animal. Of the owners surveyed, 15 per cent found inspiration to purchase after watching videos on YouTube. Rather than using bobcats as an extension of their own individuality and self-image, these owners are more concerned about their public image and only expose select and light-hearted content. Owners posting images of bobcats online could be examples of what Vail (2018) identifies as 'the Follower'. These owners are seeking to create content that presents their bobcat as a member of the family. The bobcat has become an entertainer, being made to pose for selfies, lying on their owner's bed, walking over expensive sports cars, playing with household objects and sitting on furniture.

The Individual and the follower are often the type of exotic pet owner who may not fully understand the challenges of keeping an exotic pet. Pets from these types of owners are oftentimes surrendered to a wildlife rehabilitator (Vail, 2018). Tammy says, "the bobcats I see online are not adults. Rarely do I know of somebody that kept their pet bobcat for the life of the bobcat … When they start showing signs of aggression, territory and urinating on things, that's when they are sequestered." Deb agrees, "they are usually discarded at this age, which is why so many end up in sanctuaries or roadside zoos".

## Misguided bobcat rescues

Some bobcats find themselves as exotic pets when someone deems them to be in danger and in need of rescue. Vail (2018) identifies this personality type as 'the Hero', where this act of kindness is usually from a person with a lack of knowledge about wildlife rehabilitation. Rescuing an orphaned, sick or injured bobcat may begin with good intentions but can quickly become detrimental for the bobcat. Young bobcats risk becoming imprinted, meaning they lose their sense of species identification and instead identify with their human caregiver (Wildlife Center of Virginia, 2023).

Imprinting occurred with a young bobcat kitten called Yemaya (figure 5). She was found crying and was taken into an office to be given food and water. She was at the age where she should have been nursing and rejected their offerings. Her caregivers tried to comfort her but soon realised she needed specialist care (figure 4). Unfortunately, Yemaya interacted with people during a critical time in her development which resulted in her imprinting on humans. Today Yemaya is a confused, anti-social bobcat, living alone at a wildlife sanctuary. I have met Yemaya many times and all the staff and volunteers at the sanctuary agree that she is easily irritated and can sometimes be heard 'rumbling' (a mix between a purr and a growl) in her enclosure. Had Yemaya been surrendered sooner, she may have been released back into the wild (SWCC, 2023a).

Other people choose to deliberately take animals from the wild so they can keep them as pets. A family decided to poach two scared, baby bobcats in Texas, claiming the bobcats were stray kittens. The family was bitten and scratched by the bobcats and after a few days made a call to animal control. Unfortunately for the bobcats, the family lied about where they had found the kittens, which prevented any chance of reunification with their mother. Stories such as these are all too familiar for the wildlife rehabilitator who is now looking after the bobcats. When asked about the bobcats she said, "we saved 10,000 animals who never wanted to be bothered by a human being" (Warfield, 2018).

## Do as I say, not as I do

Zoos and sanctuaries use social media to shape their public image, reach new audiences and engage potential donors (Conservation Tools, 2023). Their social media strategies vary but images of bobcats being handled by their caregivers result in a confusing message. In zoos and sanctuaries, animals that are handled by staff or visitors for 'education' are called

Ambassador Animals (Spooner et al., 2021), attempting to simultaneously inspire people to care about wildlife, while also trying to demonstrate that wildlife is not inherently dangerous. However, wild animals deserve to retain their wild instincts, behaviours and live free of forced intrusions (Bekoff, 2010). Zoos and sanctuaries should lead by example and hold themselves to the same standards they expect from the public. Handling wildlife reinforces the notion that wild animals enjoy being handled and influences our perception of danger. Some people may choose to emulate what they see in these wildlife encounters, making human–wildlife interactions and exotic pet ownership more likely (Big Cat Sanctuary Alliance, 2019; van der Meer, Botman and Eckhardt, 2019; Ward-Paige, 2016).

Sanctuaries, wildlife rehabilitators and conservation centres (henceforth sanctuaries) are facilities that have the means to rescue and rehabilitate wildlife or provide permanent sanctuary for wildlife that cannot be released (Fielder, 2021). The extent to which a sanctuary allows humans to interact with bobcats depends in part on their accreditation with third-party organisations. The Global Federation of Animal Sanctuaries (GFAS) specifies that humans are not to enter enclosures with cats and direct interaction should be limited to experienced personnel (GFAS, 2019). Deb explained that BCR is accredited with GFAS and therefore does not allow non-medical human–wildlife interactions. She believes images of people petting wildcats do not encourage protection of these animals but rather make people want to pet wildcats (BCR, 2017). In contrast, the images and videos posted by BCR illustrate the challenges for wildlife rehabilitators and demonstrate that bobcats should be living a life in the wild. As an example, the still from a social media post by BCR (figure 6) clearly shows the caregivers dressed in a ghillie suit and disguised as trees to avoid the kittens imprinting on humans. Deb says, "the only time we touch cats is the kittens for vaccines and exams. Otherwise we wear a ghillie suit so when they return to the wild they don't associate food with people."

But what if the bobcats cannot be released back into the wild? SWCC, who cared for Bubba, strongly advocate "keeping wild in our hearts and not in our homes", aiming to keep sanctuary residents as wild as possible (SWCC, 2023b). The only images of animal handling that they post to social media are from wildlife rescues (figure 7). SWCC is accredited with the American Sanctuary Association (ASA), which specifies that member sanctuaries cannot sell, trade, breed or use animals for commercial purposes (American Sanctuary Association, 2023).

In contrast, the Association of Zoos and Aquariums (AZA) allows staff to handle some wildcats (AZA Ambassador Animal Scientific Advisory Group, 2022). The Zoological Association of America (ZAA, 2021) permits human–wildlife interactions, including handling by trained staff. The Feline Conservation Federation (FCF, 2023) allows individual owners to set their own rules on human–wildlife interactions, and these facilities do post images to social media of their wildcats in harnesses and being handled by visitors.

Other smaller wildlife rehabilitators and roadside zoos not accredited by third-party organisations are still licensed under state regulations and inspected by the USDA. Under section 2.32 of the USDA Blue Book each facility is responsible for training their personnel to handle their animals (USDA, 2023). With the BCPSA banning public cub-petting of big cats, some roadside zoos are turning their attention to public petting of small wildcats. Deb says, "there is an increase in them [small wildcats] at roadside zoos so people are petting them, so there is more breeding at catteries". I also interviewed Jeff Kremer, the investigator for the documentary *The Conservation Game* (2021). He uncovered the extent to which facilities can exploit animals under the guise of Ambassador Animals. Jeff refers to these unaccredited facilities as 'pseudo sanctuaries', saying:

> These wildlife rehabilitators behave more like roadside zoos. It's all about money and ego. Animals are seen as property and not sentient. The number of small cats I'm now seeing in private ownership [since the BCPSA], including roadside zoos, has gone up exponentially. It's off the charts.

Zoos and sanctuaries have first-hand experience with issues arising from exotic ownership and should lead by example when educating the public. Starting a dialogue with the local demographic to understand their motivations for keeping bobcats as pets could also help rehabilitators

develop a targeted response. Vail (2018: 294-297) highlights several strategies that can be adopted by wildlife rehabilitators to raise awareness of keeping bobcats as pets. These include but are not limited to:

- communicating expertise and clear statistical data that can raise awareness of ethical, safety and legal issues, which will in turn discourage people from keeping bobcats as pets;
- empowering public participation in wildlife-related issues and investment in wildlife laws;
- sharing their expertise and data with scientific researchers and wildlife policymakers;
- working with other organisations that have a shared message. An example is the *Mother Knows Best* campaign, which asked people to leave wild and feral animals with their mothers. This was a Spring 2020 collaboration between Southwest Wildlife Conservation Center, Liberty Wildlife and the Arizona Humane Society (Arizona Humane Society, 2020).

## Conclusion

For some, bobcats are considered house cats, while others see them as dangerous wild animals. Bobcats are not domesticated animals, and rather than having forced interactions with human beings, they deserve to live their lives in the wild. As an indigenous species in the US, the bobcat is offered some protection under CITES. However, as a small exotic cat, the bobcat is excluded from the BCPSA. Like larger cats, bobcats suffer in captivity and appropriate care is difficult to provide. Bobcats can also pose a public safety risk and should not be subjected to the painful procedure of declawing solely for the purpose of sharing a home with their human owners.

Legal inconsistency has resulted in a lack of uniform enforcement of existing laws and an unpredictable outcome for bobcats. Further research should determine the degree to which the number of different laws and statutes across the US contribute to the suffering of privately owned bobcats. Future legislation may be able to offer additional protection for bobcats. However, legislation alone does little to address the underlying reasons for bobcat ownership in the first place. Wildlife sanctuaries are in the unique position to educate and advocate for the bobcats coming under their care. By staying true to the message and distancing themselves from roadside zoos, sanctuaries can show that bobcats should stay wild and do not deserve to be pets. For this reason, sanctuaries should also be mindful of sharing social media images of their Ambassador Animals and habituated bobcats so that people are less likely to try to emulate the behaviour.

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***Acknowledgements:*** *I would like to express my deepest appreciation to Robyn Moul and the staff at Southwest Wildlife Conservation Center. They have encouraged me throughout my research and I am thankful for all lives they have saved. I would also like to thank Tammy Theis from the Wildcat Sanctuary and Deb Quimby from Big Cat Rescue who openly shared their experiences and knowledge of bobcats and other wildcats. I am also extremely grateful to Jeff Kremer who has given me invaluable insight into the exotic cat trade and the need for additional research into our entanglements with wildcats.*

***Suggested citation:*** Musser, C. (2024). When kindness turns cruel: Keeping bobcats (*Lynx rufus*) as house cats in the US. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter. pp. 35–46.

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## Figures

Figure 1. Emma the adult bobcat and one of her fostered bobcat kittens (2021). Photo used with permission from Southwest Wildlife Conservation Center.

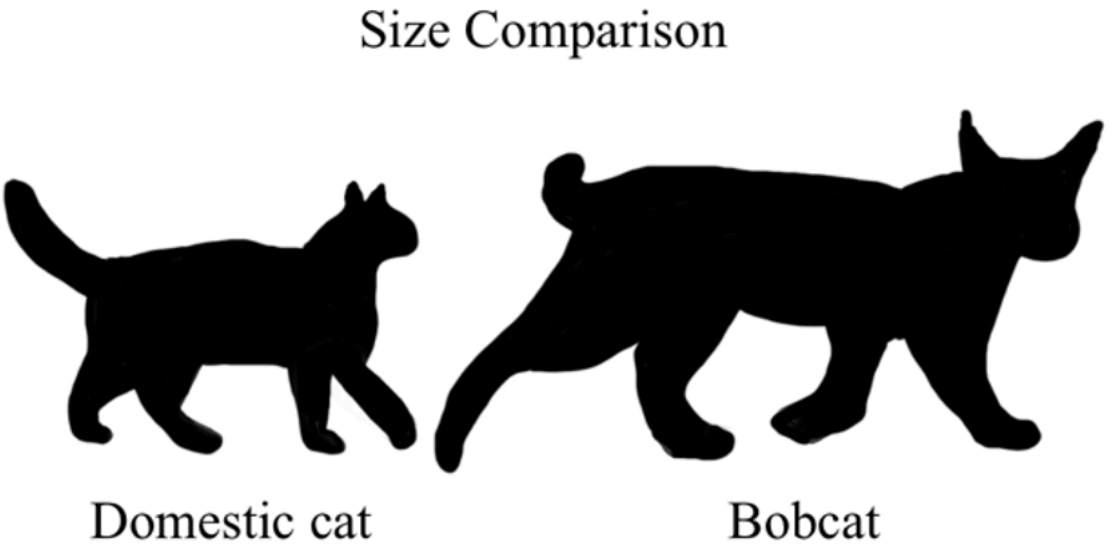


Figure 2. Bobcat and domestic cat size comparison. Author's image.

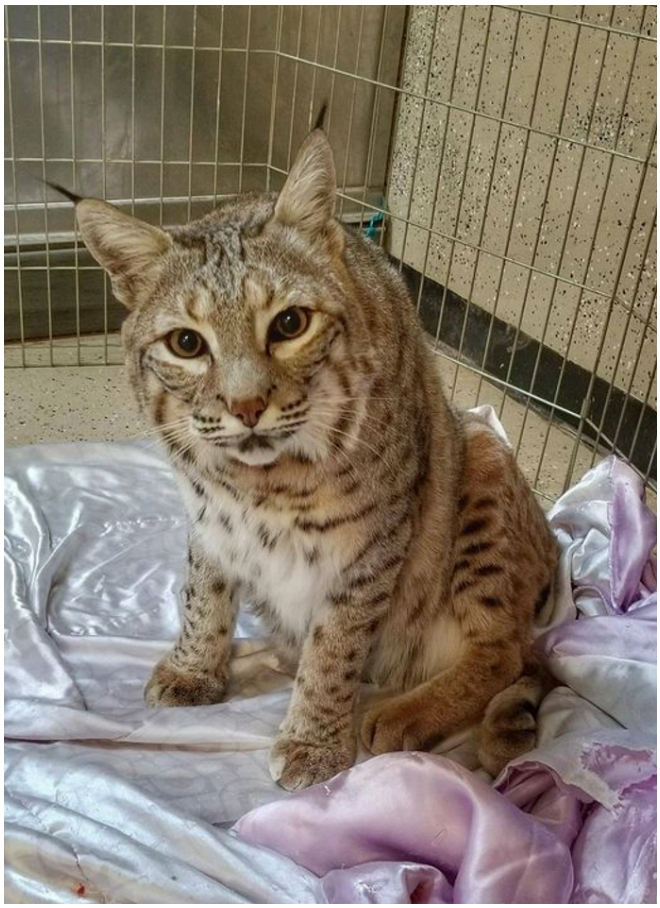

Figure 3. Bubba the bobcat on his bed.
Photo used with permission from Southwest Wildlife Conservation Center.

Figure 4. Yemaya when she arrived at the sanctuary.
Photo used with permission from Southwest Wildlife Conservation Center.

Figure 5. Yemaya, the imprinted bobcat.
Author's photo (2023).

Figure 6. Still from a video posted on YouTube of caregivers keeping bobcats wild.
Video still used with permission from Big Cat Rescue.

Figure 7. The first newborn babies of the year were bobcats rescued alongside their mother. Photo used with permission from Southwest Wildlife Conservation Center.

# Can legislation and regulation provide protection for cats (*Felis silvestris catus*) in animal holding facilities in Hong Kong?

*Kei Kong*

***Abstract:*** *In Hong Kong, cats (Felis silvestris catus) are kept in a variety of holding facilities: the home setting, traditional municipal shelters, cat cafés, offices, a bookshop serving as cat sanctuary and trading or breeding facilities. There are no regulations or legislation pertaining specifically to other-than-human animal (henceforth animal) holding facilities in Hong Kong. This paper asks to what extent legislation and regulation would be helpful in protecting cats in this heterogeneous environment and proposes a series of measures that show promise.*

CATS (*FELIS SILVESTRIS CATUS*) ARE POPULAR companion animals worldwide. In a survey conducted by the Hong Kong government in 2019, 4 per cent of the 241,900 surveyed households kept cats as companion animals, with an estimated 184,100 cats within these households. However, 4.6 per cent had considered giving away their cats for a variety of reasons (Census and Statistics Department, HKSAR, 2019). Methods of surrender were listed as 'sold through pet shops/friends' and a method labelled 'other', which was not specified in the report. This implies surrendering the cats to the Agriculture, Fisheries and Conservation Department, HKSAR (2023a), local animal charities (e.g., Society for the Prevention of Cruelty to Animals Hong Kong, 2023a), or simply abandoning the cat on the streets. These cats then become unowned and may be fed or kept by volunteers or animal rescue organisations. Since cats are not currently required to be microchipped in Hong Kong, ownership cannot be traced once a cat is free-roaming.

Various authors have discussed the implications of labelling cats as stray, unowned or feral (Farnworth, Campbell and Adams, 2011; Hill et al., 2022). 'Feral' can result in different treatment of the cats thus classified and can lead to their death in some countries (Farnworth, Campbell and Adams, 2011). International Cat Care (2023) has redefined different categories of cats as 'owned' and 'unowned', where the latter includes all strays and street cats, "[those] that have been born and live on the streets, cats that have lived in our homes with us but are no longer wanted or cannot be kept, and pet cats which have lost their way and strayed or been abandoned". This definition describes the status of many cats in Hong Kong.

Apart from cats kept as companion animals in homes, cats in Hong Kong can be found as stray cats, street cats and semi-owned cats, which include shop cats, where cats are let loose during the day and return to the shops at night to aid in rodent deterrence. Cats are also kept in traditional shelters, nine cat cafés (Cheung, 2023, see figures 4 and 5), co-op workspaces that also have cats for adoption (such as Workspace with Cats), commercial offices with a cat sanctuary room, and a bookshop (Samkee

Books) acting as a cat sanctuary (see figures 6 and 7). They are also kept by cat hoarders and breeders. This paper looks at the variety of animal holding facilities and asks whether regulation and legislation could be helpful in protecting cats in this heterogeneous environment.

## Care and welfare in animal shelters

Animal shelters originated from the impounding of lost livestock (Zawistowski and Morris, 2012), some of which evolved into organisations caring for lost or unwanted animals since the 19th and 20th centuries (Irvine, 2017). Common ground for optimal care and welfare for animals in these establishments is difficult to agree upon (Turner, Berry and Macdonald, 2012). With the evolution of the concept of 'no-kill', meaning to euthanise an animal "only when it is suffering or dangerous to people or has a poor prognosis for rehabilitation and recovery" (Rochlitz, 2014: 138), many animals remain in these establishments until their natural deaths.

There is no internationally agreed definition for the term 'animal shelter'. They are generally regarded as providing a temporary place of residence for animals. Some establishments may apply for charity status; some are privately owned or self-funded. Many are of a mixed type and accommodate more than one species of animal. There are three main types outlined by the Association of Shelter Veterinarians (2017): traditional animal shelters (figures 1–3), animal sanctuaries and rescue groups:

> Traditional Animal Shelters are animal housing facilities that, depending upon the source of funding and organisational mission, maintain a partnership between private and government agencies. They may provide housing for stray animals through mandated holding periods, offer temporary housing of homeless animals, and accept animals surrendered by their owners. Animal Sanctuaries are typically long-term or permanent housing solutions for homeless or unadoptable animals that are privately run and funded. Rescue Groups are often operated by a network of foster home-based volunteers that may or may not be associated with a standing facility. These organizations often accept difficult-to-adopt animals from other shelters and may transfer them or facilitate adoptions outside of the shelter setting. (Association of Shelter Veterinarians, 2017: 1).

Care is variously defined as follows:

> The provision of what is necessary for the health, welfare, maintenance and protection of someone or something. (Oxford Learners' Dictionary, 2023)

> Caring is an embodied phenomenon, the product of intellectual and emotional competencies: to care is to be affected by another, to be emotionally at stake in them in some way. As an ethical obligation, to care is to become subject to another, to recognise an obligation to look after another. Finally, as a practical labour, caring requires more from us than abstract well wishing, it requires that we get involved in some concrete way, that we do something (wherever possible) to take care of another. (van Dooren, 2014: 291–292)

> [Care is] tasks, interactions, labour processes, and occupations involved in taking care of others, physically, psychologically, and emotionally [involving] skill and multifaceted communication. (Coulter, 2016: 199)

Van Dooren and Coulter's definitions of care fit the traditional shelter model of care for stray and unwanted animals. Humans have moral obligations towards other animals (Fox, 2012; Singer, 1974). Stray and unwanted animals are displaced in human society and their abandonment can be seen as a form of deviance (Sykes and Matza, 1957), where the animal is the victim (Fitzgerald, 2010). However, reciprocity is also evident in the traditional animal shelter setting and through the work of caring. Even though individuals working and volunteering in traditional animal shelters are prone to occupational risks, such as moral injury, secondary trauma, stress, burnout, compassion fatigue and low job satisfaction (Hoy-Gerlach, Ojha and Arkow, 2021), some volunteers in traditional shelters do express satisfaction (Reese, Vertalka and Jacobs, 2023). Shelter policies and the nature of the shelter affect volunteer satisfaction, as does the number of intakes and save rates (Reese, Vertalka and Jacobs, 2023). Many shelters in Hong Kong are run by volunteers, and the relationship between organisations and their workers remains unexamined in the local setting, warranting further research.

Animal shelters pose many risks to the welfare of animals. For example, animals are often kept in confined spaces with minimal enrichment. Environmental issues include loud noises and unfamiliar sounds (machinery), lighting and smells (chemicals and animals) (Coppola, Enns and Grandin, 2006). In traditional shelters, many animals are confined within a limited space or with unfamiliar conspecifics (Patronek and Sperry, 2001; Stella and Croney, 2016). For many animals, including cats, these are all stressful circumstances (Eagan, Gordon and Fraser, 2021). Stress also arises from the loss of freedom, unfamiliarity, being handled by strangers (shelter staff and potential adopters) and being subjected to medical procedures and neutering involuntarily. The latter could be seen as a cause of unnecessary pain and suffering (Fox 2012) or a form of violent care (van Dooren 2014). In order to care for them, these animals are subjected to procedures which may be distressing for them. However, without neutering, many will continue to reproduce, creating other welfare risks for offspring where resources are limited, and without vaccinations many of these animals would succumb to preventable illnesses. These 'standard' concerns are in addition to stories of emaciated animals in poorly run shelters that often appear in the news (Chiu 2019, Harper and Roney, 2022). With the advent of 'no-kill' policies, many shelters have become overcrowded, leaving cats with less stimulation and human interaction (Vojtkovská, Voslářová and Večerek 2020).

In many traditional shelters, animals are euthanised if not adopted. Euthanasia of healthy animals can again be seen as a form of violent care, involving the killing of surplus, otherwise healthy animals (van Dooren, 2014). Overcrowding is a major reason for euthanasia in many traditional cat shelters (Bannasch and Foley, 2005). All aspects of the animals' lives within the shelter environment are controlled by humans, fitting Horowitz's (2014: 7) description of "constitutionally captive" and echoing Tuan's (1984) dominance and power theory in companion animal keeping. Ethically, some may argue that confining cats in this way is "for their own good" (Palmer and Sandoe, 2014: 1). They are safe from the elements and from predators, they do not need to forage for food and their confinement also reduces predation on wildlife.

The welfare of cats in cat cafés is also controversial. A recent study of the health of cats in a cat café in the United States, run by a cat rescue organization, found that the cats in the café have overall poorer health compared to the organisation' other cats, who were in foster care (Ropski, Pike and Ramezani, 2023). Incidents of sickness behaviour in cats in the cat café group were comparatively more frequent and the café cats had a longer length of stay. Sickness behaviours were defined as vomiting, diarrhea, lethargy, anorexia and decreased social interactions (Ropski, Pike and Ramezani, 2023). Similar research conducted in Hong Kong would be useful.

## A lack of regulation puts animals at risk

There are eight pieces of animal legislation in Hong Kong, but none specifically relate to animal shelters (Society for the Prevention of Cruelty to Animals Hong Kong, 2020). The care of animals in shelters comes under legislation pertaining to animal cruelty and other relevant ordinances. In Hong Kong, there are no direct licensing requirements for setting up an animal shelter or other animal holding facility. Many organisations apply for charitable status, granting them tax exemptions. However, regulations pertaining to those exemptions are not strictly enforced either (Legislative Council, HKSAR, 2021; Mariani, 2018). The Hong Kong government has admitted such a gap with proposed reforms (Legislative Council, HKSAR, 2021). However, many of the reforms are not legally binding, and only regarded as 'good practice' (Mariani, 2018). For example, it is only viewed as 'good practice' to upload financial accounts for public view. Since many animal shelters operate on private premises, without a licensing system or enforceable regulations there is no means to monitor the welfare of the animals held within, other than to rely on public reporting, which often comes too late (Whitfort, 2021).

Without regulation, animal shelters may also be a front for exploiter hoarders (Arluke et al., 2017; Whitfort 2021, Whitfort et al., 2021). According to Arluke et al. (2017: 113), these are "[c]onsidered

to be sociopaths and/or to have severe personality disorders[.] [T]heir lack of empathy for people or animals means they are indifferent to harm they cause them. They may be motivated by financial funds that are not used for animal care." A 2021 SPCA animal cruelty report looked at animal cruelty cases reported to them from 2013 to 2019 (Whitfort, 2021). It includes two cases of reported animal hoarders operating as animal shelters with open public donations. The report suggests that "regulations could be introduced to require those with a large number of animals (regardless of species) to comply with additional measures such as registering them, paying higher license fees and re-registering their animals more often than the current 3 years" (Whitfort, 2021:36). However, it is not easy to define 'a large number of animals'. How many is too many? When it comes to hoarders, it is not the number of animals that is the problem but rather the care and welfare of the animals, hence setting an arbitrary number as a cut-off or a maximum number of animals one can hold is not realistic.

The registration of animals also presents potential problems. For instance, there are many people in Hong Kong who do not comply with the existing licensing requirement in place for dogs. Under the *Rabies Ordinance (2020)* (Hong Kong e-legislation 2020), all dogs need to be microchipped and have an up-to-date rabies vaccination before a dog licence can be renewed every three years. In an ombudsman report investigating this issue (Office of the Ombudsman, HKSAR, 2021), the Agriculture, Fisheries and Conservation Department responsible for dog licensing was criticised on all fronts, including slack patrolling, poor enforcement of legislation and poor record keeping (for example, being unable to locate the registered guardians for lost dogs). This, in effect, is a form of 'enforcement gap' (Morton, Hebart and Whittaker, 2020). Therefore, Whitfort's (2021) suggestions may not be easy to implement, even if cats in Hong Kong were to be included in the mandatory microchipping requirement.

Animal 'charities' are still able to operate with no real regulatory oversight, including regarding animal welfare. This appears to be common knowledge in the local animal rescue/shelter scene in Hong Kong. In a thesis discussing animal welfare in Hong Kong, Cheung et al. (2017) conducted in-depth interviews with fifteen people who had different involvement in the animal 'business', including rescue workers, volunteers in traditional animal shelters, dog trainers and legislators with an interest in animal welfare. The authors noted there had been a growth in the number of animal shelters in Hong Kong, from 7 organisations registered with Inland Revenue in 2000 to 72 in the year 2016. This number excluded the unregistered organisations that have not applied for charity status, so the real number of animal shelters is unknown. These animal charities operated as non-profit organisations but the interviewees mostly agreed that "the presence of for-profit in disguise is widely recognised" (Cheung et al., 2017: 50). For example, donated funds were used for personal gain and potential adopters were asked to pay a large monetary sum that exceeded the operational costs of saving the animal (Cheung et al., 2017: 60). Another enforcement gap cited in the SPCA report (Whitfort 2021) similarly pertains to low transparency in how public donations are used, which should be a matter for Inland Revenue.

In her book *Run, Spot Run: The Ethics of Keeping Pets*, Pierce (2016: 2156) goes so far as to describe the (traditional) animal shelter scene as an "industry". Traditional animal shelters have grown to become a self-sustaining movement. Pierce argues that the existence of traditional animal shelters actually perpetuates animal abandonment, as the shelters deal with the surplus from the animal breeding industry, keeping the for-profit companion animal market free from unhealthy and unwanted animals. Profit reaping not only stems from misappropriated donations (donated money not directly going towards helping the animals) but also indirectly, for example the interstate transport of rescue animals in the US. Pierce argues that the traditional animal shelter is an integral part of the whole pet industry, from pet food to pet fashion. The fact that animals grow old and die spurs multiple business opportunities (Bartlett, 2023), from dog enrichment toys (Grisham, 2023) to supplements for elderly animals (Strauss, 2012) to pet memorial diamonds (Calvão and Bell, 2021). In some US counties, animals in municipal shelters can

also be sold to animal brokers under pound seizure laws (American Antivivisection Society, 2023). These animals may be sacrificed in experiments for research purposes. In Hong Kong, even though there is no equivalent legislation, the local Agriculture, Fisheries and Conservation Department has supplied research facilities with euthanised stray cats (Woo et al., 2012).

Legislation and licensing of animal shelters would provide some means of identification, including the locations and numbers of animals held in shelters in specific areas, but many animal holding facilities do not go by the 'animal shelter' label. There is no universal definition of an animal shelter, and legislation to regulate shelters specifically would not cover cat cafés, cat bookshops, or co-op offices that house cats for adoption.

There is also no regulation of the breeding of cats in Hong Kong and no registry of breeding catteries, nor do breeders require a licence. *The Public Health (Animals and Birds) (Trading and Breeding) Regulations (Cap 139b)* only requires licensing of dog breeding (Hong Kong e-legislation, 2018b). According to one home cat breeder, there are no 'commercial' cat breeders in Hong Kong; all cat breeders claim to be 'hobby breeders' and their numbers are unknown (Kong, personal communication, 2023). There is no information on where and how the cats are kept on their premises, nor the actual number of cats kept. According to the European Food Safety Authority report on scientific and technical assistance on welfare aspects relating to housing and health of cats and dogs in commercial breeding establishments (Candiani et al., 2023), the type of housing, the age at breeding and the frequency of breeding have direct effects on the animals' welfare. Without a registry of catteries and other regulations, the welfare of cats kept in these premises in Hong Kong is contingent upon the keepers' personal decisions.

Trading animals in Hong Kong does require a licence (Agriculture, Fisheries and Conservation Department, HKSAR, 2023b). An animal trader is defined as "a person who sells, or offers to sell, animals or birds except those kept by that person as a pet, or the offspring kept by that person as a pet, or the offspring thereof" (Agriculture, Fisheries and Conservation Department, HKSAR, 2023b) and trading is not limited to the exchange of an animal for money.

> [S]elling means any exchange or transfer of an animal in return for a consideration – typically the consideration will be monetary, but any type of consideration is included. For example, requiring the buyer to purchase accessories or pet food in return for exchange or transfer of the animal also counts as selling. (Agriculture, Fisheries and Conservation Department, HKSAR, 2023b)

A new licensing system that will affect cat traders is coming into effect in 2024, coupled with a cat-specific Code of Practice which requires all cats traded to be microchipped and obtained from legal sources (registered animal traders) (Agriculture, Fisheries and Conservation Department, HKSAR, 2023b). If the cat is from a home breeder, the breeder's name and contact number must be included in the records. It is hoped that this will decrease the number of cats coming from unknown sources with sub-optimal care. However, as hobby cat breeders are breeding from their own companion animals, it is ambiguous as to whether the offspring can be considered as 'traded'. Also, many breeders may advertise the animals as 'for adoption', 'giving away' their cats in exchange for a red packet (*lai-see* – a token of appreciation from the adopter, which usually is monetary) or donation. These practices are common in animal adoptions and for home cat breeders (Kong, personal communication, 2023).

To enhance animal welfare, the government also proposed a Duty of Care for companion animals in 2019. At the time of writing, the Duty of Care is still being considered and has not been included in the current *Prevention of Cruelty to Animals Ordinance (Cap 169)* (Food and Health Bureau, Agriculture, Fisheries and Conservation Department, HKSAR, 2022), which itself has not been revised since its inception in 1935 (Hong Kong e-legislation, 2018a). The *Dog and Cat Ordinance (Cap 167)* has not been revised since 1950 (Hong Kong e-legislation, 2022).

However, strengthening legislation may also have counterintuitive effects, as discussed by various authors who criticise animal protection legislation in other countries. Bryant (2007: 247) criticises American anti-cruelty statutes as reflecting a "value judgement". He states that the public's expectations

are usually different from the reality of protection afforded by these statutes (2007). Ibrahim (2006) regards some anti-cruelty legislation as 'noble' but ineffective, as it does not challenge the practices that exploit animals. For example, 98% of animals used worldwide are in the food industry but they are exempted from protective legislation. Ibrahim explains this dissonance as stemming from societal preference, legislative capture (large companies having influence on the legislature) and the fact that animals remain property:

> [P]roperty owners will only harm their property if it will produce a societal benefit. Therefore, anticruelty statutes need only protect against the irrational property owner – one who causes or allows harm to his property that is of no benefit to society. (Ibrahim, 2006: 187)

Marceau (2018) criticises the American *Animal Welfare Act* as not protecting animals, especially animals in the food industry, as they are exempted from the Act, and suggests that licences from the USDA are like 'rubber stamps', with many of the licensed establishments committing acts of animal cruelty.

Referring to the Australian animal welfare scene, Morton, Hebart and Whittaker (2020) identify factors that contribute to an enforcement gap with wide implications. These include the reliance on the public to report animal cruelty issues (instead of government agencies patrolling and enforcing the law). Often the government agencies overseeing animal welfare issues are in conflict, as animal cruelty issues may cross many jurisdictions and government departments may fail to collaborate (Morton, Hebart and Whittaker, 2020). There is ambiguity in the language in the legislation, leading to difficulty in interpretation and ambiguity of court rulings. This line of argument is echoed by Rodriguez Ferrere (2022), who sees the enforcement gap as undermining the rule of law. Governments rely on the public and animal welfare organisations with limited resources to report animal welfare issues, making the public not able to "trust the law as it is written" (Rodriguez Ferrere, 2022: 1424). The enforcement gap effectively erodes the integrity of the state's rule of law.

## Promising measures for Hong Kong

### 1. Duty of care with codes of practice

The effects of animal protection legislation and licensing are limited and may even in some cases be harmful to animals. Furthermore, animal holding facilities have flexible labels. A form of registry would serve to monitor the locations of these diverse cat holding facilities. Instead of having specific animal shelter regulations, a duty of care with broader coverage may be more effective (LegCo Panel on Food Safety and Environmental Hygiene, HKSAR, 2020). Any person has a duty of care towards the animal in their care, regardless of whether it is a companion animal or a rescue animal in a holding facility. Apart from the guardian, the 'responsible person' should include anyone looking after the animal, including personnel of pet hotels and grooming facilities. Species-specific codes of practice are being formulated. However, existing proposals still have some grey areas, especially concerning the feeding of stray animals. The currently-proposed Duty of Care amendment only covers those who have obtained a dog licence with their free-roaming or semi-owned dogs. The proposal specifically "excluded animals living in the wild or feral state" (LegCo Panel on Food Safety and Environmental Hygiene, HKSAR, 2020: 3). As discussed above, categorising free-roaming animals as stray or feral has implications for their welfare. Even with the new Duty of Care for cats coming into effect in 2024, unowned cats remain liminal in the context of legal protection.

### 2. Animal Watchers Programme (AWP)

Legislation is only one aspect of safeguarding the welfare of animals. Legislation needs to be enforced effectively. The enforcement gap needs to be addressed via education, not only for the public but also education of law enforcement officers and magistrates. The local police force first launched the Animal Watch Scheme in 2011 in collaboration with local veterinary societies, veterinary schools and animal concern groups (Hong Kong Police Force, 2021). This was in response to Whitfort and Woodhouse's (2010) review of Hong Kong's outdated animal welfare legislation. It aimed to combat animal cruelty through education, publicity,

intelligence-gathering and investigation. The police force started the Animal Watchers Programme (AWP) in 2011 to enlist wider participation from the general public to combat animal cruelty issues (Hong Kong Police Force, 2021). Ease of reporting was facilitated with a dedicated team of officers. By raising awareness through publicity and education, the public can aid in investigating cruelty issues. The Animal Watchers Programme is divided into 'headquarters' and 'regional' levels. Headquarters level consists of 16 advisory board members from government departments, animal welfare groups, animal experts and community leaders, who advise the police on matters of animal cruelty. At a regional level, AWP captains (65) and watchers (165) help the police organise local education events on the prevention of animal cruelty and help gather information on animal cruelty cases (Hong Kong Police Force, 2021). The webpage offers information on animal welfare and cruelty issues with educational campaigns for officers and the public. It is hoped that such a scheme will help to coordinate and integrate the fight against animal cruelty in Hong Kong and help to close the enforcement gap. Even though relying on public reporting of animal cruelty issues is listed as an enforcement gap by Morton, Hebart and Whittaker (2020), the AWP empowers the public in helping with animal cruelty issues by enlisting them to combat the issue together with law enforcement.

### 3. Microchipping, licensing, registration and early neutering

One method of estimating the population of cats is mandatory microchipping in all (owned) cats, as is being introduced in the UK (Department for Environment, Food & Rural Affairs, 2021). The main aim is to reunite lost and stray cats with their guardians, but in effect it can also be used to estimate the size of the population.

Together with microchipping, a cat licence could also be granted, similar to the dog licensing system. However, in Hong Kong, dog licensing is linked to rabies vaccination under the *Rabies Ordinance*, but rabies vaccination of cats is not mandatory. Preventive vaccination for companion cats is also only recommended, not mandatory (Agriculture, Fisheries and Conservation Department, HKSAR, 2023d; Society for the Prevention of Cruelty to Animals Hong Kong, 2023b). With the new cat trader licensing system coming in, all cats traded will be microchipped and vaccinated (Agriculture, Fisheries and Conservation Department, HKSAR 2023c). However, instead of licences, alternative documentation could also be used, for instance identity cards, companion animal passports or centralised electronic vaccination records, forming a database of (owned) cats in Hong Kong. A centralised registry would not only help lost cats be reunited with their guardians (provided the guardian's information is up-to-date) but would also curb illegal breeding.

Early neutering would prevent population growth and help tackle abandonment and the stray animal problem. Using a multistate Matrix Population Model for cats in the UK, McDonald et al. (2023) predicted that husbandry of owned cats (especially neutering) was the most influential in all cat subpopulation dynamics. The model was based on three parameters: the life stage of the cat (i.e., kitten/juvenile/adult/senior), their subpopulation status (i.e., owned/shelter/stray/feral) and their reproductive status (i.e., neutered/un-neutered) (McDonald et al., 2023). The optimal time for neutering remains controversial. The British Veterinary Association (2023) recommends neutering cats and dogs at 16 weeks. Prepubertal neutering in cats (defined as neutering before 23 weeks) was examined by Farnworth et al. (2013), who found differing attitudes towards it across veterinary practices in the UK, Australia and New Zealand. Reasons given were the differences in professional guidelines between countries and different attitudes towards cats (pest vs pet). In a more recent study by McDonald and Clements (2020), opinion remained mixed amongst UK-based veterinary practices regarding neutering at 16 weeks. The authors concluded that this may be related to the familiarity of the procedure and perceived norms amongst veterinarians.

## Conclusion

Regulation and legislation have their part to play in animal protection but need to be enforced effectively. There are many grey areas that still need to be addressed in Hong Kong before all cats, owned

and unowned, can enjoy full protection, for example the labelling of cats and the issue of unregulated breeding and sheltering. The proposed Duty of Care excludes wild and feral animals. Labelling lost and stray animals as such will therefore exclude them from protection. Microchipping all cats would assist in identifying the number of (owned) cats, but it might not be effective given the compliance issues surrounding dog licensing and the enforcement gap. A change in nomenclature from shelters to animal holding facilities in general may also be practical when instigating regulatory measures, given the varied environments in which cats are kept in Hong Kong. The introduction of species-specific Codes of Practice for animal care is commended and it is hoped that with the Animal Watchers Programme more animals can enjoy the protection they deserve.

***Kei Kong's*** *lifelong interest in animals was rekindled with the adoption of her first dog (followed by 7 cats and 2 dogs). Animals have always been her teachers, especially cats, hence the special interest. Having completed various animal-related courses, Kei was lucky to be accepted onto the MA Anthrozoology programme at the University of Exeter, where she is able to delve in depth into questions on human–animal relationships that have bewildered her all her life. It is a fulfilment of a lifelong dream. She is hoping to contribute what she learnt to her home city of Hong Kong. Correspondence: sk768[AT]exeter.ac.uk*

***Acknowledgements:*** *I am an unpaid member of a local animal charity and a newly appointed member of the Animal Welfare Advisory Group, Agricultural, Fisheries and Conservation Department, Hong Kong Special Administrative Region (May 2023 to 2025). I would like to thank Mr P. Chan and the Society for Abandoned Animals (Hong Kong) for providing photographs of their cat shelter. I would also like to thank Miss D. Lau and Miss N. Lee for providing photographs of local cat cafés. I would like to thank Dr J. Gröling, Dr F. Eason and the Anthrozoology department at the University of Exeter for their continual support throughout my journey in anthrozoology.*

***Suggested citation:*** Kong, K. (2024). Can legislation and regulation provide protection for cats (*Felis silvestris catus*) in animal holding facilities in Hong Kong?. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 51–65.

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## Figures

Figure 1. Traditional shelter for cats in Hong Kong. Photo used with permission from Mr P. Chan of the Society for Abandoned Animals, Hong Kong.

Figure 2. Traditional shelter for cats in Hong Kong. Photo used with permission from Mr P. Chan of the Society for Abandoned Animals, Hong Kong.

Figure 3. Traditional shelter for cats in Hong Kong. Photo used with permission from Mr P. Chan of the Society for Abandoned Animals, Hong Kong.

Figure 4. A cat café in Hong Kong. Photo used with permission from Miss D. Lau.

Figure 5. A cat café in Hong Kong. Photo used with permission from Miss N. Lee.


Figure 6. Samkee Bookshop. Photo used with permission from Miss D. Lau.

Figure 7. Samkee Bookshop. Photo used with permission from Miss D. Lau.

# The case against pheasants: Questioning the legal framework governing the release of captive-bred pheasants (*Phasianus colchicus*) in the UK

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***Abstract:*** *As a hand-reared game bird, the common pheasant (Phasianus colchicus) occupies a unique legal status in the UK. At certain times of the year, almost a third of all wild birds in the UK are pheasants (Burns et al., 2020), and each September, when captive-bred pheasants are released into the wild, they constitute almost half of the overall avifauna biomass (Blackburn and Gaston, 2021). The pheasant's legal status is particularly problematic, due to the impact that such large numbers of invasive and voracious omnivores have on both biodiversity and on road safety. Their liminality also negatively affects the wellbeing of the pheasants themselves. In this paper I investigate the legal framework pertaining to pheasants in the UK and question, albeit tentatively, whether there is an argument for changing existing legislation or practices, based upon the negative impacts that occur as a result of their release.*

THERE ARE FEW BRITISH BIRDS WHO ARE AS conspicuous as the common pheasant (*Phasianus colchicus,* figure 1). 'Common' is an apt descriptor, as at certain times of the year a third of all wild birds in the UK are pheasants (Burns et al., 2020). In September, when captive-bred pheasants are released into the wild, they make up almost half of the overall avifauna biomass (Blackburn and Gaston, 2021). These numbers are even more remarkable when one considers that the common pheasant is a non-native species (Jonsson, 1992: 182–183).

As hand-reared game birds, common pheasants occupy a unique legal status in the UK. This status is particularly problematic due to the impact that such large numbers of voracious, free-roaming omnivores have on both biodiversity and road safety. Their management also negatively affects the wellbeing of the pheasants themselves and they cannot expect to live long in the wild, as will be explained more below.

In this paper I investigate the legal framework pertaining to common pheasants in the UK. Based upon the negative impacts that occur as a result of their release, I then question, albeit tentatively, whether there are arguments for changing existing legislation or practices, on the grounds of road safety, animal welfare and environmental impact.

## The common pheasant

The common, or ring-necked, pheasant is a large galliform native to various parts of Asia (Jonsson, 1992: 182–183). The cock varies in colour, depending on race, several of which are popular variants in the UK. They were first imported into Britain and eaten as a luxury by the Romans and have grown in popularity as a game bird ever since. In terms of total 'bag', common pheasants (henceforth pheasants) are the most popular game bird in the UK (Blackburn and Gaston, 2021).

In order to maintain a sizeable population of pheasants for hunting purposes, millions are reared in captivity by game hatcheries every year, before being released into the wild. The number of pheasants released is not regulated and so it is difficult to ascertain the precise peak pheasant population. However, Aebischer (2019) estimates that between 35 and 47 million birds are released annually. For the purpose of this paper, I will use Blackburn and Gaston's (2021) estimate of a peak wild population of 47 million birds. This number would constitute approximately 40 per cent of the overall UK bird population (based upon a survey conducted of UK breeding bird populations by Burns et al., 2020) and almost half (48.8 per cent) of the entire avifauna biomass (Blackburn and Gaston, 2021). Pheasants are four times more common than the UK's second most common wild bird, the wren (*Troglodytes troglodytes*), which has a breeding population of 11 million birds (Burns et al., 2020).

In captivity, a pheasant can live for 27 years (AnAge, 2023) but the life of most British pheasants is far shorter. In September, at the age of six to eight weeks, young poults are placed in pens and then released up to six weeks later (GWCT, 2023). Only 13 per cent survive until the end of the hunting season in February (data extrapolated from Turner, 2008). Ten per cent are involved in accidents (mostly collisions with cars) and 11.9 million (34 per cent) are eaten by predators (70 per cent of which are foxes). 1.4 million are victims of disease (or unknown deaths) and only 12.5 million (36 per cent) are actually shot. Only one to two per cent are thought to survive past their second shooting season.

According to the most recent estimate, the wild population of pheasants is 2.35 million pairs (Woodward et al., 2020). However, this number does not exclude captive-bred pheasants that have simply survived their first shooting season. Pockets of wild pheasants have been recorded in arable areas of East Anglia, southern England, northeast England and some lowland areas of Scotland (Tapper, 1999) but we do not know how sustainable wild populations would be long-term, without the annual release of fresh, hand-reared stock. Other galliform species that were once popular but are no longer legally released have subsequently disappeared from the wild. Once common in some areas, Lady Amherst's pheasants (*Chrysolophus amherstiae*) are now either categorised as no longer self-sustaining or considered extinct (BOU, 2022), and Woodward et al. (2020) record only 15 pairs of golden pheasants (*Chrysolophus pictus*).

Pheasants are not included on DEFRA's (2022) list of "invasive, non-native (alien) animal species". While pheasants are non-native, the term 'invasive' is problematic, as there is no globally accepted definition, and many of the definitions that are used are open to interpretation. The UK government uses the Great Britain Non-Native Species Secretariat's definition of 'invasive species': "any non-native animal or plant that has the ability to spread, causing damage to the environment, our economy, human health and the way we live" (House of Commons, 2019: 5). This paper will discuss some of the ways in which 'damage' can be attributed to pheasants, however their 'ability to spread' is reliant on humans rather than population growth in the wild. In the US, the Department of Agriculture (USDA) define an 'invasive species' as a species that is "1) non-native (or alien) to the ecosystem under consideration and, 2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health" (USDA, 2023). The use of the word 'invasive' to describe pheasants in this paper is based upon their non-native status and the argument that they cause such damage and harm.

## Pheasants and the law

Captive-reared pheasants have a unique dual status under UK law, which they share with the red-legged

partridge (*Alectoris rufa*), a similarly invasive, captive-bred game bird species. While in captivity, pheasants are considered 'livestock' (*Animals Act 1971*: section 11b), however, the moment they are released into the countryside, they are considered 'wild birds' (*Wildlife and Countryside Act 1981*: section 1-6b). This means that while in captivity, pheasants are the farmer's property and protected under the *Animal Welfare Act 2006,* but upon release they are no longer owned by the farmer and the latter is absolved of all responsibility for them. If the pheasant comes to harm, if they damage a crop or if they cause a road accident, no human can be held responsible. However, if the farmer chooses to round up and recapture surviving pheasants at the end of the hunting season (as is often the case), the birds regain livestock status (figure 2).

There are no rules governing how many pheasants can be released onto a normal piece of land. However, as of 2021, *General Licence 43* limits the release of birds to 700 birds per hectare of a release pen on a 'European site', or 1,000 birds within the 500-metre buffer zone of a European site. European sites were formerly known as 'Natura' sites and are areas of particular environmental importance, designated as either a Special Protection Area (SPA) or a Special Area of Conservation (SAC) under the *Conservation of Habitats and Species Regulations 2017* (regulation 17).

The *Game Act 1831* (section 2) defines pheasants as 'game', which means that they can be shot in the wild under licence at specific times of the year, under certain conditions. In the case of pheasants, the shooting season in England and Wales runs from October 1st until February 1st but no shooting is allowed on Sundays or Christmas Day. Rural land has sporting rights attached to it and the owner of these rights can authorise anyone to come on to the land to shoot game. Sporting rights are generally the property of the landowner, but they can be separated or leased to a third party. Because pheasants are classified as wild birds upon release, any pheasant is fair game, irrespective of its origin. The person shooting the pheasant need only seek permission from the owner of the shooting rights and be in possession of a firearms or shotgun certificate.

*General Licence 42* permits gamekeepers in England to shoot carrion crows (*Corvus corone*), jackdaws (*Corvus monedula*), magpies (*Pica pica*) and rooks (*Corvus frugilegus)* to protect pheasants when they are livestock. However, the licence also defines pheasants as livestock when they are "free roaming but remain significantly dependent on the provision of food, water or shelter by the keeper for their survival" (GL42, 2022). This extends the definition of pheasants as livestock and leads to ambiguity as to when a pheasant is and isn't wild. In January 2022, wildlife campaign group Wild Justice challenged the lawfulness of GL42, also stating that corvids pose no threat to pheasants at this stage in their lives (Horton, 2022). This is the latest in a series of legal challenges, which began in 2019, in which the group have challenged general licences relating to shooting in England, Wales and Northern Ireland.

## Argument 1: road hazard

In the UK, pheasants collide with cars in disproportionately high numbers. They are 12 to 13 times more likely to collide with a car than should be expected, compared to other bird species (Madden and Perkins, 2017). Pheasants make up 45 per cent of all reported avian roadkill, and 14 per cent of all reported other-than-human animal (henceforth animal) roadkill (Project Splatter, 2022). Only badgers are reported in greater numbers. However, whereas the Badger Trust (2023) encourage people to report road casualties, an equivalent reporting structure does not exist for pheasants. In one study conducted by Turner (2008), 486 pheasants were radio-tagged at 6 separate sites. 10 per cent of these birds died of 'other' causes, which Turner (2008: 69) attributes to "collisions with vehicles and fences, drowning in cattle troughs or similar". If the same is true of all released pheasants, then up to 3.5 million die of these causes.

There are many factors and traits that contribute to the high pheasant mortality rate on roads, over and above the sheer size of the pheasant population. Pheasants have relatively small brains (Møller and Erritzøe, 2017) and fly low for short distances (Erritzøe, Erritzøe and Møller, 2011). Pheasants' omnivorous diet is also a factor (Cook and Blumstein, 2013). In a study that compared mortality between wild and pen-reared pheasant hens in the US

(Leif, 1994) it was only reared pheasants that collided with vehicles and not wild ones. Birds born in captivity have poor spatial memory (Whiteside, Sage and Madden, 2016) and poorer flight skills (Robertson, Wise and Blake, 1993). Pheasant roadkills peak between September and November, after the young pheasants have been released from their pens (Madden and Perkins, 2017). There is a lull during winter months, as the pheasants are provided supplementary food, but roadkill rates rise again at the end of February, as feeding ceases and the pheasants search for food.

Between 1999 and 2003, collisions with pheasants were implicated in an average of 65 accidents per year that resulted in injury to humans (Langbein, 2007) and approximately 4 accidents per year led to serious human injury or death. Collisions with pheasants that result in damage to property are far more widespread. Research conducted by Zurich Insurance Group (2021) states that approximately 3,500 claims a year are made for damage to vehicles caused by pheasants. Animal-vehicle collisions cost insurance companies £63.8 million in car repairs, with the average claim costing £2,400. The vast majority of these claims are for collisions with deer (61 per cent), however pheasants account for the second highest number of claims (11 per cent). As DEFRA and the Highways Agency do not record data on the cost of animal collisions, it is difficult to determine the total cost to drivers from vehicle collisions with pheasants in term of money and personal injury, yet the data above suggests it is significant.

There is always a victim in this type of vehicle collision and that is the pheasant themselves. If current management practices result in the death of up to 10 per cent of released birds, economic loss to drivers and insurance companies and even serious human injury and death, it would seem prudent to consider measures that could reduce the number of vehicle collisions with pheasants. If the release of pheasants into the wild was more closely regulated and if each bird was ringed, it would enable populations to be both managed and monitored. Releasing pheasants set distances away from roads, based upon the average radius of travel from the original pen, might reduce the likelihood of a collision. If a ringed pheasant remained livestock, the farmer would be liable for the damage caused by the bird, if it could be proved that they had failed to control the animal. These are just a few of the measures that could be explored to reduce the number of collisions between pheasants and vehicles.

## Argument 2: animal welfare

Not always livestock, not always wild, the legal liminality of pheasants also negatively affects the wellbeing of the birds themselves. While kept in captivity, pheasants are classed as livestock and so they are 'afforded' similar protection and welfare standards as other farmed animals (*Animal Welfare Act 2006*). However, it is a life of containment in cages and pens. When pheasants are released, they are as free to roam as any other wild animal. However, as game birds, they are not provided the same protection as most wild birds (under the *Wildlife and Countryside Act 1981*). There are many other game birds that can be hunted in the UK, as well as 'pest' species that can be shot under *General License 42*, but evidence suggests that captive-reared pheasants are unprepared for a life in the wild and cannot expect to live long.

In captivity, chicks are reared at an initial density of around 60 birds per square metre, in visual isolation from the outside world (Wise, 1993). At approximately 3 weeks they are moved to unheated shelters and finally external mesh pens to acclimatise them to the elements and provide visibility of aerial predators. Anti-pecking devices are often fitted to their beaks to prevent injury during aggressive social interactions (Butler and Davis, 2010). Barnett (2004) estimates that 1.6 million pheasants (8 per cent) die in farms every year before they are 8 weeks old. Madden, Santilli and Whiteside (2020: 2) state that it is inappropriate to compare the welfare and husbandry techniques of pheasants to those of chickens (*Gallus gallus domesticus*), as they are "likely to respond to stressors in very different ways". Chickens have been bred to encourage traits consistent with domesticity and husbandry, while breeding pheasants are often re-captured individuals that have survived their first hunting season.

If the data from Turner's study on the fate and management of pheasants (2008) reflects the fate of pheasant populations at large then 48% of all released pheasants will have died within the first 6 months of their release, for reasons other than being

shot (which accounts for another 38 per cent of fatalities). A primary reason for this high mortality rate is that captive-bred pheasants are ill-equipped to survive in the wild (Kraus, Graves and Zervanos, 1987; Robertson, Wise and Blake, 1993; Whiteside, Sage and Madden, 2016). One could argue that it is unnecessarily cruel to release an animal in the knowledge that they are ill-equipped to survive long-term in the wild, even if they are being bred to be shot.

There is little precedent for such an argument. The closest comparison may be white 'release doves' that are used at weddings and other ceremonies. Albino ring-necked doves (*Streptopelia capicola*), which have traditionally symbolised peace in Judeo-Christian religion, have no homing instincts and will not return if released. They have little chance of survival in the wild (Engber, 2005). Albino domestic pigeons (*Columba livia domestica*) are also used as release doves. These birds are more robust and do possess homing instincts but are often untrained at the point of release. There have been several high-profile cases where release doves have died immediately after their release (Bever, 2015; Jones, 2002; Tejwani, 2021) and the Vatican and the International Olympic Committee have subsequently ceased using them in ceremonies (Bever, 2015; D'Emilio, 2015; ICC, 2020). But despite objections and calls for a ban on release doves from animal welfare organisations (Rose, 2018; WRL, 2018), so far all welfare guidance specific to this practice in the UK is voluntary.

Pheasants are predominantly shot for sport rather than food. From a farming perspective, such high mortality rates and the wholesale price for shot birds make pheasants a highly inefficient form of meat production. Between 2011 and 2018 the wholesale cost of a shot pheasant fell from 60p to just 26p, and by 2018 only 48 per cent of shot pheasants were taken by game dealers. 46 per cent of these birds were taken by dealers free of charge and 12 per cent of shoots paid for a dealer to collect them (Savills, 2018: 4). This could be considered when comparing the welfare of pheasants against a requirement to produce food and sustain the farming industry, as opposed to purely hunting.

## Argument 3: environmental impact

Pheasants are opportunistic omnivores and will eat a wide range of food, including cultivated grains, wild seeds, fruits, nuts, insects, grass, leaves and other animals such as snails, worms, millipedes and spiders (Dalke, 1937). As the annual release of 47 million members of an invasive species into the British countryside almost doubles (95.3 per cent) the entire avifauna biomass (Blackburn and Gaston, 2021), pheasants must consume large amounts of food that would otherwise be available to wild animals. Agricultural and semi-rural habitats are managed by gamekeepers in ways that promote the survival of game birds and local populations of wild, generalist predators, and pest species, such as foxes, are shot. Supplementary feeding provided to pheasants and partridges and disturbances caused by hunting itself, such as trampling, flushing and accidental shooting, also impact wildlife (Madden and Sage, 2020). There is growing concern amongst environmental campaigners that, released in these numbers, pheasants are altering the structure of hedgerows and having long-term negative impacts on woodland diversity (RSPB 2023).

Releasing a large number of captive-reared birds across a wide area of the UK also poses a potential risk as the vector for spreading zoonotic disease to wild populations of animals (Madden and Sage, 2020). Low welfare standards during containment could lead to immunosuppression and vulnerability to pathogens. In May 2023, the RSPB called for a moratorium on the release of game birds, following 10 outbreaks of avian flu at game bird hatcheries since 2021 (Laville, 2023). Other potential environmental concerns include the continued use of lead in the ammunition used to shoot game birds. Meyer et al. (2016) calculate that ingesting lead shot in the carcasses of dead game birds reduces the annual population growth rate of red kites (*Milvus milvus*) by between 6.5–4 per cent. Another risk is the spread of antibiotics and other pharmaceuticals used to treat pheasants in captivity into the food chain upon release (NADIS, 2023a; 2023b). Antimicrobial resistant bacteria (ARB) have been detected in the faeces of foxes, buzzards and other raptor species that are common predators and scavengers of pheasants (Madden and Sage, 2020).

Organisations that represent the shooting industry argue that land management practices related to pheasant shooting have a beneficial environmental impact, due to the conservation efforts and habitat improvements carried out by landowners, gamekeepers and volunteers (Olstead and Moore, 2014: 11–17). Environmental and anti-hunt groups, such as Wild Justice, argue that pheasant shooting has a negative environmental impact (Barkham, 2019). The most recent study of the ecological consequences of gamebird releases in England was conducted by Madden and Sage (2020). It concluded that the release of pheasants into the wild has both positive and negative impacts on habitats. In many instances, such as the 'predation control' measures implemented by game managers, there are both subjectively positive and negative effects of a single factor. Madden and Sage (2020: 6) advised that "future work needs to clearly determine the specific ecological outcomes that are of interest and carefully consider and assign the direction of each effect in order to arrive at meaningful net outcomes".

However, it may not be necessary to prove either a positive or negative environmental impact of releasing captive-reared pheasants, only that there *is* an impact. In the General Assembly's *World Charter for Nature 1982* (I,1) the first principle states that "nature shall be respected and its essential processes shall not be impaired". The fourth principle adds that organisms that are utilised by humans (in this case pheasants) "shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist". The subsequent Functions and Implementations sections of the charter provide further guidance as to how these principles are to be achieved. The key word in the charter is 'integrity'. At the very least the charter warrants a further, definitive study into the negative impact of releasing pheasants on the integrity of natural habitats.

As discussed earlier in this paper, if not for the annual release of captive-bred birds, it is not known whether wild pheasant populations would be sustainable long-term. The demise of other pheasant species suggests they would not. If this is the case then common pheasants are a non-native species, not normally resident in the UK. There are numerous laws that prohibit the release of invasive species. The *Wildlife and Countryside Act 1981* (c.69, 14, 1a) states that it is an offence "to release into the wild any animal [...] not ordinarily resident to the UK, or which constitutes a known threat". The *Natural Environment and Rural Communities Act 2006* regulates the possession, transportation and sale of such species. The *Invasive Alien Species Order 2019* (Schedule 2, Part 1) lists eight particularly problematic animals, including grey squirrels (*Sciurus carolinensis*), but excludes pheasants. The *Conservation of Habitats and Species Regulations 2017* (Part 4, 54) prohibit the introduction of new species from ships, if that species has a natural range "which does not include any area of Great Britain" and if the introduction would give rise to a "risk of prejudice" to natural habitats and wild native flora or fauna. England has agreed to combat invasive alien species as part of its commitment to the international *Convention on Biological Diversity* (DEFRA, 2020).

In 2019, Wild Justice challenged DEFRA in court, arguing that the annual industrial-scale release of gamebirds was in breach of the EU *Birds and Habitats Directive* (Barkham, 2019). As a consequence, DEFRA agreed that the law required them to assess the impact of gamebird releases. The study by Madden and Sage (2020) formed a major part of that assessment but proved inconclusive. Wild Justice requested a judicial review (Weston, 2020), which took place in the high court in November 2020. As a result, DEFRA agreed to license the release of common pheasants and red-legged partridges and an interim general licence (GL43, 2023) was published, following a three-week consultation, and subsequently reissued in May 2023. However, in June 2023, Wild Justice sent a Pre-Action Protocol letter to DEFRA, claiming the department had failed to monitor compliance with GL43 (Wild Justice, 2023) and that gamebirds were being released close to sites of high nature conservation value.

In recent years, the RSPB has also campaigned more actively to reduce the number of pheasants released. After a gamebird review conducted in 2020, they stated that they would call for "further regulation to drive up environmental standards" within 18

months, if significant progress was not made (Harper, 2020). In August 2022, they called for an immediate moratorium on the release of gamebirds into the UK countryside (RSPB, 2022), in this instance questioning their role in spreading avian influenza to wild bird populations.

## Conclusion

Shooting advocacy groups are keen to point out the economic, environmental and social benefits of shooting (Olstead and Moore, 2014) and, as Wild Justice have discovered, any suggestion that the release of captive-bred pheasants should be subject to changes in the law, new legislation or closer regulation is met with strong opposition. Such a case should therefore be based upon a very compelling argument.

I do not believe that collisions between pheasants and cars alone provide an appreciable enough argument, based upon current levels of collision, injury and cost, relative to other wild animals. The same could be said about the quality of life that pheasants experience and the high mortality rates that pheasants suffer upon release, compared to other farmed animals. Such evidence, however, could be presented as part of a wider case. The environmental impact of releasing an invasive species into the wild on such a massive scale appears to provide the most compelling argument and has gained the most legal traction thus far. As Wild Justice has pointed out, more research is urgently needed to further understand the negative ecological impacts of releasing so many birds.

However, I believe that a study to understand the long-term viability of wild pheasant populations in the UK would also be hugely beneficial, as this might lead to us reframing the way we see common pheasants in the UK. Are they wild birds with a rightful place in the British countryside, or are they a truly invasive and destructive, alien species?

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***Suggested citation:*** Mulford, P. (2024). The case against pheasants: Questioning the legal framework governing the release of captive pheasants (*Phasianus colchicus*) in the UK. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 67–76.

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## Figures

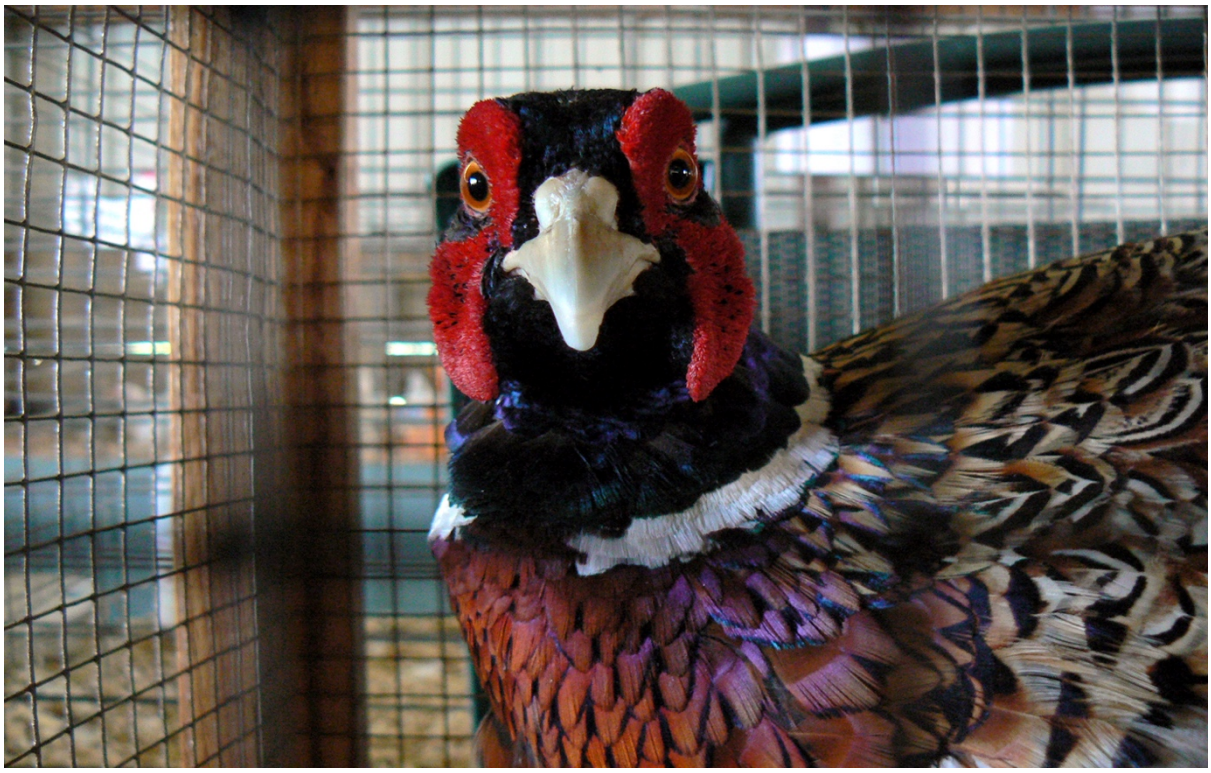

Figure 1. A common pheasant is prepared for release.
Photo courtesy of Benimoto under licence CC by 2.0.


Figure 2. Pheasants and the law. Author's illustration.

# Doing the crime but not the time: Raptor persecution, deterrents and prosecution rates in North Yorkshire

*Niamh Byrne*

***Abstract:*** *The persecution of raptor species has increased in correlation with the rise of grouse shooting in the UK. Gamekeepers, who manage moorlands for shooting estates, are responsible for maintaining grouse populations within the estate's perimeter and legally kill certain species that consume grouse. However, this has also led to the illegal persecution of protected raptor species. This paper investigates raptor persecution within North Yorkshire, the county which retained the highest rate of raptor persecution in the UK for seven consecutive years. Current legislation is investigated to determine whether it provides adequate deterrence to this illegal activity. Selecting the UK's number one hotspot of illegal raptor persecution as a case study, this paper concludes that current legislation and its enforcement inadequately combat this wildlife crime and not enough is being done to address this, both regionally and nationally.*

THE WORD 'RAPTOR' ENCOMPASSES BIRD species such as red kites (*Milvus milvus*), buzzards (*Buteo buteo*) and kestrels (*Falco tinnunculus*) (figure 1). It is derived from the Latin *rapere*, which means 'to seize', as they capture and feed on live prey or carrion (National Wildlife Crime Unit, 2023). Within the UK, game shooting became widespread in the 19th century and since then, the persecution of raptors has increased (Lovegrove, 2007). Driven grouse shooting, specifically, takes place on UK moorlands, which are heavily modified and managed for the shooting of red grouse (*Lagopus lagopus*). This shooting activity requires a high density of grouse so that a line of beaters can walk along and drive the grouse over a row of waiting shooters (Southerton, Tapper and Smith, 2009). Gamekeepers are hired by large estates to intensively modify the moorland and manage and protect game species (Melling et al., 2018; Royal Society for the Protection of Birds, RSPB, 2019a). This results in gamekeepers being in competition with each other to retain the highest density of grouse within their holding. To maintain a large population for shooting, gamekeepers can legally control species that may consume grouse and their eggs, such as red foxes (*Vulpes vulpes*), weasels (*Mustela nivalis*), stoats (*Mustela erminea*), carrion crows (*Corvus corone*) and hooded crows (*Corvus cornix*). However, there is substantial evidence to suggest that gamekeepers also illegally persecute protected raptor species (Ewing et al., 2023; RSPB, 2021a; Swan et al., 2020).

Raptor persecution has been a UK wildlife crime policing priority for the past fourteen years (RSPB, 2019a). The RSPB is an organisation leading the

way on the prevention of and research and education into raptor persecution in the UK. The RSPB, alongside bird crime officials within the police force and statutory agencies, publish an annual bird crime report, which summarises national bird crime rates along with case studies and solutions to address this wildlife crime (RSPB, 2021a). Due to such bird crime data being collected for 33 consecutive years, summarising raptor persecution trends (RSPB, 2020b), it was important for this paper to utilise these bird crime reports alongside other relevant academic research.

In order to gain a thorough insight into this form of rural crime, this paper takes a case study approach to focus regionally on the UK's raptor persecution hotspot, North Yorkshire. This area has not previously been analysed using a case study methodology, especially within the academic literature. However, such a methodology can provide an in-depth understanding of the social dimensions of the conflict, extracting lessons which can then be applied further afield to a nationwide problem (Crowe et al., 2011). Using a case study approach based on North Yorkshire, this paper explores the social–cultural complexities of raptor persecution regionally to understand the dynamics involved. This paper will investigate current legislation and enforcement, asking whether it is appropriate for combating this wildlife crime priority, and suggest potential modifications and improvements.

## The historic contribution

Understanding how societies have behaved in the past, and in this case examining the historical representation of raptor species, can help us explore why societies presently behave the way they do (Stearns, 2020). Lovegrove (2007) outlines three distinct phases of wildlife management that are important for understanding the history of raptor persecution. The first phase coincided with the *Vermin Act of 1566*, where church wardens provided payment to those who killed 'vermin' species, which included raptors at that time. The second phase began in the 19th century with an indiscriminate war on predatory species by new sporting estates in England. The third phase followed the Second World War when public concerns over the killing of wildlife began to emerge and subsequently raptor persecution awareness increased.

The widespread disappearance of raptors in North Yorkshire really began when game shooting flourished in the 19th century (Lovegrove, 2007). Labour was plentiful. Elites paid top prices to shoot red grouse on the moors and so provided economic fortunes to remote areas. Farmers were hired to transport grouse sacks, gamekeepers were hired to manage the land, while less directly, income was generated for farriers, hoteliers, game dealers, railway companies and coachmen (Done and Muir, 2001; Lovegrove, 2007). As a result, shooting became a deeply rooted tradition in North Yorkshire, supported by rural folks and the elites. However, this extensive history of management resulted in the near-extinction of raptor species (Done and Muir, 2001; Lovegrove, 2007). Burnside and Pamment's (2020: 191) research cites a gamekeeper who explained that "in the 1960s, 70s, 80s and early 90s it was absolutely industry standard. If it flies, it dies. If it's not a grouse, shoot it. It was that clear-cut." By the beginning of the 20th century, red kites were down to just two remaining breeding pairs, hen harriers (*Circus cyaneus*) were eliminated, and buzzards only existed where gamekeepers were absent (Lovegrove, 2007).

The *Protection of Birds Act 1954* was the first legal protection granted to raptors to halt their extinction. Despite the recovery of raptor populations, however, illegal persecution became rife (Lovegrove, 2017; Taylor, 2011). Nevertheless, alongside their legal protection, public attitudes began to change, with mounting opposition to shooting sports (Lovegrove, 2007). Now, in the 21st century, there is increasing public and political support for raptor protection, yet illegal persecution continues (Burnside and Pamment, 2020).

## Raptor persecution rates

In the UK, bird of prey populations are returning from the brink of extinction through the use of reintroduction programmes and full legal protection. Using the BirdLife International (2004) Birds in Europe rating standards, of the 15 breeding raptor species in the UK, 10 remain on the Red or Amber list, meaning their population status is still of concern (RSPB, 2023a). However, gamekeepers

are concerned about rising populations, as raptor species reduce the breeding density and productivity of red grouse and therefore the shoots' overall profits (Thirgood et al., 2001). There are several studies which propose a threshold number of raptors within an area to reduce the impact on grouse management (Game and Wildlife Conservation Trust, 2023; Thirgood and Redpath, 2008). One report, produced by a partnership between The Game Conservancy Trust and the RSPB (2002) stated that raptor predation reduced grouse abundance by 50% on the Langholm estate, resulting in grouse shooting becoming no longer economically viable. However, it is difficult to find similar studies from game organisations about red grouse population thresholds, which the RSPB state are kept "unnaturally high" (RSPB, 2023b: 15).

Raptor persecution is the illegal killing of birds of prey, predominantly using methods such as shooting, poisoning and trapping. As this is done illegally and discreetly in the countryside, the majority of these wildlife crimes go unreported (RSPB, 2021a). In bird crime reports, RSPB records confirm raptor persecution incidents with physical evidence such as carcasses. Murgatroyd et al. (2019) undertook a study to get closer to the true figure of this wildlife crime by using a large sample of tagged raptors. Of the 58 satellite-tracked hen harriers, 4 were confirmed illegally persecuted with evidence of their carcasses, whilst 38 others simply disappeared. Due to their disappearance being tracked to habitats managed for grouse and the unnaturally high death rate, they concluded that there was strong evidence that the 38 disappearances along with the 4 confirmed dead raptors were linked to illegal killings associated with grouse shoot management. The highest density of these disappearances and illegal killings was in Yorkshire. North Yorkshire retained the highest rate of raptor persecution for 7 consecutive years, with approximately 135 confirmed incidents in just 10 years (figure 2) (RSPB, 2020a). A combination of grouse shooting being a deeply rooted tradition in North Yorkshire and 95% of the special protected area in North York Moors National Park being managed for grouse (Southerton et al., 2009) could explain this hotspot of illegal raptor persecution.

The year 2020 experienced unprecedented figures, with 137 raptor persecution incidents across the UK, the worst bird crime figure ever recorded for the RSPB, and 26 of those incidents were recorded in North Yorkshire (RSPB, 2020b). The 2021 bird crime report also recorded 108 raptor persecution incidents and for the first time in 7 years North Yorkshire did not have the highest raptor persecution rates (RSPB, 2021a). However, with 10 recorded incidents it was not far off the worst county, Norfolk, which had 13 reported raptor crime incidents (RSPB, 2021a). Wildlife crime officials believe that gamekeepers were using the COVID-19 lockdown to persecute raptors without fear of detection, hence the significant increase in the number of incidents (RSPB, 2019a).

## The current law

All wild birds, their nests and their eggs are protected by the *Wildlife and Countryside Act 1981*, which includes all wild birds that are resident in or visitors to Great Britain, except game and poultry. This Act makes it a criminal offence to take, kill or injure protected wild birds or take, damage or destroy their nests or eggs. In addition, it is an offence to use methods of killing such as traps, poison, snares, lights, electrical devices, some firearms and decoys to kill any wild bird, except under licence. The majority of these methods have been used to persecute raptor species. Some rarer bird species are placed in Schedule 1, which makes it an offence to disturb an active nest intentionally or recklessly during the breeding season (Cooper, 1986; *Wildlife and Countryside Act 1981*). Schedule 1 raptor species include common buzzards, red kites and hen harriers, all of which have been persecuted in North Yorkshire (RSPB, 2021b). If it is suspected that any person has committed an offence, an officer can stop and search the individual along with their possessions. If the individual is found guilty of an offence, they can be fined up to £5,000 and/or imprisoned for a term not exceeding six months (*Wildlife and Countryside Act 1981*). However, the fine will vary depending on the vulnerability of the bird species and the number of offences involved. The courts can confiscate the birds, nests, and/or eggs, along with any vehicle, weapon, or tools used to commit the crime (RSPB, 2010; *Wildlife and Countryside Act 1981*).

To promote the enforcement of this legislation, 39 out of the 43 police forces in England and Wales had received some form of wildlife crime training by 2018 (National Police Chiefs' Council, 2018). However, wildlife crime officers' duties are mostly part-time, tasked alongside other police matters (RSPB, 2023c), with many struggling with time and resources to investigate such cases (United Nations Office on Drugs and Crime, 2021). Since North Yorkshire has the most consecutive years of being the hotspot for such crimes, a project called *Operation Owl* was launched in 2018 by North Yorkshire Police, the RSPB, Royal Society for the Prevention and Cruelty to Animals (RSPCA), North York Moors National Park and Yorkshire Dales National Park (North Yorkshire Police, 2024). This joint initiative was established to raise awareness of raptor persecution, encouraging the public to be vigilant for signs of this crime and to report suspicious activity to the police. This operation provided police with the necessary intelligence to carry out randomised checks on known persecution hotspots to disrupt illegal activity. Due to the uptake and success of the project, in June 2019, *Operation Owl* was rolled out nationally (National Rural Crime Network, 2023; North York Moors National Park Authority, 2023; National Wildlife Crime Unit, 2023).

## Assistance of external agencies

A large proportion of raptor persecution is never discovered, reported or recorded, which has a significant impact on our understanding of the true severity of the crime. As a result, police forces lack the statistics on crime rates to allocate an accurate number of resources, finances and task forces to the enforcement of the law in this area. Therefore, non-governmental bodies take initiative to assist police forces in combating this wildlife crime priority. The likes of the RSPB, RSPCA and Environmental Investigation Agency (EIA) all carry out their own investigations and in some cases pass them to the police to pursue prosecutions (Wellsmith, 2011). In 2006, the National Wildlife Crime Unit was founded to gather data and intelligence, perform tactical and strategic analysis, and co-ordinate and facilitate co-operation with other countries. The unit cannot pursue prosecutions but can highlight local and/or national threats and hotspots and assist in the prevention and detection of wildlife crime priorities (Osborne, 2006). The RSPB, the charity leading the way on fighting raptor persecution, retains an accurate data map for confirmed raptor persecution incidents (figure 3), highlighting hotspots for shooting, trapping, poisoning and nest destruction incidents. Natural England state that the visual reference might encourage members of the public to keep their eyes out for suspicious activities and work alongside police efforts (National Wildlife Crime Unit, 2023).

All these collaborations now work under an umbrella group called The Partnership for Action Against Wildlife Crime (PAW). This partnership has the aim of reducing wildlife crime, facilitating data sharing, and enabling inter-agency working. This culminates in increased resources, knowledge, finance and power to tackle wildlife crime. With this collaboration, the member organisations can also make a combined effort towards awareness-raising, publicity and training (Gov.uk, 2023; Wellsmith, 2011). The public support these organisations have, such as the RSPB having over a million members, significantly increases public awareness of and support for combatting raptor persecution crimes (Burnside and Pamment, 2020; Nurse, 2012; RSPB, 2023d). Such public reinforcement provides strength to a campaign when organisations lobby for legislative change (Nurse, 2012). Increasing this awareness of raptor persecution inflates the chances of individuals reporting suspicious activity. As raptor persecution most often occurs in the countryside, information is often passed to the police or other organisations by ramblers and other countryside users (Lovegrove, 2007). However, despite increased public awareness surrounding the issue, support from wildlife presenters such as Chris Packham and increased police attention, the influence on the number of prosecutions and convictions for raptor persecution, especially in North Yorkshire, has been negligible.

Not all partnerships result in significant improvements to solve the bird crime issue. The Yorkshire Dales Birds of Prey Partnership included organisations such as the RSPB, Country Land and Business Association, British Association for Shooting and Conservation, National Gamekeepers Association, Moorland Association, police

authorities, Northern England Raptor Forum, Natural England, Nidderdale Area of Natural Beauty and Yorkshire Dales National Park. They partnered to tackle illegal raptor persecution in Yorkshire, including North Yorkshire (Raptor Persecution UK, 2022). However, the RSPB left the partnership, stating that there had been little to no improvements or action to address illegal activity (RSPB, 2018). There had also been issues of modified press releases from the Moorland Association, which did not represent the true figure of bird crimes within the National Park (Raptor Persecution UK, 2023).

## Prosecution rates and failing enforcement

Most wildlife crime investigations never lead to court and many cases are handed to inexperienced counsels that are not trained to prosecute such crimes (UNODC, 2021). Between 2019 and 2021 there were 51 confirmed raptor persecution incidents in North Yorkshire but no convictions (RSPB, 2019a; RSPB, 2019b; RSPB, 2020a; RSPB, 2021b). In 2020, during the COVID-19 lockdown, North Yorkshire Police and the RSPB found 5 dead buzzards in North York Moors National Park Authority, 8 individuals were interviewed under caution in connection with the incident but without supporting evidence the case did not go any further (RSPB, 2020b). With North Yorkshire being the hotspot for raptor persecution for 7 consecutive years, in 2020 North Yorkshire Police undertook several raids of shooting estates for 10 bird of prey shooting and poisoning incidents. None led to convictions (RSPB, 2020b).

> [S]ome 21 hen harriers had disappeared from North Yorkshire last year [2022]. We have had some horrific cases of some chicks being trampled to death and birds being decapitated. We are fooling ourselves if we think this is some progress. (Yorkshire Dales natural environment champion Mark Corner, as cited in Minting, 2023: 10)

The disappearance of 21 hen harriers would set North Yorkshire's bird crime rate higher than the previous year's RSPB figure of 10 raptors being illegally killed. These statistics provide indisputable evidence of the failures in tackling raptor persecution, not just in North Yorkshire but nationally. The RSPB has plotted the declining trend of raptor persecution-related convictions per year between 1990 and 2020 (see figure 4).

Several researchers and conservationists have proposed reasons for ineffective enforcement (Gosling, 2017; Nurse, 2012; Wellsmith, 2011). A list constructed by Wellsmith (2011) summarises many relevant issues:

1) Under-resourcing and marginalisation

Police forces are under-staffed, under-resourced and have limited knowledge of wildlife crime. These factors contribute to a lack of essential information and data being recorded, in turn affecting enforcement efforts (Nurse, 2012; Wellsmith, 2011). Over 30 years, the RSPB have noticed an improvement in the investigation of raptor persecution crimes (RSPB, 2021a). However, it still remains difficult to obtain accurate data on wildlife crime, due to inconsistencies in recording methodologies and limited knowledge-sharing between forces (Gosling, 2017; Nurse, 2012; UNODC, 2021).

Additionally, there remains an issue of police call-handler ability to accurately log wildlife incidents, in part due to insufficient training (Gosling, 2017). The call-handler must have the necessary knowledge to record the incident as a wildlife crime, not, for example, as anti-social behaviour. Most police forces rely on their own internal training, although some are fortunate to have specialist wildlife crime investigators that can educate local officers (UNODC, 2021). With a lack of structured call-handler training, incidents may be allocated incorrectly and therefore written off before input is sought from wildlife crime officers. With the high turnover rate of call-handlers, retaining knowledge and experience within forces can be a challenge. Incidents then do not go reported as wildlife crime, crime rates are underrepresented and there is insufficient evidence to campaign for extra resources to be delegated to the wildlife crime taskforce (Wellsmith, 2011).

2) A large dark figure/true extent not known

The true extent of raptor persecution is not known. Since 2021, the RSPB has been the most active organisation investigating bird crime and

publishing annual reports (RSPB, 2021a). However, since raptor persecution occurs within the countryside, the true crime rate is most definitely higher than their estimates, with a large proportion of persecution incidents never discovered, reported or recorded, therefore having significant impact on enforcement and the deterrent effect (McMullan and Perrier 2002; Wellsmith, 2011). This results in the likely detection of such crime being considered low risk by perpetrators. Without the true extent being known, it is difficult for police forces to delegate an adequate number of staff to combat the issue. If there is no evidence of a problem, resources and funds cannot be allocated to tackle it (UNODC, 2021; Wellsmith, 2011).

3) Overall lack of deterrent effect

The above factors combine to impact the ability to exert an efficient deterrent effect. As grouse shooting is valued as a £120 million (Gross Value Added — GVA) industry in the Yorkshire and Humber region (British Association for Shooting and Conservation, 2014), it may be that the severity of the potential punishment is considered low compared to the greater financial rewards gained. Raptor persecution "cases can be hard to prove because the defendants will often have top QCs, paid for by their employers" (Countryfile, 2021: 8). Employers are estate landowners who are economically motivated, linked to the success and intensification of the business. The role of gamekeepers is to follow the instruction of the landowner and estate manager. Burnside and Pamment (2020) argue that landowners request for raptors to be persecuted as they affect the success of their business. In one interview cited in Burnside and Pamment (2020: 192), a gamekeeper said "[h]e [the landowner] mentioned it. He did it in a roundabout way, they need shooting, you know". If this approach is indeed the case, there is currently very little deterrence for the landowner themselves to halt raptor persecution. Many gamekeepers are provided with a house, off-road vehicles, equipment and a stable salary, making them potentially more inclined to follow these commands, despite it being a criminal offence. The risk of losing their job to poor grouse population numbers is higher than the risk of being caught persecuting birds of prey (Burnside and Pamment, 2020).

## Enforcement and legislation suggestions

Even with these enforcement issues, there is no doubt significant progress. Most importantly, there is now a large collaborative approach in place, sharing essential data, information, training and increasing public awareness, all to achieve a similar objective. Over the last thirty years, the RSPB has led the way and supported most bird crime investigations in the UK. They have recognised an improvement in the investigation of these crimes but there remain disparities from force to force. The RSPB highlight that the existing law is failing to protect birds of prey from being killed illegally (RSPB, 2021a). In 2021, the RSPB had four bird crime convictions, with previous years having none (RSPB, 2021a). Police forces and organisations in North Yorkshire have overcome some of the issues mentioned above, whilst others remain a problematic hurdle. To improve the success of enforcement and improve conviction rates, this paper makes the following suggestions:

Firstly, improving the training of call-handlers and those who monitor the reporting of incidents would improve the number of raptor persecution incidents that are reported to the police being recorded accurately (UNODC, 2021). Having reported incidents logged through a specific Home Office code would also ensure they are recorded accurately and therefore build a better evidence base to campaign for increases resourcing to tackle the crime of raptor persecution (Gosling, 2017; Wellsmith, 2011).

Secondly, shifting the focus from the individual offenders and increasing the risk of prosecution for all those involved could be of benefit. Currently, a large proportion of the efforts in North Yorkshire goes towards convicting gamekeepers that are killing protected raptors. However, if encouraged to do so by their employers, with a high risk of losing their job and house and a low risk of being caught, they may remain inclined to do so, as proven by Burnside and Pamment's (2020) research. Therefore, it is important for their enablers to face prosecution too.

Lessons can be learnt from Scotland. Since 2012, Scotland has been raising the importance of raptor

persecution crime. Scotland's first change resulted in both landowners and gamekeepers being held accountable if a raptor was illegal persecuted within their landholding (Burnside and Pamment, 2020). According to the RSPB (2021a), this increase in satellite tagging of raptors alongside this legislative change resulted in a significant drop in detected poisoning incidents. This is due to satellite tags providing a higher chance of finding raptor victims on their landholding, which resulted in an efficient deterrent to the use of poison. In 2020, an updated *Animals and Wildlife (Scotland) Act* was introduced, which increased the maximum penalty for wildlife crime, including raptor persecution, to five years imprisonment and unlimited fines, with the hope that it would act as an efficient deterrent (Cunningham, 2020). Unfortunately, these two policies did not significantly reduce persecution levels in Scotland as many perpetrators changed their methods from poison to traps and guns whilst also making a concerted effort to clean up evidence (RSPB, 2021a; Scottish Government, 2023a).

Most recently, to combat this crime further, the Scottish Government introduced the *Wildlife Management and Muirburn (Scotland) Bill* in March 2023, which was initiated by the Werritty Review (2019), an independent review of grouse moor management. This bill introduces a licensing regime for managed land used to shoot red grouse, for moorland burning and for wildlife traps such as snares. It hopes to address raptor persecution and the management of grouse moors (Scottish Government, 2023b). Licences will be revoked for shooting red grouse if there is evidence of such illegal activities being pursued within the game estate (RSPB, 2021a). This bill could signal monumental change for illegal raptor persecution, with many NGOs and organisations asking for such a bill to be introduced UK-wide (Burnside and Pamment, 2020), which would assist in combatting the crime in the UK's hotspot in North Yorkshire. North Yorkshire accounts for 10% of bird crime incidents, which is twice as bad as the second worst county at 5.6% (RSPB, 2020c). Grouse shooting to date has been unregulated in Scotland and continues to be in the rest of the UK. Prompt and appropriate legislative changes are essential to tackle wildlife crime.

It has also been suggested that the only way to significantly increase the risk to perpetrators of raptor persecution would be to increase the likelihood of convictions. Some researchers have found that increasing the severity of punishment does not have a significant deterrent affect if rates of conviction are not increased at the same time (Marceau, 2019; Schneider, 2008). Conviction rates and the above-mentioned enforcement issues are all interconnected. As proven by Scotland's initial policy change in 2012, it is extremely difficult to increase the likelihood of convictions of raptor persecution, due to the crime taking place in remote countryside locations where evidence can be easily discarded or lost.

Due to the remoteness of this crime and the difficulty of gathering evidence, it is also important to understand the social-cultural context and differing opinions of raptors. Shooting is still a deeply rooted tradition on the moors, with some shooting estates earning £14,000–£23,000 for a group of eight shooting grouse (Dawnay Estate, 2023). However, there are also examples of the public and particularly rural communities emphasising their despair over raptor persecution in North Yorkshire (Beever, 2020; Newton, 2020; Shelton, 2020). This contrast of opinions undermines claims that the conflict is between rural and urban folk because of the latter being disengaged from countryside activities and livelihoods (Valkama et al., 2005). With increasing public and political support for raptor protection (Burnside and Pamment, 2020), changing views could be dispersed through shooting community organisations, who estates follow and support for updates, news, policy changes and best practice. Hodgson et al.'s (2022) research found that individuals, in this case gamekeepers, will base their decisions on their level of trust and representation by decision-makers. Therefore, in this conflict, gamekeepers and shooting supporters will follow the advice from gamekeeping organisations.

## Conclusion

Raptor persecution is widely opposed by the public, along with it being a policing priority. However, even with the combined efforts of wildlife crime officers, NGOs and other organisations and public

bodies, there has been very little reduction in the number of persecution incidents, especially with 2020 recording the highest levels of raptor persecution levels in the UK since the RSPB began publishing its bird crime reports in 1990 (RSPB, 2020b). It remains to be seen whether North Yorkshire will return as the hotspot for raptor persecution in the UK.

The current approach has succeeded In raising public awareness of the crime but little has changed in North Yorkshire in terms of enforcement and deterrence. Enforcement issues are difficult to combat, especially with the crimes occurring in rural areas, which results in a large 'dark figure' of wildlife persecution. The following combined tactics are needed: Firstly, better education is needed to reduce support and tolerance for raptor persecution. Secondly, increased penalties, such as in Scotland, may contribute to deterrence. However, conviction rates also need to improve, which is more challenging. Deterrence also must be considered from the top down. Convicting gamekeepers alone is not deemed sufficient, as the original pressure may come from their employer. Gamekeepers are easily replaceable but if estates were held accountable themselves, the risk of losing their reputation and income could act as a deterrent. This may be where the RSPB's suggestion to license shooting estates could be beneficial, as in Scotland.

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***Acknowledgements:*** *The completion of this research paper would not have been possible without the contribution and support of many individuals and organisations. Firstly, I would like to thank Dr Jessica Gröling for her invaluable input and support throughout the research process and considering this paper to have the potential to be published in the EASE Working Paper Series. Her insight and experience in tackling wildlife crime assisted me greatly in writing this paper. I would also like to thank the University of Exeter for hosting an online distance-learning Anthrozoology Masters and providing the platforms for digital communication and support between lecturers, researchers and students. I would also like to thank my partner, Matt Barnes, who influenced and supported me to write this paper alongside the North York Moors National Park Authority, who, during my time working there, educated and exposed me to this important subject.*

***Suggested citation:*** Byrne, N. (2024). Doing the crime but not the time: Raptor persecution, deterrents and prosecution rates in North Yorkshire. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 77–89.

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## Figures

Figure 1. Kestrel resting on a fence post in North Yorkshire.
Photo taken by author (2022).

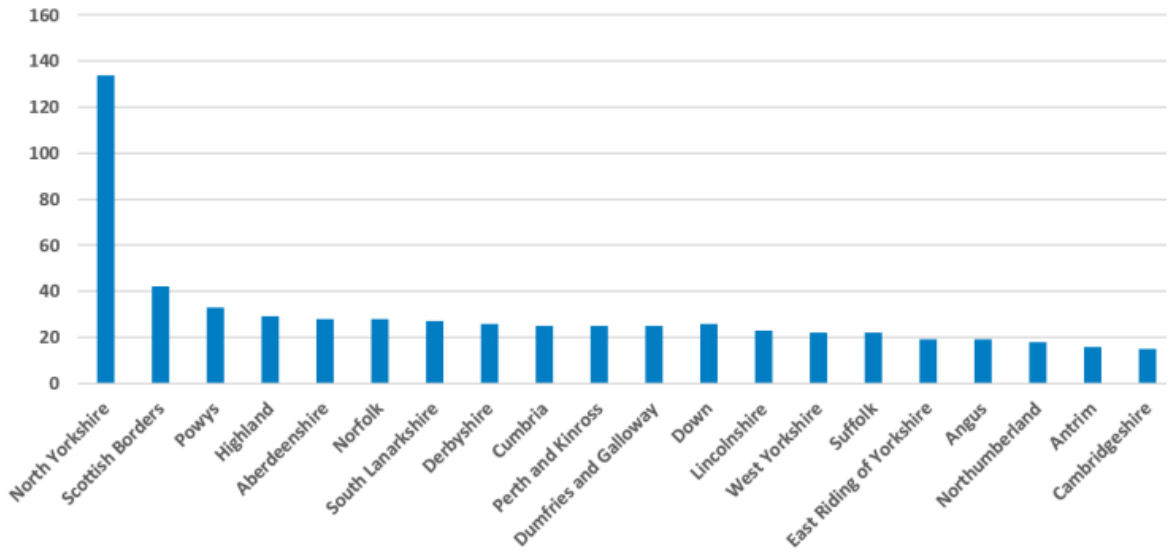


Figure 2. Confirmed raptor persecution incidents in the 20 worst UK counties (RSPB, 2020a). Figure used with permission from the RSPB.


Figure 3. Raptor persecution incidents recorded in Britain on RSPB Raptor Persecution Map Hub (2007–2021) with the hotspot concentrated in North Yorkshire (RSPB, 2023d). Figure used with permission granted from the RSPB.

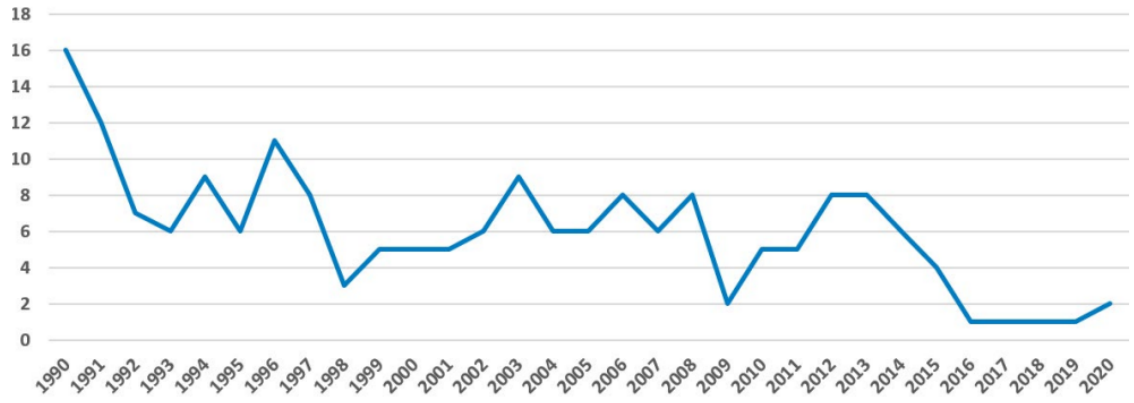


Figure 4. Number of raptor persecution-related convictions per year between 1990 and 2020 (RSPB, 2020a). Figure used with permission from the RSPB.

# ‘You wolf, don’t come here’[1]: How Norwegian interpretation of the Bern Convention leads to legal killing of critically endangered wolves (*Canis lupus lupus*)

*Luise Boye Sprechler*

***Abstract:*** *Despite being listed on the IUCN Red List as a protected species, Eurasian wolves (Canis lupus lupus) resident in Norway are threatened by inbreeding, illegal killing and low tolerance by humans, especially in some rural regions. Indirectly, wolves’ primary threat is the interpretation by the Norwegian authorities of how the wolf population should be managed according to the Bern Convention’s obligations. Focusing on the Convention’s stipulated preconditions for legal killings, as well as its list from which a minimum of one point must be present to justify the killing of wolves, this paper explores how formulations of the Bern Convention and the derived Norwegian Nature Diversity Act allow for a biased interpretation by the authorities, which leads to a failure to protect wolves in Norway. Moreover, the paper includes an exploration of cultural factors that may be influencing the Norwegian authorities’ wolf policy and management.*

THE EURASIAN WOLF (*CANIS LUPUS LUPUS)* has been a part of Nordic mythology, nature and culture for thousands of years (Kvangraven, 2021: 13), although it is still not embraced as a resident species. The wolf is critically endangered in Norway with a small population of approximately 43–44 individuals solely in Norwegian territory, whereas an additional 46–48 live on both sides of the border between Norway and Sweden (Rovdata, 2023a), including only a few individuals of reproductive age (Artsdatabanken, 2021). When they were officially listed as a protected species in 1973 (Miljødirektoratet, 2021a), wolves were extinct in Norway. Their extinction can be traced back to 1845 when it was decided that all predators should be culled (Bjørnstad, 2015; Rovdata, 2023a). However, populations have slowly returned, initially from Finland. The ‘wolf zone’ (where wolves are prioritised, Miljødirektoratet, 2021a) covers approximately 5% of mainland Norway and is located alongside the Swedish border (Miljødirektoratet, 2018). As such a small population, wolves are threatened by inbreeding, illegal killing and low tolerance by humans, especially in some rural regions (Krange and Skogen, 2018).

[1] “You wolf, you wolf, don’t come here. You shall never have my child.” (Astrid Lindgren, 1984, author’s translation)

To manage the current wolf population, the target for the wolf zone is a maximum of 4–6 litters annually (Artsdatabanken, 2021; Rovdata, 2023b). As a result, within the wolf zone, wolves are culled (in Norwegian *tatt ut* – 'taken out') every year. During the winter of 2022/23, 12 wolves were legally killed by private hunters and 7 were culled as 'vermin' by official hunters (Statsforvalteren for Innlandet, 2022; Statistisk Sentralbyrå, 2023a). Indirectly, wolves are threatened by the Norwegian government's interpretation of how the wolf population should be managed according to the *Bern Convention's* obligations (*Bern Convention 1979*; Trouwborst, Fleurke and Linnell, 2017) and the *Nature Diversity Act* (Klima- og Miljødepartementet, 2009; Stortinget, 2015). The interpretations are key elements in understanding how the Norwegian government can officially state that it wants to lead with (even) more restrictive predator policies (Det Kongelege Kommunal- og Distriktsdepartement, 2023).

This paper explores secondary qualitative and quantitative material in the form of legislation, peer-reviewed articles, media articles, books, statistics and other information from official authorities and NGOs.

## Wolf management according to national and international obligations

One of the objectives of the *Nature Diversity Act* is to "maintain species and their genetic diversity […] and to ensure that species occur in viable populations in their natural ranges" (Klima- og Miljødepartementet, 2009: section 5). According to the Act, if authorities approve of any wolf killings, it should be because no alternatives are available (Klima- og Miljødepartementet, 2009; Sollund, 2015: 19). However, the authorities believe they are adhering to the *Nature Diversity Act* when culling wolves, arguing that wildlife can be culled if it is "to safeguard general health and safety interests or other public interests of substantial importance" (Klima- og Miljødepartementet, 2009: section 18c).

This standing was also supported by a Norwegian Supreme Court ruling (Klima- og Miljødepartementet, 2023), which was a result of a lawsuit by animal rights organisation Noah (2021a). Noah had argued that the 2020 state culling of the Letjenna wolf family of two parents and their two puppies was problematic as the wolves had not attacked any animals used as livestock and did not display any 'negative' behaviour. The main argument made by the state for the killing of the wolves was that they were 'stable' (Noah, 2021a). Interpreting the *Nature Diversity Act*, however, proves to be complex: the Oslo District Court had previously ruled in favour of Noah and hence interpreted the *Nature Diversity Act* differently (Borgarting Lagmannsrett, 2022; Noah, 2021b; Statsforvalteren for Innlandet, 2021).

According to the *Bern Convention* (the international treaty which commits signing parties to promote national conservation policies), Norway is obliged to prohibit wolf killings and to only allow exceptions if the following preconditions are met: (a) "That there is no other satisfactory solution" and (b) "That the exception will not be detrimental to the survival of the population concerned" (*Bern Convention rev, 1993*). However, not even the *Bern Convention* with its objective to ensure conservation of nature and wildlife populations (wolves are granted special protections in Appendix II), has succeeded in preventing the Norwegian authorities from committing theriocides (the act by which a human causes the death of other-than-human animals, henceforth animals) on wolves (Sollund, 2015). As will be argued below, this can also be given the status of a green crime, an act which produces ecological damage, whether or not it is recognised as criminal in law (Nurse, 2020; Sollund, 2017a; Stretetsky, Long and Lynch, 2013).

The challenges of the *Bern Convention* are multiple. Firstly, it is not stipulated what the minimum threshold for a wolf population needs to be, but as commented by researchers Linnell, Trouwborst and Fleurke (2017: 150), it is unlikely that "maintaining a population in a permanent state of 'critically endangered' satisfies its obligations". Secondly, the *Bern Convention* fails to protect the endangered population from being culled with the Norwegian authorities' approval. According to Article II (*Bern Convention rev, 1993*), signing parties should "take requisite measures to maintain the population of wild flora and fauna at […] a level which corresponds […] to ecological, scientific and cultural requirements". The so-called cultural requirements

are intangible and hence left open for the Norwegian state to evaluate (Linnell, Trouwborst and Fleurke, 2017). Thirdly, exceptions to the *Bern Convention* are unclear and open to interpretation in a way that is unlikely to benefit the wolves residing in Norway. However, according to the *Vienna Convention on the Law of Treaties*, signing a treaty means that countries accept obeying the rule "in good faith […] and in the light of its object and purpose" (as cited in Linnell, Trouwborst and Fleurke, 2017: 136).

In terms of the *Bern Convention*, point (a) ("That there is no other satisfactory solution") opens the possibility of qualitative and creative alternatives (e.g., fences or guard dogs to protect livestock, or the moving of wolf families to other areas), and, according to the European Council, Convention parties have to choose "the most appropriate one that will have the least adverse effects on the species while solving the problem" (*Bern Convention rev. 1993*). Still, point (a) is quite 'vague' and is open for national interpretation and adaptation. What *is* a satisfactory solution, for whom and what is the threshold? According to Linnell, Trouwborst and Fleurke (2017), the solution should be investigated to establish whether it is effective and whether it can achieve its aims in a way that does not threaten the wolf population.

The second precondition, (b) ("That the exception will not be detrimental to the survival of the population concerned"), also depends upon interpretation. Wolves resident in Norway are claimed by some to not be *real* Scandinavian wolves, but rather Russian wolves, wolf/dog hybrids or even 'German Shepherd freaks' (Fausko and Ording, 2020; Miljødirektoratet, 2021a). However, genetic research shows that wolves that have lived in Norway since the 1980s derive from a Finnish population of Eurasian wolves and that they are not wolf/dog hybrids (Stenøien et al., 2021). The research, however, also supports the already established fact that the population is inbred (WWF, 2023) and it proves that wolves in Norway and Sweden are in fact in danger of becoming extinct (Stenøien et al., 2021). Norway's Environment Agency (Miljødirektoratet, 2021a, author's translation) claims that "[t]oday's Norwegian predator politics must ensure sustainable management of the Norwegian–Swedish wolf population". When interpreting the wolf population as belonging to a larger 'Fennoscandinavian' population, the Norwegian authorities can claim that the killings do not constitute a concern for the survival of the population, as new wolves will find their way across from Sweden. For example, according to Prof Barbara Zimmermann (in Ertesvåg, 2021, author's translation), "[i]t is similar to a Sisyphean-means to kill x number of wolves in Norway because eventually new individuals will enter from Sweden". However, in a 1999 verdict by Oslo District Court it was stated that Norway does have obligations to protect the wolves, regardless of the total size of the Norwegian–Swedish wolf population (Sollund, 2015).

Sweden, being an EU member, is also obliged under both the *Bern Convention* and the *EU Habitats Directive (1992)* to protect the wolf population, though Norway does not officially share a political and administrative wolf management programme with Sweden (Linnell, Trouwborst and Fleurke, 2017). This situation is strongly criticised by leading wolf researchers, such as Peter Wabakken (in Ertesvåg, 2021, author's translation), who argues that "we need cooperation because the populations in the two countries are so intertwined". This is backed on the Swedish side by the Chairman of the Swedish predator organisations, Magnus Orrebrant (in Ertesvåg, 2021, author's translation), who states that "[t]he extensive hunt in Norway is indirectly a hunt on the Swedish wolf population. […] I am afraid it can have negative consequences."

No matter the interpretation of the wolf population base, the Norwegian authorities appear to be failing in establishing population goals to ensure survival, and the state-ordered theriocide is arguably detrimental to the continued survival of the Norwegian–Swedish wolf population. Consequently, the Norwegian state has a weak standing in respect of precondition (b) (Linnell, Trouwborst and Fleurke, 2017) and commits a green crime in that it causes ecological damage to the wolf population (Sollund, 2017a). Moreover, it disregards the recommendations from the *Bern Convention* Standing Committee (2008: no.137) to adopt and implement a common population policy with Sweden.

As additional preconditions, the 1993 revision of the *Bern Convention* lists five points, of which a minimum of one must be present to justify the killing of

wolves (as cited in Trouwborst, Fleurke and Linnell, 2017: 141):

> (1) for the protection of flora and fauna
> (2) to prevent serious damage to […] livestock […]
> (3) in the interests of public health and safety […] or other overriding public interests
> (4) for the purposes of […] repopulation, of reintroduction and for the necessary breeding
> (5) to permit, under strictly supervised conditions, on a selective basis and to a limited extent, the taking, keeping or other judicious exploitation of certain wild animals […]

These factors range widely and, as with other conditions, appear to be open to interpretation. As a result, in the next section of this paper the possible elements (especially points 1–3), which potentially serve as a basis for the Norwegian authorities to keep the population at a minimum by legalising wolf killings, will be assessed.

## Preconditions for theriocides?

*(1) "for the protection of flora and fauna"*

Wolves are inherently part of Norwegian nature and have been since before the last Ice Age 12,000–115,000 years ago (Bryhni and Hagen, 2021; Eidsvold, 2021), so it is not likely that wolves pose a threat to biodiversity. Rather, as some of the top predators in the food chain, wolves often kill prey that are weakened by disease or age (WWF, 2023). To illustrate this, I touch upon wolves' impact on elk (*Alces alces*) and reindeer (*Rangifer tarandus*) populations below.

*(2) "to prevent serious damage to […] livestock […]"*

According to sheep farmers, sheep (*Ovis aries*) use natural resources and help to maintain the landscape (Rossavik, 2021). Norway has a tradition of letting approximately two million livestock sheep graze in the wild 'outfield' (large areas of forest and mountain grazing), with no fences, shepherds or dogs to protect them from predators (Rossavik, 2021). There have been successful attempts with preventative measures to install fences and gather livestock but removal of sheep from the outfield is, not surprisingly, the most efficient measure (Rønningen, 2020). Still, when sheep are moved to other grazing priority areas outside of the wolf zone, the wolves follow (Rønningen, 2020: 9), and inland grazing is not ideal according to sheep farmers, who experience an increased workload and decrease in income (Zahl-Thanem et al., 2020). Media stories about sheep being attacked or killed by wolves are not uncommon (Buggeland, 2021; Nordby, 2023), though damage reports are relatively low (685 were reported in 2022, the lowest number since 2008) and other predators species, including wolverines (*Gulo gulo*), lynx (*Lynx lynx*), bears (*Ursus arctos*) and golden eagles (*Aquila chrysaetos*) attack more sheep than wolves (Miljødirektoratet, 2022a). However, sheep farmers believe the wolf is the most problematic species because they do greater damage due to more dead sheep (Zahl-Thanem et al., 2020). When sheep are attacked by wolves, farmers often call it 'murder' (Kvangraven, 2021), which seems paradoxical given that sheep eventually will be sent to slaughter by the farmers themselves (Sollund, 2015). The farmers' anger and perception of wolf attacks can, however, also express an unconscious attempt to strengthen a paternalistic human authority over their livestock (Hurn, 2012), as they see wolf attacks on 'their' sheep as unnecessary transgressions (Børreson et al., 2018). Aside from measures to protect sheep from being killed by wolves, a preventative active measure is to kill wolves to avoid future attacks (Næsheim and Løberg, 2018; Sollund, 2015).

Domestication of reindeer has seen immense development in Norway. There are approximately 250,000 reindeer living as livestock on 40% of the Norwegian land mass, though the industry constitutes only a small part of the Gross National Product (Klima- og Miljødepartementet, 2022b). Herding of reindeer takes place with all-terrain vehicles, snow scooters and helicopters (Ravna and Benjaminsen, 2018) and there is little tolerance for wolves that enter the vast reindeer territories. Should a lone wolf cross the border from Sweden or Russia and kill just one reindeer, they are likely to be shot by hunters, sometimes from helicopters, on approval by the Norwegian Environment Agency (Berg, 2018). According to reindeer herder Anders Eivind Eira (in Varsi and Boine, 2022, author's translation), an official approval to start hunting a wolf who killed a couple of reindeer means that "both the pack [of reindeer] and we can have some tranquility

and rest". However, some reindeer killings also occur because of dog attacks (Haetta, 2022). In case of loss of livestock, reindeer herders can apply for compensation from the state, however the lowest amount of all predator compensations (0.6%) is due to wolf killings (Miljødirektoratet, 2022b; Rovbase, 2022).

Since wolves are not a significant threat to reindeer herding, why are they not tolerated in these areas? Wolves have a long tradition of hunting reindeer (Wabakken, 2017) and the indigenous Saami who reside in parts of Norway and Sweden have a long tradition of wolf encounters. In shamanistic Saami culture, Saami could identify with the wolf 'as hunter' through *joiking* (a form of singing/chanting) but the other side of the *joik* could also express fear and anger (Kvangraven, 2021) and a means to avoid mentioning the wolf directly, as it was believed that the wolf's (feared) 'magic powers' could be cast upon those who did (Gaski, 2020). The *joik* could also stem from wolves representing a threat to Saami reindeer. This duality seems to have shifted more towards a paradox in which indigenous Saami co-evolved their reindeer farming with the wolves, at the same time as wolves became increasingly unwanted and seen as enemies. Other indigenous people in the northern hemisphere (the Siberian Yukaghir hunters) perceive the wolf as "shameless", "dirty" and with an "irresistible greed and bloodlust" (Willerslev, 2007: 76, 91) but how and why the wolf came to be perceived as a non-tolerated element in the Saami reindeer herding culture calls for further investigation. One factor could be the shift from animism to Christianity, where wolves were demonised and seen as a threat to Jesus, 'the lamb' himself (Tulinius, 2018). Some Saami families even added the wolf to their 'Our Father' prayer: "[…] and free us from the Devil's dog" (meaning 'wolf', author's translation) (Elsrud, 1980: 33).

Today, Saami reindeer herding is officially recognised as a "cultural element" (Norges Høyesterett, 2021b: 134), whereby it is also a cultural right protected by the *United Nations International Covenant on Civil and Political Rights 1976*. However, for Saami, an indigenous minority that have had to fight for the right to own their culture and identification in modern times, the tolerance for any 'outside' threat, including a four-legged predator, is potentially close to zero.

> *(3) "in the interests of public health and safety […] or other overriding public interests"*

Although there has been just one proven case of a wolf killing a human (a six-year-old girl in 1800, Linnell and Bjerke, 2002), there are numerous folk tales of wolves chasing, attacking and killing both children and adults (Kvangraven, 2021). Nowadays, wolf stories make their way into the media when wolves have killed a hunting dog or been spotted close to a school (Buggeland, 2021; Fausko and Ording, 2020; Ropeid, 2020) and *ulvefrykten* (the fear of the wolf, author's translation) is a commonly used word. However, this fear seems unfounded (Linnell, Kovtun and Rouart, 2020). Still, fear of being attacked by a wolf is perceived as the largest component of human–wolf conflict (Linnell and Bjerke, 2002). Given that only a small part of the Norwegian population is at risk of ever meeting a wolf, can fighting this fear be described as an 'overriding public interest'?

To most Norwegians (97% according to the Norwegian Environment Agency, Miljødirektoratet, 2021b) it is important to stop the loss of natural diversity because of the belief that human wellbeing and quality of life depend on nature and biodiversity. More than half the Norwegian population claim to like and want the wolf in Norwegian nature (Krange and Skogen, 2018), although for people living in wolf areas, the figure is a smaller (approximately 35%, according to Krange and Skogen, 2018). Nevertheless, in rural areas it is more common to like wolves than to dislike them. The region (Innlandet) which covers the wolf zone is a rural forestry area where the highest number of elk (approximately 10,000) are shot annually (Statistisk Sentralbyrå, 2023b). In both Innlandet and Viken (where wolves are found outside the wolf zone), the number of hunters is among the highest in the country. 5-10% of all men actively go hunting (Statistisk Sentralbyrå, 2023c). Do the hunters fear the wolf, or do they fear the wolf as competition for their quarry?

The elk population is not believed to have suffered due to wolves, hence wolves are not considered to

be competition for hunters. Rather, human hunters are a challenge for the elk population (Zimmermann et al., 2015). Though for private landowners who hoped to kill their quarry themselves, they risk 'losing' the right to kill, as well as the elk meat, to the wolves (Kvangraven, 2021; Sollund, 2015). If wolves kill elk, it is a small percentage of the 10,000 elk killed annually by hunters in one county, so fear of the wolf being a competitor appears disproportionate. It is common practice to use Norwegian elkhound (hunting dogs), who run loose, for elk hunting (Elghundforbundet, 2022). Wolves occasionally do kill these dogs, to the hunters' frustration. As Kenneth Sletner, a hunter who lost a dog to wolves, puts it (in Fausko and Ording, 2020, author's translation), "Why should we back down on something which we have done for generations because the government has put upon us a pack of loose dogs that look like freak German Shepherds?" To Sletner (in Fausko and Ording, 2020, author's translation), the elk hunt itself is threatened by the presence of wolves:

> As the wolf is allowed to roam nowadays, elk hunting will be history in a decade. I have lost my appetite for elk hunting a little bit.

On average, wolves kill approximately seven dogs annually in Norway, particularly hunting dogs (Odden, 2018). It is perhaps not surprising, therefore, that research has found that owners of hunting dogs are much more negative towards wolves than other dog owners are (Odden, 2018).

Illegal wolf killings by hunters have taken place on several occasions (Rossavik, 2021). In 2015 one case was in the spotlight where a group of hunters were convicted and given prison sentences after committing illegal theriocides (Sollund, 2017b). Criminologist Ragnhild Sollund argues that this type of crime is not only organised but is an example of a green crime and the hunters should be seen as a subculture or a minority (Sollund, 2017b). According to Angus Nurse (2011), wildlife offenders' primary motivations can be multiple. In the case of illegal wolf killings, hunters' motivations can include antipathy towards government bodies (centralised decision-making), cultural reasons (strengthened by belonging to a subculture) or ignorance of the law (disagreement with the authorities' wolf management policies). Nurse (2011) argues that different offender types can be derived from these motivations. Illegal wolf hunters can be described as "masculinities criminals", to whom the feeling of power, excitement and a sense of belonging to a culture are important (Nurse, 2011: 46; 2020: 912). Perhaps Norwegian hunters also kill wolves as an attempt to showcase resistance against the authorities (Krange and Skogen, 2020). Moreover, Sollund (2017b) argues that the authorities are practising double standards when they permit wolf hunting whilst still considering it a serious crime when it is done illegally and suggests that this could lead to more illegal hunting.

To return to the *Bern Convention*, is the legal killing of wolves done "in the interests of public health and safety […] or other overriding public interests"? Public health and safety are broad arguments, though the fear of wolves, as much as it appears to be disproportionate, is a factor in human–wolf conflict. Although tragic, it is unlikely that the small number of dog killings could constitute an argument for the authorities to kill wolves to protect public health and safety. Protecting the public interest in belonging to a hunting culture also seems disproportionate compared to the legal theriocide of wolves. However, since wolves and human hunters to a large extent inhabit the same rural regions, it may be that the wolf represents a human conflict between people living in rural regions and the people and authorities living in urban areas (Krange and Skogen, 2020). In the case where three animal rights organisations filed against the state for killing wolves (Noah, 2022), the Court of Appeal (Borgarting Lagmannsrett, 2022: 113, author's translation) voted in favour of the authorities' decision, even though there "were no sheep in the area, the wolves only had little negative effect on hunting (however, there were potential conflicts with using loose hunting dogs), and it was 'difficult to see' how the wolves influence the local area". The verdict (Borgarting Lagmannsrett, 2022: 113, author's translation) emphasised rural interests: "the local communities see the continuous presence of predators as a strain".

## Overriding interests overlooked?

The lack of a precise definition of "overriding public

interests" causes difficulties, as admitted by the *Bern Convention's* Standing Committee (*Bern Convention rev. 1993*). It recommends that decisions are made on a case-by-case basis. Is one outcome of this that the *Bern Convention's* second and third preconditions ("to prevent serious damage to […] livestock […]" and "in the interests of public health and safety […] or other overriding public interests") are being interpreted as one and the same by the Norwegian authorities?

The Supreme Court (Norges Høyesterett, 2021a) concluded that outside the wolf zone the weighing of interests should happen by accumulating all interests on each side. However, if prevention of serious damage to livestock and public interests, such as those of sheep farmers, are considered one and the same, is this likely to distract from the need to find other solutions, such as wolf-proof fencing combined with a debate on the general feasibility of having outfield grazing areas? What about the first precondition "that there is no other satisfactory solution"? And what about the interests of those who suffer from the fact that their authorities kill endangered wildlife? How are their interests weighed?

The 2021 Supreme Court verdict stated that considerations for district policies should be of special significance (Norges Høyesterett, 2021a). This builds on the government's decision that "weight should be put on regional management, respect for private property ownership, individual humans and the quality of the local community" (Stortinget, 2010, authors's translation). However, the Supreme Court Judge noted that, because of their differences, interpretations of opposing interests depend on "estimations of which interests should be given more weight" (Norges Høyesterett, 2021a: 115, author's translation) and that "how far this obligation [to secure wolf survival in Norway] goes, is […] uncertain" (Norges Høyesterett, 2021a: 68–69, author's translation). Nevertheless, the overall importance of weighing these interests was downplayed as the Judge (Norges Høyesterett, 2021a: 71, author's translation) stated that "It is clear to me that Norway does not breach the *Bern Convention's* Article II so long as the Norwegian population reaches it population goal". In other words, consideration of individual wolves' interest in survival is kept to a minimum.

How much weight the public interest in killing wolves should be given can be questioned further. The *Nature Diversity Act* officially builds on the *Bern Convention* (Borgarting Lagmannsrett, 2022). However, the *Bern Convention's* formulation ("overriding public interests") differs in a potentially significant way from the *Nature Diversity Act*, which instead emphasises "interests of substantial importance" (*vesentlig betydning*, Norwegian Government, 2009: section 18). It is beyond the scope of this paper to conduct a linguistic analysis, however 'overriding' ("more important than anything else", Cambridge Dictionary, 2024a) is not synonymous with 'substantial' ("large in size, value or importance", Cambridge Dictionary, 2024b). It could therefore be argued that the Norwegian state authorities do not follow the *Bern Convention* in their weighing of interests but rather the weaker formulation of the *Nature Diversity Act*. If "overriding public interests" are necessary to justify killing endangered wolves, the authorities should be expected to put forward extraordinary arguments for why some interests may be overriding. According to the Court of Appeal (Borgarting Lagmannsrett, 2022: 57, author's translation), "the interpretation must follow the principles of the *Vienna Convention* […] which means that the wording has great weight". The importance of this formulation derives from the fact that the size of the Norwegian wolf population is decided "from the role model" (Borgarting Lagmannsrett, 2022: 96, author's translation) of the *Bern Convention's* "overriding public interests" formulation. Interestingly, the Court of Appeal (Borgarting Lagmannsrett, 2022) mentioned that the World Wide Fund for Nature (WWF) had stated that the formulation of the *Nature Diversity Act* "should only be used in extraordinary cases". The Court of Appeal, however, dismissed this with the argument that neither the formulation, nor the Standing Committee's communication about their understanding of the Convention, "draws in this direction" (Borgarting Lagmannsrett, 2022: 100, author's translation). The Court of Appeal (Borgarting Lagmannsrett, 2022) concluded that 'overriding' means the cumulative weighing of interests, in other words, whose interests weigh more heavily. By neglecting to see the difference in these formulations, the authorities import an immediate bias into the equation.

## Conclusion

Norwegian wolf policy officially adheres to both the national *Nature Diversity Act* and the international *Bern Convention*. However, the way it interprets obligations is immediately not in the wolves' favour. The authorities fail to maintain a population which can keep wolves off the endangered list, neglect to work jointly with Sweden and so far have not succeeded in finding reasonable alternative solutions to killing. Moreover, the basis for approving legal killings appears to be a weakly articulated set of considerations in favour of specific public interests and groups. Further analysis is warranted to investigate to what extent the Norwegian authorities neglect their commitments to and thereby undermine the objectives of *the Bern Convention*. Further research into wolf perceptions in the Saami reindeer herding context and in other regions outside of the current wolf zone could also constitute a valuable input into the discussion around the feasibility of having a designated wolf zone at all. Additionally, a spotlight needs to be shone on the weaknesses of the formulation of the *Bern Convention* and its corresponding national legislation, as this calls into question the ultimate weight of the Convention and its ability to protect various other species as well. Even though NGOs fight for wolves and the majority of Norway's human population appreciate them, the theriocide of wolves continues. As a result, Norwegian nature becomes less diverse but the ultimate price is paid by individual wolves, who are killed in part because of ambiguous formulations of human obligations towards them.

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***Acknowledgements:*** *I would like to thank all the professors on the MA Anthrozoology programme at the University of Exeter, who teach with a tremendous commitment to Anthrozoology as Symbiotic Ethics and who allow students to explore themes of specific interest. A special thank you to Dr Jessica Gröling, who teaches the module in Animal Criminology with inspiration and clearly a sincere wish to also expand horizons, from student inputs to discussions.*

***Suggested citation:*** Sprechler, L.B.. (2024). 'You wolf, don't come here': How Norwegian interpretation of the Bern Convention leads to legal killing of critically endangered wolves (*Canis lupus lupus*). In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 91–101.

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# Should the rhino horn trade be legalised?

*Annie Harratt-Slinn*

***Abstract:*** *An ultimate solution to prevent the endangerment and extinction of rhinoceros caused by the illegal horn trade is yet to be found. Despite the 1977 ban on the international trade in rhino horn, poaching has persisted, primarily for East and Southeast Asian markets. This has caused violence between poachers and local authorities and concern from private owners regarding the rhino on their property. There have been a range of suggestions, from horn dyeing to the manufacture of synthetic horn, with questionable implications for the prevention of rhino death from violent horn removal. Theoretical discussion around the potential for legislative changes to provide a safe route forward is complicated by the unpredictability of what would actually happen when these changes are put into practice. Researchers agree that ensuring the international safety of rhinos will require communication and cohesion in monitoring and response, both temporally and spatially. This is a difficult task. Further research is needed as the post-COVID-19 pandemic environment shows a decline in poaching and an increase in stockpiles flooding the market, with potential economic and social consequences that could impact protective measures going forward. This paper presents a review of the existing literature surrounding legalisation of the trade, highlighting the need for more research on rhino horn markets and the need for global consistency and cooperation in the management of the trade to ensure the welfare and persistence of rhino populations globally.*

THE TRADE IN RHINOCEROS (HENCEFORTH rhinos) has been banned internationally since 1977 under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES). The ban was extended to domestic trade in 1987 but despite ups and downs in poaching levels, the practice has persisted, threatening the survival of rhinos (Ayling, 2013). There are only around 25,000 African rhinos left (composed of approximately 20,000 white rhinos [*Ceratotherium simum*] and 5,000 black rhinos [*Diceros bicornis*]), over three quarters of which are located in South Africa (17,671 in 2017, according to the United Nations Office on Drugs and Crime, UNODC, 2020). The rest, as of 2017, live in Kenya (1,258), Zimbabwe (887), Botswana (502) and others (412). More recent statistics from 2021 show that Kenya was home to 1811, Zimbabwe 1033 and Botswana 265 (International Rhino Foundation, 2023). South Africa continues to hold the highest populations, with 2056 black rhinos and 12,968 white rhinos, totalling 15,024 for both species, a significant decline since 2017 (International Rhino Foundation, 2023).

Of the South African rhinos, more than 40% are owned privately and live on ranches and game properties. The population is in decline due to lethal poaching for their horn and the impact of severe drought in recent years (CITES, 2019; UNODC, 2020). The highly concentrated nature of rhino populations in South Africa makes them particularly vulnerable to exploitation, and private ownership can often become unsustainable due to the physical and economic threat from poachers. Poaching activity has continued despite an increase in intervention

from game officials, military and police (UNODC, 2020). If poaching continues then rhinos may become extinct within decades (Eikelboom et al., 2020), with some estimating that both white and black rhinos could be extinct by 2036 (Haas and Ferreira, 2016).

As illegal poaching has persisted despite the ban, academics, governments and other stakeholders have suggested that additional legislation could be needed to preserve rhino populations. Additionally, post-pandemic there have been changes in the international market for rhino horn and poaching trends, suggesting further interdisciplinary research is needed to ensure the persistence of the species, as well as to create appropriate legislation to prevent harm to the individual through horn removal.

## The black market for rhino horn

Rhino horn is made of keratin and, like fingernails, it can regenerate (Eikelboom et al., 2020). It has traditionally been used as a medicinal product in parts of Asia (primarily Vietnam and China) but has more recently become an item of status (UNODC, 2020). Specifically in Vietnam, horn is commonly used as a powder mixed with water to treat a hangover and detoxify the body. This is often done at business parties by affluent members of society (Dang Vu, Nielsen and Jacobsen, 2022). Rhino horn is often held by wealthy elites not just for this purpose but also for its investment potential. It can be artistically formed into products such as jewellery, decoration and libation bowls (UNODC, 2020).

The chain of organised crime for rhino horn consists of poachers, who can belong to organised groups or act as individuals poaching for subsistence, runners who then take the product to safety and pass it on to the intermediaries, and dealers who sell or transport to exporters in the country of origin and importers in the destination country. The product is then given to wholesale traders and retailers in the destination country, where the consumer can purchase the item either in person or online (Interpol/UNEP 2016; UNODC, 2020). The majority of rhino horn is transported by air, mainly in luggage, wrapped in material such as tinfoil in an attempt to disguise it (UNODC, 2020). The end destinations represent the key target markets, with Vietnam comprising 41% of the market, China 39%, Malaysia 5% and Thailand 3% (UNODC, 2020). There was a large market for rhino horn in Yemen, where it was used to carve handles for traditional daggers known as *jambiya*, which are objects of social status. However, since the import was banned in Yemen in 1982, demand has reduced significantly and alternatives using plastic or buffalo horn have met the existing demand (Ayling, 2013). However, this is important to note because it highlights that demand for illegal horn *can* be reduced through behaviour change and improved enforcement.

## Current measures to prevent poaching

After the significant risk of extinction to African rhinos was realised by the international community, southern African nations implemented several different methods to try and prevent further exploitation of rhinos. Firstly, they increased patrols of reserves using specialist anti-poaching park rangers and improved the fencing around essential protected areas (Cambron et al., 2015). Drones have also been utilised to monitor these areas from the air (Eikelboom et al., 2020). This is an important measure, as organised crime syndicates have access to high-level technology, including helicopters, night vision goggles, silencers and tranquilisers, meaning that those attempting to protect rhinos must ensure they are able to keep up with such equipment (Ayling, 2013). The horns of living rhinos have also been treated in a number of ways. Some have Radio Frequency Identification (RFID) chips attached, so the horn and the rhino can be tracked (Wildlife ACT, 2014). In addition, horns have been either removed, treated with poison or dyed different colours to reduce the value of the horn and protect the individual rhino (Ferreira et al., 2014; Rubino and Pienaar, 2017; Save the Rhino, 2016a). Synthetic horns have also been put forward as a suggestion to disrupt the existing market for rhino horn (Save the Rhino, 2016b).

Additional communication has also been made with the Southeast Asian countries that received the product to encourage better enforcement of domestic sales bans and better monitoring of cargo to seize the products before they enter the market (Save the Rhino, 2015). South Africa have also increased the

regulation of permits for trophy hunting, including several hunting association verifications and country-specific factors being taken into account, which has slowed the rate of permit consents provided for Asian countries (Ayling, 2013). Airports in a range of countries are monitoring shipments to detect horn entering the country and they either seize on arrival or track the shipment to the end destination to convict as many involved in the supply chain as possible (UNODC, 2020). Weights of horn seizures have increased gradually from 2008 to 2014, followed by a more rapid rise (UNODC, 2020). Further research is required to provide an accurate overview for recent years, again highlighting the need for regular reporting.

Several concerns have been raised about the above measures. For example, dyeing of horns does not last a long time and the dye is placed in drilled holes which can be removed by poachers (Save the Rhino, 2016a). Synthetic horns are mainly profitable for large companies based in countries like the US and it has not been clarified to what extent those profits are put back into conservation (Save the Rhino, 2016b). In addition, traffickers are granted a potential smokescreen for trial, where they could potentially state they believed the horn was synthetic. Customs officials also must be able to test and correctly recognise horn of both origins. There is also the potential for synthetic horn to result in an increase in the demand for illegal (real) horn (Save the Rhino, 2016b). Measures such as synthetic horns, treatments and dehorning have not stopped rhino poaching or brought about the removal of horn without harm. The EASE Working Group's documentary film *Rhino People* (Mitchell et al., 2021), for instance, showed a rhino who had been poached after being safely dehorned. Although it has been argued that horns are removable and alterable in a humane manner, further research is needed that puts the individual rhino and the implications for them at the centre. Where traditional conservation values may focus purely on species survival, other-than-human animal welfare-oriented values focus more on the individual rhino and these perspectives deserve more attention in the literature (Brown et al., 2019; Dubois and Fraser, 2013).

Rhino poaching was in decline between 2014 and 2019, but the exact cause of this is hard to know. Research indicates that reduced demand may have led to a crash in the market, with large holdings giving up their stock for fear of losing money (UNODC, 2020). However, some researchers believe that the increased protections placed on rhinos and their horns are the main cause (Eikelboom et al., 2020). It is likely that many different factors are involved in the overall decline in poaching incidents witnessed over that period, but it is important to note that seizures increased in the same timeframe, which could indicate that either monitoring and control measures improved and/or that stockpiles were being quickly sold off in response to changes in the international market (UNODC, 2020). Although the UNODC report is important for such evaluations, it is now out-of-date since the COVID-19 pandemic.

## The case for legalisation

A key but controversial suggestion for preventing the death of rhinos due to horn trafficking is the legalisation of the international trade. This suggestion has been supported internationally by several government actors, conservationists and scientists (Biggs et al., 2013; Rubino and Pienaar, 2017; Taylor et al., 2017).

### Private landowners

As over 80% of the land in South Africa is privately owned (Cousins, Evans and Sadler, 2008) and many private landowners partake in private wildlife ownership since the removal of agricultural subsidies in the 1990s, it is important to consider their opinion as they could potentially provide safe land for rhino populations. Poaching risks making their revenue unsustainable, as their income from tourism, trophy hunting and live other-than-human animal sales often does not outweigh the amount needed to prevent illegal poaching, particularly of rhinos. This led to around 70 of the approximately 400 private owners of rhinos in South Africa removing the species from their land, due to the risk from poaching and concerns around the impact on their business (CITES, 2016). It is believed that this has led to a reduction of 200,000ha that could be used for conservation activities (CITES, 2016). As a result, many private owners are in favour of legalisation, as they believe it would allow them to provide consumers with horns harvested in a sustainable manner and

this extra income could be fed back into preventing poaching on their land (Eikelboom et al., 2020; Rubino, Pienaar and Soto, 2018). In addition, the potential increase in rhino populations could reduce the extinction risk (even if the rhino increase comes from captive-bred populations rather than wild ones) (Redford et al., 2011) and tax from the sale of horns could be used in communities nearest the wildlife parks which are the most vulnerable to poacher infiltration (Di Minin et al., 2015). Eikelboom et al. (2020) however note that it is unlikely that tax revenues would be used directly for rhino conservation due to an anthropocentric focus on pressing human issues, such as healthcare and education. The factors impacting private owners are complex and often interlinked. They have to consider the current market and how this may impact the possibility of their rhinos being poached and the impact this may have on their business, as well as the costs involved in maintaining rhino populations and the potential benefits of ecotourism (Rubino and Pienaar, 2017).

**Consumers**

It is possible that legalisation would lead to a decline in poaching as the perceived rarity of the species and of the product would decline, which can reduce the product's value. However, there will always be consumers that prefer illegally harvested products and see them as a symbol of status, with some even believing that the suffering of the animal increases the potency of horn-based medication (Cheung et al., 2018; Eikelboom et al., 2020). The price for the product must compete with the illegal market while also being sufficiently profitable so as to allow for funds to be fed back into the conservation of the species. This is extremely difficult to achieve and in the case of species such as tigers, their legally traded bones are 50–300% more expensive than those derived from the illegal trade (Eikelboom et al., 2020).

Overall demand for rhino horn may persist due to the high range of perceived medicinal benefits for the treatment of hangovers, fevers, rheumatism, gout, strokes and even cancer, particularly in countries like Vietnam (Ayling, 2013). However, due to the uncertainty and potential changes in attitude caused by the recent COVID-19 pandemic toward the consumption of wildlife products, consumers may have changed their opinions from the time of the original buzz surrounding rhino horn legalisation (Lam et al., 2020). Surveys are therefore vital to determine if consumer choices and attitudes have changed. Dang Vu, Nielsen and Jacobsen (2022) conducted a choice experiment which found that affluent consumers are still willing to buy illegal rhino horn and consumers in general still preferred wild horn as opposed to semi-wild or farmed rhino horn, suggesting that legalisation would likely have to compete with the illegal black market due to such consumer preferences.

**Conservationists and scientists**

Some conservationist have growing concerns that legalisation may be the only remaining option to save wild rhino populations, as education programmes, conservation and enforcement have not been sufficient to fight the large, organised black market trade (Biggs et al., 2013). Ezemvelo KZN (KwaZulu Natal) Wildlife proposed the case for legalisation to the International Wildlife Management Congress. Horns would be identifiable by chemical signature and transponders (Ayling, 2013). Treatment of the horns with transponders and DNA signatures for monitoring and sales can be achieved for less than US$200 per horn (Biggs et al.; Martin, 2012). Buyers would be registered under a centralised system and income generated would flood back into conservation or community development (Ayling, 2013; Biggs et al., 2013). The central selling organisation is viewed as acceptable if laundering and corruption are prevented, it can be delivered reliably and competitively priced and regulation would mean that if the tide did turn and there were negative impacts on the species, legalisation could be reversed (Biggs et al., 2013).

**Government and enforcement officials**

Di Minin et al. (2015) used several modelling systems to calculate how the legalisation of the rhino horn trade could impact the rhino population. They found that legalisation could potentially lead to profits of US$1,000,000,000 and an increase in the white rhino population of 35,000, but for this to be achieved, improvements in enforcement and protection on subnational, national and international scales were required. Their modelling also predicted that increased monetary fines and efforts to

prevent poaching on the ground by rangers would have the most impact. They also calculated that with the trade remaining illegal, costs to protect rhinos could equal US$147,000,000 per year, which is an unsustainable cost due to other priorities in the area (Di Minin et al., 2015). Other studies have also found that the South African and Namibian governments needed to consider the responsibility and challenges inherent in implementing a legal trade against the illegal trade. A substantial monitoring and central selling organisation would be required under the legal trade route, placing significant pressure on these governments not only to regulate the trade but to communicate with consumer nations such as Vietnam and China to ensure they are implementing their side, such as higher levels of enforcement and harsher penalties (Biggs et al., 2013).

**Unpredictability**

Curtailing rhino poaching through legalisation is a complex matter, as depending on a wide range of factors, the outcome of legalisation could go either way. However, significant change is clearly needed. As the trade has been illegal for so long, there will always be a certain level of uncertainty around the figures researchers are using when they are modelling the outcomes of legalisation. Such uncertainty is unavoidable, particularly in the post-COVID-19 world. If the outcomes of legalisation are negative for rhino populations then those that strongly believe in it must be willing to shift their position if it ultimately leads to further decimation of the species (Ayling, 2013; Di Minin et al., 2015).

At present, the potential offered by legalisation brings with it too many risks, due to the significant resources that would be required to make it a success, including increased enforcement, rangers, weaponry, increased penalties, scientific innovation, registration of stockpiles, investment into communities and ecotourism and intergovernmental arrangements (Ayling, 2013). It also appears that the cultural beliefs surrounding rhino horn in consumer countries across East and Southeast Asia have not sufficiently shifted yet (Dang Vu, Nielsen and Jacobsen, 2022), so legalisation could potentially lead to an increase in the purchase of horn and perhaps even greater reliance on the illegal market if prices are cheaper. In such a scenario the legal market would act as a gateway to the illegal (Eikelboom et al., 2020).

**Next steps**

Eikelboom et al. (2020) suggest that the best solution going forward is to provide safe havens for rhinos. Ferreira and Dziba (2021) suggest that moving away from captive breeding (farmed and semi-wild rhino populations) and investing in rewilding, contained and safe natural environments would be the best option to conserve rhino populations. Media must be used carefully to avoid antagonising or providing key anti-poaching enforcement information to poachers but rather provide accurate information about the situation using discretion regarding protection strategies. In addition, local insight could help to provide researchers with a better understanding of how poaching occurs at the local level and this information can be integrated into protection measures.

Higher levels of governance are required to enforce and subsequently prevent poaching from occurring. However, this requires rhino poaching to be viewed as a priority within these areas. Ensuring the safety of rhinos will require both national and international communication and agreements (Ferreira and Dziba, 2021). This must involve legislative changes, education, enforcement and further research into the drivers of poaching. It is possible that legalisation may become an option, but only if the previously discussed essentials (investment in legal trade, continued rhino conservation support, a central selling organisation, prevention of laundering and corruption, competitive pricing, easy delivery, community investment, continued research and stronger regulation and enforcement) are implemented (Bwalya and Shuping, 2020). Ultimately, if the rhino horn trade is legalised, it must be conditional on continued monitoring (Ayling, 2013; Biggs et al., 2013).

## Conclusion

Most of the studies reviewed for this paper indicate that legalisation of the rhino horn trade is a risky choice. Although there could be benefits for private owners of rhinos and for consumers, there are several factors that would likely cause the system to fail, including continued laundering and corruption,

removal of stigma leading to unsustainable 'harvesting' and lack of international enforcement. The world has changed since the recent global pandemic and we must ensure that we have accurate information about poaching levels and consumer attitudes before making any decisions. It is possible to reduce poaching and transport of horns to demand countries, as is evident by changes on the demand side in Yemen, so all hope is not lost. The exact cause of the poaching decline following 2014 is not known, so ongoing research is needed and decision-makers must be responsive to the most up-to-date research findings in order to protect dwindling rhino populations.

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***Acknowledgements:*** *I would like to express my gratitude to the teaching staff on the University of Exeter's Anthrozoology programme, without whom this paper would not have been possible.*

***Suggested citation:*** Harratt-Slinn, A. (2024). Should the rhino horn trade be legalised? In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 103–109.

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# Meat laundering and non-human spaces: The case of the Italian law on boar (*Sus scrofa*) hunting

*Gino Querini*

***Abstract:*** *The growing presence of wild boar (Sus scrofa) in urban spaces is a global issue often addressed by liberalising hunting to control animal populations. However, this approach has been criticised for its lack of effectiveness and for its ideology which reinforces the divide between humans and non-humans. Referring to the recent (December 2022) Italian law on hunting as an example, this paper investigates how normative settings can lead to exploitation and abuse. I argue that the Italian law facilitates 'meat laundering', the introduction of meat from illegal and abusive sources into the food supply chain, by creating a grey area between hunters, rural enterprises and meat distributors. To understand how this is possible, I propose to interpret the law as an application of the concept of the frontier, as theorised by F.J. Turner, to interspecies relationships. I argue that this interpretation explains the law's rationale as it presents non-human bodies as outside human spaces and therefore to be 'pacified' at all costs, thus sanctioning human sovereign power over them and consequently privileging exploitation over any other form of interaction, including those based on mutual rights and obligations.*

THE FOLLOWING ARTICLE IS A RESPONSE TO recent changes in the legislation on wildlife management in Italy, characterised by the institutionalisation of hunters as population control agents, the loosening of limitations on culling as a wildlife management practice and the creation of a meat supply chain to utilise the carcasses produced in this population control effort. The law has been presented as a response to the 'boar emergency' in Italy and abroad (Tack, 2018), thus boar (*Sus scrofa*) are particularly relevant for my analysis. However, the law impacts animals more broadly. The law is presented as a necessary tool for protecting biodiversity, the environment and human interests. However, since it hasn't yet been fully implemented, it is impossible to offer a specific impact assessment of its outcomes. Therefore, in this contribution I will limit myself to examining the approach to wildlife management embodied in the law. I conclude that, counterintuitively, the law could be conducive to an increase in criminal behaviours targeting non-human animals (hereafter animals) due to its informing principles. I concern myself primarily with meat laundering. I propose to consider the complex network of interests and practices embodied by the law through the metaphor of the *frontier,* used here as a conceptual tool to frame our engagement with the non-human world. I use the metaphor to capture the status of something (or someone) at once outside society as a subject but simultaneously within it as a resource.

The concept of the frontier is clearly similar to the state of exception (Agamben, 2005) as a form of sovereign domain over the administration of violence. However, I consider the frontier more appropriate to deal with our interspecies relationships as it focuses on bringing within something from without, rather than being an 'internal' organisation of power. According to Blumenberg's (2016) metaphorology, our conceptual systems are informed by fundamental metaphors (Hawkins, 2019), which define their terms and inform their developments. Among the metaphors Blumenberg examined, two describe our engagement with the world: that of a *terra incognita* and that of an *incomplete universe*. Specifically, the latter presupposes the world as a "heap of raw material" (Blumenberg, 2016: 61) to be perfected by technology. I consider them to be closely related to my use of the concept of a frontier.

To put it quite straightforwardly: animals and wildlife enter human societies through a frontier, which handles them as resources to be either commodified or managed. From within the frontier, what's outside can only be seen through this exact gaze, which, as we know since Foucault, has a disciplinary and constitutive power (Holligan, 1999: 139). Thus, the frontier has a 'transformative' power.

I consider Frederick James Turner the key theorist of the frontier as a societal principle, as according to his frontier thesis, not only is what's outside by definition passive and up for the taking but the same settler subjectivity is defined in its activities of frontier control. According to Turner (1994[1893]: 32, 41),

> the frontier is the outer edge of the wave–the meeting point between savagery and civilization. […] The wilderness has been interpenetrated by lines of civilization growing ever more numerous.

As the frontier deals with the limits of society, rights and obligations are blurry. The frontier is proverbially a space ripe with abuse and I argue that such a concept is essential to understanding crimes against animals as belonging to an overall spectrum of activities of 'border patrolling', rather than as independent outliers from an otherwise pacified territory. This spectrum I identify with the so-called *Animal–Industrial Complex*, or AIC. The AIC has been defined by Twine (2012: 23) as,

> multiple sets of networks and relationships between the corporate (agricultural) sector, governments, and public and private science. With economic, cultural, social and affective dimensions it encompasses an extensive range of practices, technologies, images, identities and markets.

The notion of the AIC was developed as a tool to critique the way in which animals are reduced to lives unworthy of living for our gain (Stallwood, 2014). The critiques rely on an approach to animals based on animal rights, which I will use here as well to navigate the complex network of hunting, wildlife management and meat consumption generated by the Italian law. I will, however, do this by considering the law as part of the AIC and criticising it as such. More precisely, I will examine the law through the idea of legal affordance. The concept of affordance is derived from the philosophy of perception and indicates the possibilities of actions for a creature as perceived in the environment they navigate (Siegel, 2016), such as we perceive a handle as to be grasped.

I argue here that the Italian law offers itself as an affordance towards the practice known as meat laundering, a type of food fraud in which meat products are substituted or adulterated with different substances, often of lower quality or dubious provenience (Croall, 2009; Manning, Smith and Soon, 2016). However, I conclude that this is not a deviation from the AIC's standard practices but rather a proper expression of its working.

The structure of the paper is as follows: in the next section, I will provide an overview of the situation concerning boar in Italy and discuss the relevant Italian laws addressing this issue. Following that, I will delve into the AIC and offer an interpretation of it, including its laws, through the lens of legal affordances. This analysis will underscore the interconnectedness between what is deemed legal and illegal. Subsequently, I will examine wildlife management, emphasising the aforementioned continuity and its ties to the AIC. I will also briefly explore how criminal and violent actions can be integrated into the AIC and entrepreneurial activities on a broader scale. Finally, I will address the role of animal rights in wildlife protection and within the context of the AIC. I will conclude by discussing some of the justifications used to oppose these rights. In

the conclusion I will sum up my observations on the approach embodied by the law.

## The situation of boar in Italy and the legal response

Boar have been described as having a substantial environmental (Massei and Genov, 2004) and agricultural (Ficetola et al., 2014; Monaco, Carnevali and Toso, 2010) impact, causing severe damages and disturbances. Furthermore, boar are a reservoir species for the African Swine Fever (ASF) virus, which poses a great risk to pigs and the pig farming industry at the moment (Ruiz-Fons, Segalés and Gortázar, 2008). According to the Italian National Institute for Environmental Protection and Research (ISPRA), the population of boar in Italy is estimated at 1.5 million animals and in the years 2015–2021 they caused damages to Italian agriculture amounting to between €14.6 and 18.7 million per year (Isprambiente.gov.it, 2021). Yet despite the steady global increase in their numbers, the current situation is not simply the result of an unexpected demographic spike. Our relationship with Suidae is in fact informed by a much more complex network of variables, of which their population dynamics are the result.

Boar, once almost disappeared, have been reintroduced in Italy since the 1960s (Hearn, Watkins and Balzaretti, 2014) and irresponsible wildlife management has greatly reduced their and other ungulates' predators, such as wolves, which kept their populations in check (Mori et al., 2016). Attempts at population control have pushed young boar into reproductive spikes, which have resulted in population growth. Hunters have influenced boar populations with their practices, such as with foraging and introducing individuals to grow populations (Claydon, 2020; Geisser and Reyer, 2005; Massei, 1993). Currently, urban expansion encroaches on boar habitats (Castillo-Contreras et al., 2021) and the urban landscape attracts boar due to food availability (Toger et al., 2018).

The new law is intended to address the outcomes of these dynamics decades after the boar were reintroduced. However, as the rest of this paper will show, its approach comes from a very specific understanding of interspecies relationships, not too different from the one that caused the current crisis. The new Italian law was officially published with the *Italian Budget Act for 2023* (Gazzetta Ufficiale Della Repubblica Italiana, 2022), which modified the pre-existing *Standards for the Protection of Warm-blooded Wildlife and Hunting* (Gazzetta Ufficiale Della Repubblica Italiana, 1992*)*, a cornerstone of Italian wildlife management. The modified law also introduced the provision for an *Extraordinary Plan for the Management and Containment of Wildlife* (Gazzetta Ufficiale Della Repubblica Italiana, 2023a) which was published in July 2023 and will last for five years. The *Extraordinary Plan* defines the criteria for local wildlife management plans, including the kind of equipment to be used in control activities, which kinds of hunts are accepted and the basic requirements for managing carcasses. Other regulations dealing with wildlife, following the new law's approach, are spread out across different pieces of legislation. For example, in August 2023, regulations tackling the ASF emergency were published as part of the *Urgent Provisions on the Organisation of Public Administration, Agriculture, Sport, Labour and for the Organisation of the Jubilee of the Catholic Church for the Year 2025* (Gazzetta Ufficiale Della Repubblica Italiana, 2023b).

Overall, the new provisions are characterised by easier access to culling as a population control method in comparison to the previous framework, which privileged 'ecological methods'. The new provisions also regularise hunters and other private figures[1] as systematic actors in wildlife management. According to the law, registered hunters can be involved in population control efforts under the coordination of local authorities after they attend dedicated training courses. Hunting associations have applauded the law (BigHunter.it, 2023; Cacciamagazine.it, 2022; Iocaccio.it, 2023). It should be noted that hunters were already used for similar

[1] According to the *Extraordinary Plan* (Gazzetta Ufficiale Della Repubblica Italiana, 2023a), these might include "private companies, specialized firms or professional operators, cooperatives and individual professionals" (author's translation), provided they attend the appropriate courses. I will focus more specifically on hunters from now on.

actions at the local level but this practice was not recognised at the national level.

Most controversially, the law allows local governments to carry out culling activities (also with hunters) outside the regular limits set both for hunting and regular wildlife management. This *controllo numerico* (numeric control) can be carried out outside the hunting season and in areas where hunting is otherwise not permitted, such as urban and protected areas. The law explicitly states that these actions should be considered as 'control' and not *attività venatoria* (hunting):

> [Local governments] provide to the control of wildlife species […]. [They] can authorise control plans through culling or capture. Control activities listed herein are not hunting. (Gazzetta Ufficiale Della Repubblica Italiana, 2022, author's translation)

Furthermore, the legislation establishes that animals killed within the new framework can be introduced into the meat supply chain, assuming that the carcasses pass adequate health and safety checks. Although there are more established hunting meat supply chains in Europe, such as in France, Slovenia, Austria and Scotland (Gaviglio, Marescotti and Demartini, 2018), this is not the case for Italy. In the Italian context, hunting and its products are handled primarily at local level and within local circles (Gaviglio, Demartini and Marescotti, 2017). However, there is a recent surge in interest in the standardisation and expansion of this potential market (Marescotti et al., 2021; Viganò et al., 2019). For example, a recent research project was dedicated to the creation of a wild meat supply chain in northern Italy (Viganò et al., 2017; Viganò et al., 2018), based on the 'valorisation' of game meat (Marescotti et al., 2019).

The *Extraordinary Plan* specifies criteria for handling carcasses and how they should enter the supply chain. Animals should be tagged and dropped at collection points. At regular intervals, carcasses from these collection points should be brought to treatment centres to be placed on the market. The revenue from their commercialisation should go towards the compensation of damages caused by the animals, to incentivise investigative activities for signs of ASF or to incentivise other unspecified control activities.

Animal rights activists have commented that the new framework weakens environmental and animal protection. Associations such as ENPA (the national body for the protection of animals) and LAC (the league for the abolition of hunting) have argued that the real goal of the law is the creation of the meat supply chain (Abolizionedellacaccia.it, 2023; Enpa.it, 2023). These criticisms were raised at European level and the European Commission in fact launched an investigation into the law (Lav.it, 2023). The European Commission letter focuses mostly on the derogations for activities carried out in protected areas. At the time of writing, I have been unable to find information on the investigation's outcomes.

In short, the law confirms some pre-existing tendencies in Italian wildlife management that frame animals and human beings in opposition to one another and that consider the former first and foremost as resources to be used. This is the opinion expressed by a commenter who pointed out that the law will not change much in day-to-day wildlife management in Italy and should rather be read as "anthropocentric propaganda" (Magneschi, 2023: n.p.). While there is something to be said for this interpretation, considering that hunters did already participate in wildlife management, I argue that it is necessary to understand the law through the framework of the AIC, which the provision for a meat supply chain brings to the fore, in order to clarify its premises as well as its potential pitfalls.

## How does the AIC work?

Both academic and non-academic literature on food crimes has focused on, for example, the exotic trade or breaches associated with potential medical catastrophes. To understand the kinds of crimes that can emerge from the Italian legislation, however, it is important to focus on the place in which they tend to happen. In the case of meat laundering, this place is the rural enterprises where green crimes are more likely to happen (Goodall, 2022). What emerges from such an approach is an attitude that sees rural criminals not as individuals acting simply by way of a cost-benefit calculation *outside of* otherwise perfectly legal systems. Rather, criminals should be seen as enmeshed in complex networks of relation-

ships which generate opportunities and make criminal behaviours the most 'reasonable' option among several to choose from. Rural crime should be seen as the output of a network of agents and affordances along more 'acceptable' courses of action, with the borders between the two being rather blurry. As van Uhm (2018: 199) points out, about 30% of wildlife criminals work legally with wildlife.

This situation is key to understanding concerns about meat laundering in Italy. To clarify, I will briefly examine two other food crimes that received much more media attention compared to meat laundering, namely the bushmeat trade and meat adulterations in established markets. What is significant here is that both are as enmeshed in the rural productive system as meat laundering is and an examination of the two will further an understanding of animal-related crimes and their complexities.

The bushmeat trade refers to the illegal trade and sale of meat of (mostly) African wildlife, either on site or possibly smuggled and sold in black markets in Europe and other countries (Gombeer et al., 2021). Such an activity clearly impacts endangered species and is practiced in otherwise deprived areas by "poor, unemployed and food-insecure young men who sell bushmeat for money to buy food" (Lindsey et al., 2011: 91). Meat adulterations consist of (but are not limited to) practices such as the fabrication of expiry dates on meat packaging, the distribution of rotten meat on the market and similar malpractices of varying gravity and intentionality (Robson et al., 2020). A famous example of meat adulteration was the 2013 horse meat scandal in which beef destined for several markets was adulterated with undeclared or wrongly declared horse meat (O'Mahony, 2013). Obviously, meat laundering is closely related to, if not a kind of, meat adulteration (Croall, 2012).

Both types of crimes are associated with the globalised market and its history. For example, the bushmeat trade is closely tied with the role of western colonialism and consequent diasporas from the Global South (Dawson, 2018) and it relies on established commercial networks to ensure its persistence (Robertson et al., 2014). Meat adulterations highlight how economic interests inform enterprises' day-to-day activities and are their literal bottom line (Smith and McElwee, 2021).

If this is the case then we can argue that these crimes, as well as others, belong to the AIC, meaning that from the exploitative perspective of the AIC, the legal/illegal dichotomy is not of primary importance. In other words, we can see the AIC as an institution dedicated to the use of animals, in which laws are but an element among many others and the final goal is exploitation. This consideration allows for a more general outlook on what institutions are and how they work. De Rosa and Trabalzi (2016: 305) define institutions as "the rules of the game", i.e., how things are done. For our goals this means that to understand institutions we need to consider them in their concrete, localised existence. That is, institutions are connected to local subjects, resources, infrastructures and, most importantly for us, *practices* (De Rosa, Trabalzi and Pagnani, 2018: 47).

Institutions' continued existence and possible transformations are therefore determined by the interactions between subjects and the affordances offered by the institution itself. Affordances are the possibilities of action of a creature (Gibson, 1979). That is, if we consider perception as an embodied condition (Gallagher and Zahavi, 2021) then "to perceive [...] is to perceive structure in sensorimotor contingencies […] [meaning that] when we perceive, we perceive in an idiom of possibilities for movement" (Noë, 2004: 105). In other words, certain elements in our environment appear as opportunities for specific actions. Classical examples are chairs for sitting or doorhandles for grasping. In short, they include all perceptual elements that evoke certain behaviours and inform our embodied and active navigation of the world.

According to Fiebich (2014: 151) it is the shared social cognition (of the institution) that might shape perceptions of the affordances to action available to the subject. That is, if we acknowledge an institution (if we share the "rules of the game"), we are led to perceive our environment accordingly. A typical example in this case would be money: sharing the rules of the game of money, we perceive it as something that allows certain activities or not. According to Hodgson "[i]nstitutions both constrain and enable behaviour" (Hodgson, 2003: 163). Thus, whereas bottom-up transformations (gener-

ated by subjects) are possible, many members of institutions end up reproducing the institution they find themselves in and I argue that this applies to the 'renewed' Italian AIC as well.

Our participation in different institutions can take many forms. Some subjects might even see crime as a form of bonding and rite of passage *per se*, such as for teenagers and wannabe gang members (Schneider, 1999). An empirical example of this understanding of institutions regarding the law being examined here would be the fact that, after news outlets reported its approval, several amateur hunters interpreted it as granting them a free pass to hunt in urban spaces, to my knowledge without major consequences so far, but dangerous and obviously illegal. It could be argued that the law accelerated several elements in Italian society, including attitudes to wildlife, urban spaces and gun control. According to the most recent data, almost 10% of Italians own a firearm (Censis, 2021) and their perception in terms of safety is low. According to a 2017 Eurobarometer survey, 10% fewer Italians felt that their country was safe compared to the continental average (Directorate-General for Communication, 2017).

Returning to the topic of rural enterprises, it is not surprising to see then that illegality is sometimes characterised as a local open secret, part of what 'everyone does' (McElwee, Smith and Somerville, 2011), that is, part of a known institution. The rules of this institution are however questionable. According to Hunt (2013: 103), animal agriculture is built on two key assumptions: "the decision to externalize the lethal costs of its activities onto animals and the fantasy of sublation that turns these costs, via a sacrificial logic, into human life." In other words, the AIC is an institution embodying a form of thanatopolitics (or necropolitics), in other words managing death and dying as an exertion of power (Neo and Emel, 2017).

In general terms then, the AIC embodies certain decisions over who dies to keep others alive. Furthermore, animal agriculture births those that it will later kill, keeping them in a status of "living death" (Hunt, 2013: 104). It is reasonable to assume that those working to introduce wildlife in the AIC to exploit it in a meat supply chain will be pushed to see wildlife in the same way, as living death to be exploited. This means that the investigation of the Italian law can be reframed as the following question: How does the Italian law on wildlife conservation, with its correlation of killing, population control and consumption, impact the necropolitics of the meat industry? In this context, it is reasonable to hypothesise that the new Italian law will be used to find loopholes or to allow any kind of behaviour finalised to the extraction of value as happens in more 'traditional' rural enterprises. Laundering the meat of animals killed not regularly in the newly established supply chain is just one of the possibilities that come to mind.

From this point of view, if laws and regulations aren't carefully considered, they might even end up greatly facilitating abuse and violence, either in the form of "lawful but awful" (Croall, 2012: 16) activities or straightforwardly unlawful and criminal behaviours**.** The latter usually results from the exploitation of lacklustre controls or oversights, happening in the so-called grey areas of different sectors. For example, Couper and Walters (2018) note how regulations on endangered species might increase demand for the illegal wildlife trade due to their commodified rarity, with lax regulations substantially facilitating the crime (e.g., via falsifying tags or corrupting authorities). This use of laws is not unique to wildlife crime, however. Grasten, Seabrooke and Wigan (2021) examined how firms such as Uber or AirBnb use legal affordances to collateralise local value chain activity into global wealth chains. That is, thanks to legal affordances (such as absence and ambiguity in laws), the firms in question can occupy non-existing markets or exploit ambiguous legislation for managing employment regulations to their advantage.[2] What is relevant to us is the continuity between legal and illegal practices that firms might exploit through legislation, which I will examine in the following section from the perspective of wildlife management.

[2] Another theory of laws as affordance is offered by Hildebrandt (2017), but her focus is on the relationship between laws and technologies (such as writing) and seeing the former as an affordance of the latter.

## Wildlife management crime

Prima facie, an activity such as meat laundering might be considered not a very relevant crime and an abuse only in the sense that it break laws such those regulating markets (Taylor and Fraser, 2017) or customer health protection (Spink and Moyer, 2011). However, not only does meat laundering rely on the same condoned abuse of the AIC but it also brings a different kind of abuse and possibly cruelty to the table. Cohn and Linzey (2009: 319) argue, for example, that a painless, instantaneous death is far from the norm for hunted deer. Goodall (2022) examined deer hunting regulations in rural England and pointed out that in fact hunting and meat processing legislation were the weak spots (we can say the *affordance*) that facilitated exploitative and abusive behaviours, as the various steps involved in the commodification of carcasses within the AIC provided several opportunities for laundering animals killed irregularly (e.g., with shots that are technically 'prohibited' but still happening). Ben-Ami et al. (2014) noticed a similar phenomenon with kangaroo hunting in Australia, with conservative estimates suggesting that at least 4% of animals are killed with unacceptable shots. In an earlier work, Ben-Ami (2009) estimated this number to be much higher (up to 40%!), considering the number of carcasses that had been delivered to processors with signs of a potential cover-up for misplaced neck shots.

These examples show that existing contexts might provide opportunities for impunity and even rewards for illegal or irregular behaviours, in this case in the form of loopholes for laundering animals killed in inhumane ways. By institutionalising hunters as both members of the AIC and as the ones in charge of culling, the Italian law ends up embracing the blurriness that comes with their practice and, in doing so, highlights its exploitative aspects. In other words, what stops members of the newly created apparatus from looking for ways to maximise at all costs the exploitation that normally happens in the AIC (including hunting)?

This highlights a more general observation regarding conservation: laws, such as the Italian one, that consider populations in terms of resources to be managed and consumed should be interpreted truly as managing anthropocentric concerns rather than wildlife. Pierri (2023) argues that the Italian law builds on a recent constitutional reform that, while presenting elements such as environment, ecosystems, and biodiversity as worthy of constitutional legal protection, does so from a position that might be considered primarily anthropocentric. As a matter of fact, the Italian Constitution distinguishes protecting biodiversity from protecting animals and for Pierri (2023 this makes the latter somewhat expendable, not part of a truly intersubjective idea of interspecies relationships. A truly intersubjective relationship would make any culling based on utilitarian reasons immoral (Sayce, 2019: 174–5) and render the question over the use of hunting as population control moot. If conservation stays grounded in a model that considers animals as resources and not as rights-holders, it might always be adapted to respond to changing interests or perceived outcomes or might not be designed to avoid such misuses.

For example, it may well be that, as Jackson (in Leader-Williams, Kayera and Overton, 1996: 7) points out, trophy hunting has a positive impact on the species it targets. However, as Wyatt (2016) has found, the same figures that protect certain animals (e.g., deer) for hunters have no qualms in poaching other species to keep the first safe. Even more paradoxically, as Hare et al. (2023) note, while trophy hunting ungulates might help control the population and positively impact biodiversity, inconsiderate hunting is one of the reasons for the need for similar forms of population control.

Leaving aside the question whether hunting is an effective method of population control, either via selective hunting or trophy hunting, these examples show that the goal of the practitioners is hunting, first and foremost. Of course, conservation intrinsically positions human beings as "the centre of agency" (Jamieson, 2008: 189), as distinct agents in charge of an overall passive otherness, but in a framework such as the one designed by the Italian law the potentially exploitative nature of the position comes to the fore.

In short, many regulations protecting animal wellbeing and the environment in general cannot but reflect the innate and inescapable anthropocentrism of our engagement with the world. Even the most progressive of our conservation efforts cannot but

be directed towards allowing our continued existence on the planet, for which a certain sustainable environmental status is a precondition. Our engagement with the environment is characterised by our uneven position within it and this unevenness is embodied by our practices in the AIC. The following brief section is dedicated to the kind of subjectivity behind these activities.

## Subjects and resources in the AIC

In a famous parodic piece, Marx (1970: 38) argued that "a criminal produces crime" as "a philosopher produces ideas, a poet poems, a clergyman sermons, a professor compendia, and so on". By presenting crime as functional to the development of several sectors of society, Marx was satirising the opinion that crime was the antithesis of productive occupations (Hirst, 1972). Rather than being productive for its morality, in capitalist economies an occupation is productive when it produces surplus value for the capitalist to make money from it.

The goals that inform similar societies and keep them constantly producing are informed by an agency which sociologist Ruggiero (2018) called a philosophy of desire (2018). Such desire is an intrinsic irrationality, characterised by never-ending wants, which call for more and more sophisticated ways of generating commodities to fill them (for a price), generating value. For the ones providing commodities, limitations are indistinguishable from each other, be those ethical, physical or legal, as the goal is the extraction of value. Thus, as we know, bodies are not excluded from this process, be those animal or human. In *Gore Capitalism*, Valencia (2018) explores the phenomenon of criminals using human bodies as resources through extortion, kidnapping, homicide and so on. These peculiar capitalists are called Endriago subjects. According to Valencia (2018: 26):

> Endriago subjectivities are created in the face of this world order [informed by masculinist neoliberalism], as individuals seek to establish themselves as valid subjects with the possibility of belonging and ascending within society.

In *gore capitalism* the "destruction of the body becomes in itself the product or commodity" (Valencia, 2018: 20) and therefore a viable entrepreneurial strategy. Endriago subjects then use violence and exploitation to establish themselves according to neoliberal criteria, i.e., consumption and wealth (Valencia, 2018). Endriago subjects share some similarities with the subjects of the AIC, as both manipulate bodies and death as a form of entrepreneurship. Muller (2018) describes this aspect of the AIC, picturing slaughterhouses' necropolitics[3] through the metaphor of the 'zombie': in slaughterhouses, animals (and workers) are broken down to extract value from of them. Animals are living a life planned towards their death. By being placed in such a status, animals live in a space of indecision in which laws and rules do not necessarily apply.

Von Essen and Redmalm (2023) identify culling and hunting for biosecurity and pest control as another necropolitical practice. In their attempt to frame it, they note that the application of guidelines is not without conflict. Cooper (2009: 312) points out how UK hunters show "little or no respect for the law", as they continue to hunt wild mammals with hounds even when the practice was declared illegal in 2004. The Italian law, as it embodies a form of (necro)power, similarly creates grey areas. In doing so, it generates a space in which abuse is possible.

## Abuse in the AIC

I have argued that the AIC is informed by an attempt to respond to capitalist demand for commodities. In doing so, it generates spaces of ambiguity to extract value from its resources, where the legal/illegal dichotomy is not of primary relevance. What follows from this is that bodies under its 'care' are placed in a situation ripe for abuse.

The use of culling as a population control method is not uncontroversial and the practice has been criticised for its track record *vis-à-vis* animals' wellbeing

[3] I'm using thanatopolitics and necropolitics interchangeably to indicate the forms of 'living death' in which certain subjects are kept to extract value from them. The classic definition of necropower is by Mbembé and Meintjes (2003), which focuses on human experience such as slavery. I understand that the application of the notion to animals might be controversial but this is but the other side of the metaphor used by Mbembé and Meintjes themselves: savage life is just another form of animal life (2003: 24)

(Littin and Mellor, 2005). Approaches such as compassionate conservation reject the idea altogether, arguing for the intrinsic value of individuals and proposing alternative methods and perspectives (Wallach et al., 2018). This position has been criticised as inconsistent, impractical and fundamentally ineffective, however. In short, advocates of more 'hands-on' approaches to wildlife management reject the idea that certain inviolable animal rights exist, or if they do, that they trump the value of conservation. They therefore reject the right of individual animals to not be sacrificed for the greater good (of the species or of the environment), such as the need to restore compromised ecosystems. According to advocates of population control, without it many animals would suffer due to anthropic causes and we would still lose biodiversity (Callen et al., 2020; Oommen et al., 2019). Dickson (2009) argues that animal rights advocates cannot distinguish between the death of the last member of a species and the death of an animal not at risk of extinction. Similarly, he argues that the 'leaving wildlife alone' approach of animal rights activists is inconsistent with our care for pets and domesticated animals.

According to the theory of animal rights developed in *Zoopolis* (Donaldson and Kymlicka, 2014), this rejection depends primarily on the fact that theories of animal rights are presented almost exclusively as black-or-white negative rights, best summarised by the 'leave animals alone' ethos. The authors propose to solve the issue by understanding animal rights through the prism of citizenship instead, based on the idea that rights and obligations are defined by different forms of participation in subjects' communities. Different obligations depend on different contexts and responsibilities. Thus, inviolable rights should be respected at all stages, but the way in which this is done might vary. Accordingly, the relationship with wildlife should be seen within the paradigm of sovereignty, akin to the relationship communities have with one another under frameworks of international justice. Therefore, we should consider wildlife as a community capable of self-organisation that we should 'leave alone', save from forms of cooperation that do not infringe on their inviolable rights. In this framework, therapeutic culling would be a radical breach of basic animal rights, and therefore unacceptable. This is radically different from an approach based on frontier-like relationships, in which even a conservative approach would be directed at keeping resources abundant, at the cost of breaching the 'resources" rights.

> The term frontier […] refers to an area or source of unusually abundant natural resources and land relative to labour and capital. […] The process of frontier expansion, or frontier-based development, thus means exploiting or converting new sources of relatively abundant resources for production purposes. (Barbier, 2010: 7)

Consequently, the dichotomy between legality and illegality can be framed through the prism of abuse as a violation of rights, showing how the continuum between the two is understandable through the fundamental unity of the latter. On the one hand, abuse can be considered animal exploitation and domination, which isn't necessarily illegal. Taylor and Fraser (2017: 180) call this "condoned violence", which is undeniably an essential part of our everyday relationships with animals. On the other hand, the term 'abuse' could have a narrower sense and refer to something that happens outside the limits of laws and regulations, a form of crime in the common understanding of the word, i.e., as an abuse of power. Laws such as the Italian one clearly do not question abuse in the form of condoned violence but rather embrace it. However, this approach may inadvertently lead to abuses in the narrower sense of the term, particularly in the form of crimes. It operates on the assumption that animal rights can be revoked when necessary, framing animals and wildlife as a passive resource past "the hither edge of free land" (Turner, 1994[1893]: 33), "lacking a complex nervous system for the originally simple, inert continent" (Turner, 1994[1893]: 41). This approach has been observed in various forms while examining the AIC and how its self-imposed legal limits can be easily circumvented, refusing agency for the targets of its actions. What's left before concluding is to explore some of the justifications the AIC uses to rationalise this approach and their shortcomings.

## Hunters, farmers, criminals: Some actors in the AIC

Despite their apparent different fields of application, hunting, the AIC (as in commodification and

consumption) and population control do share a common understanding of animal life. This is what explains the possibility of moving freely between the three. We can start by using the definition of hunting given by the philosopher Ortega y Gasset to understand the premises behind the practices in question. It should be noted that Ortega y Gasset is interested in the experience of hunting primarily regarding its existential relevance for us, rather than for its own sake (Inglis, 2004: 93). Ortega y Gasset (1972/2007) describes hunting as enacting a hierarchy among beings in a form that can be considered playful: a ritual.

> Hunting is what an animal does to take possession, dead or alive, of some other being that belongs to a species basically inferior to its own. (Ortega y Gasset, 1972/2007: 62)

Due to our technological advancements, we must make a deliberate choice to engage in this way with animals, whereas the hierarchy is innately played out for other creatures. Consequently, "in the instinctive depths of his nature he [sic] has already foreseen the hunter" (Ortega y Gasset, 1972/2007: 64). That is, animals in the hunt have certain roles and peculiarities that define their place in the hierarchy:

> Thus, without our seeking it, the universal fact of hunting reveals to us the inequality of level among the species – the zoological hierarchy. (Ortega y Gasset, 1972/2007: 61)

For Ortega y Gasset, hunting should take place according to his thesis "that hunting implies an inequality among species, but that this inequality cannot be excessive. *Aquila non capit musca* [the eagle does not hunt flies]" (Ortega y Gasset, 1972/2007: 65). In contemporary parlance this is called "the sporting chance" (Leader-Williams, 2009: 10). The human exceptionalist position is justified by "its capacity to be […] an infinite number of different things" (Ortega y Gasset, 1972/2007: 102). This means that the most fundamental element of the hierarchy is that human beings are extra-natural (Gonzáles, 2016: 397). The act of hunting is therefore a voluntary descent from the top of the hierarchy, which takes place when the hunter hears and accepts the demands of the prey, for "[i]t is the animal […] which demands that he [sic] be considered in this way" (Ortega y Gasset, 1972/2007: 119). This approach implies that killing is essential to the hunt, as it marks the reality of hunt: "one does not hunt in order to kill: on the contrary, one kills in order to have hunted" (Ortega y Gasset, 1972/2007: 105).

Due to this predator–prey relationship, Ortega y Gasset can coherently conclude that 'accepting' the prey relationship is in a way more earnest than, for instance, farming or pet-keeping, as in the former, the hunter responds to the animals' 'nature'. This, however, raises the question why we cannot consider other animal relationships as equally earnest and equally fulfilling. Roger Scruton (2007), for example, argues about the relationship that can be established with cattle and this includes eating them. Scruton speaks of certain duties we have towards animals, especially domesticated ones, due to their being "gregarious, gentle and dependent" (Scruton, 2007: 58–59). In this case, marking the relationship as real does not just involve death but consumption, which should take the form an almost religious ritual (Scruton, 2007: 54). As Ortega y Gasset's prey animals are marked by their calling to be preyed upon, so Scruton's cattle is life living towards sacrifice (Scruton, 2007: 61–62). Scruton also has to admit to a radical difference between us and them in order to claim that animals aren't moral beings. Otherwise, we could not, morally speaking, make use of them as we do.

Both Ortega y Gasset and Scruton rely on a 'view from outside' of nature and conservation. It is seeing others (of any kind) as outside the community of those having rights that allows for their exploitation and given that no equal protection is given, it also implies the feebleness of any 'humane' approach to said exploitation, as these methods can easily be abandoned in any case of perceived *force majeure* or even the value of habit and tradition.

This is what is embodied by the concept of the frontier: a situation in which the other is never completely a member of the same community but always something to be exploited, to be in function of another's use. In their citizenship-based theory of animal rights, Donaldson and Kymlicka (2014) conclude that our usual approach to animals and their environment bears striking similarities to the *terra nullius* justification used by colonialists in their exploitation of other populations. Lands previously occupied (in this case by animals) were (and are) seen

as empty and to be developed (Donaldson and Kymlicka, 2014). This penetrability of the frontier exists both for animal enclaves in our community and for those that we consider outside of it, namely wildlife. If we are not willing to concede forms of citizenship to animals, we can't expect different approaches.

## Conclusion

According to Berger's (2008) famous distinction regarding the male gaze, women in art are seen and men are the ones seeing. The former are passive; the latter are active. The same happens at the frontier: settlers are at once enticed by promises of wealth and riches and justified by the presumption of a hierarchy of being in which they are above the colonised. The contradiction appears in all its tension regarding the use of other bodies: the colonised are at once powerful and weak, appealing and disgusting (McClintock, 2013: 22). In the case of animals, they are pests *and* food, companions to be loved *and* to be eaten, and so on and so forth. Similar dichotomic approaches, aside from having been a trope of European conceptual history, take the shape of institutions, places, relationships, architecture and geographies. What emerged from this paper is that, in the case of animals, the movement that controls animals both outward and inward is about how we handle and manage *resources*. This is what happens with the AIC and its peripheries, such as wildlife control via hunting and that which characterises frontier spaces, where sovereignty is in question.

In this context, the distinction between legality and illegality becomes less relevant because something treated as a resource is not granted rights comparable to those who manage these resources. Consequently, the AIC is rife with criminal activities, which can also be viewed as a calculated entrepreneurial strategy. The line between sanctioned and acknowledged abuse blurs and local institutions emerge with rules that might not align with our expectations.

With this premise in mind, the Italian introduction of hunters as wildlife guardians and the connection of wildlife management with the commercial aspects of the AIC create a potential breeding ground for abuse. This abuse extends not only to condoned practices but also breaches the established limits of the activities in question. Meat laundering becomes the process by which any activities within the newly established grey areas of wildlife management are cleaned up through commercialisation. This can encompass clear violations, such as animals being killed outside the parameters of population control, which was my primary concern when writing this paper, but in a broader sense it also includes the condoned violence inherent in the practice itself. From this perspective, the concept of the frontier is useful in framing what initially appears as an act of wildlife management and protection but is, in reality, a deliberate assertion of sovereignty over other animals. Considering this viewpoint, alternative ways of dealing with animals may not even be conceivable to those managing animal resources.

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***Suggested citation:*** Querini, G. (2024). Meat laundering and non-human spaces: The case of the Italian law on boar (*Sus scrofa*) hunting. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 111–125.

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# How is the concept of unnecessary suffering shaped by diverse actors in the context of UK animal farming?

*Catherine Cowan*

***Abstract:*** *Despite having some of the most rigorous animal welfare legislation in the world, UK law nonetheless allows tremendous harm to befall the 1.155 billion land animals and many millions of fish who are killed annually to support the country's food supply. This paper discusses how, in the deliberate vagueness of UK legislation, responsibility for defining welfare standards devolves upon a range of actors, from farmers and food producers to retailers and non-governmental organisations. In exploring this complex web of diverse parties, some of the ways in which extreme suffering is persistently constructed as 'necessary', even by those who purport to prioritise the animal's interests, are examined. Given the steadfastly anthropocentric values of the most powerful actors and a reticence to divert from precedent, it is concluded that UK farmed animals, receiving meagre legal protection, remain in a position deeply vulnerable to exploitation and abuse.*

TO CAUSE FARMED ANIMALS 'UNNECESSARY' suffering is an offence under the current UK *Animal Welfare Act 2006* (henceforth AWA), as it was under preceding legislation. The flexibility of this term entails certain legal advantages, allowing its use across various contexts and accommodating evolving understanding of how other-than-human animals (henceforth animals) should be treated, without the need for frequently updating legislation (Radford, 1999). However, its ambiguity necessitates a clear understanding of who is in the position of interpreting it and how they are doing so, if the 1.155 billion land animals that are killed annually to support the UK food supply (Animal Clock, 2022) or the estimated 28–77 million fish in UK aquaculture (Mood and Brooke, 2019) are to be provided welfare in any meaningful sense.

There is certainly cause for concern. Despite having some of the highest levels of animal welfare in the world (Animal Clock, 2022), the UK houses the majority of its farmed land animals in 1,674 intensive farms, without fresh air, natural light or the ability to express natural behaviours (Compassion in World Farming, CIWF, 2022). Ill-health abounds:

> [M]aladies are too numerous to list, but [...] include mastitis, ketosis, abscesses and lameness in dairy cattle, feedlot bloat and abscesses in beef cattle; lameness, feather-pecking, respiratory problems, ascites, sudden death and broken bones in poultry; and muscoskeletal problems and tail-biting in pigs. [...] [T]he extent of confinement is such that animals cannot walk or even turn around. [...] Often the animals are kept in barren environments, and lack [...] opportunities for positive socialization. [...] [A]nimals are grouped so closely together that they cannot escape from each other, leading to fighting, injury and even death. (Garner and Rossi, 2014: 493)

Importantly, suffering is not only physical. Animals on intensive farms can experience psychological

pain throughout their lives (Kona-Boun, 2020). As Cudworth (2017: 168) discusses, "[a]ll animal lives in contemporary agricultural systems are drastically foreshortened [...] barren and stressful." Her description of intensive farming as "an institutionalised site of animal abuse" (2017: 160) validates the role of the criminologist in investigating the socio-economic landscape on which these harms occur, despite their legality, a view supported by Beirne (2014).

That such animal treatment is routine and legal indicates that it is considered necessary, but by whom and based on what assumptions? Radford (1999) asserts that it is the judiciary who define what unnecessary suffering means in criminal law. However, as I shall note, due in part to the courts' striving for objectivity and in part to the UK's neoliberal legal-political landscape, other, diverse interested parties, from farmers and private sector food companies to non-governmental organisations (NGOs) and consumers, have also accrued agency to interpret the meaning of (un)necessary suffering and shape its boundaries. This paper aims to provide a brief exploration of some of these groups and their influence over each other and vast numbers of sentient animal lives, while acknowledging some of the moral problems of modern animal farming in the UK.

## The judiciary

Depending on the legislative context of an animal cruelty charge, courts may seek an objective standard of *mens rea* (criminal intent) (Radford, 1999). In 1889, recognising that "[w]hat amounts to a necessity [...] for inflicting suffering upon animals [...] is hardly capable of satisfactory definition" (Animal Legal and Historical Center, ALHC, 2022a), Mr Justice Hawkins decided in the case *Ford v Wiley* regarding the dehorning of cattle, that "pain caused [...] must not so far outbalance the importance of the end as to make it clear to any reasonable person that it is preferable the object should be abandoned rather than that the disproportionate suffering should be inflicted" (ALHC, 2022a).

Who is the reasonable person to whom the judiciary look? In the 1985 case of *Roberts v Ruggiero*, the Divisional Court dismissed a charge of causing unnecessary suffering to farmed calves kept in veal crates, on the basis that it was not "beyond that which was general in animal husbandry" (Radford, 1999: 706). Judge Stoker dismissed evidence that less harmful ways of procuring veal were available, stating that a magistrates' court was "not the appropriate forum in which, nor [was] a criminal prosecution the appropriate method by which, the legality of the system of husbandry should be established" (ALHC, 2022b).

In the case of *Hall vs RSPCA*, 1993, involving the interpretation of the offence of wantonly or unreasonably doing, or omitting to do, any act which causes any animal unnecessary suffering, the divisional court held that the meaning to be applied to unnecessary must include being 'unreasonable'. They determined that the objective standard against which to compare the defendants' conduct was that of "the reasonably competent, reasonably humane, modern pig farmer" (Radford, 2005).

The role of defining unnecessary suffering is therefore devolved, avoiding the costs of detailed criminal inquiries into a multitude of animal exploitations and preventing judges from having to acquire detailed knowledge of animal husbandry (Radford, 1999).

## The conflicting interests of humans and farmed animals

This appears an apt illustration of Stretesky's assessment (2013: 110; cited in Sollund, 2017: 83) that the law, "[r]ather than being an objective measure of harm [...] is a social construction that registers the amount and kinds of harms that the social forces that make laws are willing to allow", where here the social force is the status quo of animal husbandry. As philosopher Francione (1996) contends, the question whether animal suffering is necessary is decided not by moral thinking but by reference to norms of exploitation already deemed acceptable. As such the law has been described as having a central role in the oppression of animals. Kymlicka (2017: 124) for example argues that "it is the legal system which authorizes humans to harm and exploit animals".

While the qualities of many species of animal can be perceived directly by spending time with them (Safina, 2015), there is also a growing literature providing evidence of the sentience, consciousness,

culture, social bonds, individual character, complex cognition and emotions found among farmed animals (e.g., Held, Cooper and Mendl, 2009 discussing pigs; Mitchell and Makecha, 2017 on cows, and Marino, 2017 on chickens). It is clear such animals have very strong interests in not only avoiding suffering but also in having positive experiences that might constitute a good life or at least a life worth living (Farm Animal Welfare Council, 2009). It is important therefore to ensure that animal interests only be overridden by interests of others that, after sincere questioning, can earnestly be conceived as being even stronger, certainly ruling out human pleasure or profit alone (Bilchitz, 2012). Fox (1997: 29) however describes the current cost–benefit analysis undertaken in context of the legal use of animal bodies as a system whereby "all of the costs are assigned to one class of sentient beings, and all of the benefits accrue to another", something he describes as "a model of injustice".

While it appears morally impoverished of the courts to avoid sufficiently interrogating the assumed dominance of human over animal interests due to costs and the difficulties (as complex as they may be) of challenging common farming practices, Francione (1996) argues that due to animals' status as human property in law, no weighing of human and animal interests could ever be meaningful. Since humans will always value their own interests (such as access to affordable meat) more strongly than that of property, he concludes that abolition of all animal exploitation is the moral ideal and one that society must urgently pursue.

Troubling moral questions do indeed abound over the requisition of animal bodies for human use in any but the most respectful and reciprocal capacities. Examples of such can be found, however. At Skanda Vale Hindu ashram in west Wales, only after her young have had their fill will a cow's surplus milk be taken for consumption by humans. Living in accordance with the principles of ahimsa (non-violence), this community allow their cows to live out their natural life. Older cows, who due to severe arthritis can no longer stand, are turned many times a day and hand-fed by the monks (Hurn, 2016).

Though finding a way to cease animal exploitation may be the ultimate moral goal given the strength of many farmed animals' interests in avoiding suffering, the idea of a non-exploitative model of farming (such as at Skanda Vale) becoming widely established in the near future is politically unfeasible (Kymlicka, 2017). It is vital to improve the lives of suffering farmed animals now (Bilchitz, 2012) and until farming moves away from harmful practices such as we see in intensive systems in particular. Since the role of the farmer appears to have considerable importance in defining the standard of farmed animal lives, both by being in charge of their daily care and with influence over the quality of animal life legally considered acceptable, it is to exploring their experiences and behaviour I now turn.

## The farming industry

The farmer–animal relationship is a complex, "productive paradox" (Wilkie, 2005: 213), since farmers play contradictory roles as both carers of animals and producers of animal products and bodies. Wilkie proposes four broad categories of these relationships, briefly described in figure 1.

That the highest levels of connection with animals are largely associated with recreational farmers raises concerns for the majority of UK farmed animals living on intensive farms, where their sheer numbers may contribute to the lack of meaningful human–animal interaction or recognition of the animals as individuals. In Wilkie's (2005: 228) words, "[a]s workers move away from the everyday responsibilities of feeding and looking after livestock they can disregard their sentient nature, perceive them as pure commodities and exercise 'detached detachment'".

This is substantiated by wider research. Rollin (1995) notes that high numbers of animals de-individualises those animals from their caretaker's point of view, while Seabrook's (1994) research shows that greater connection between farmer and animal is associated with the frequency and intensity of contact between them. Thus the modernisation and intensification of farming can de-humanise the work of farmers, preventing them from relating to the animals as they might wish (Porcher, 2006).

Though Bock et al. (2007) highlighted many factors which can influence farmers' attitudes to the animals in their care, including the animal species and their length of on-farm stay, their research also

makes clear that factors connected to intensive farming, such as the number of animals involved and certain housing systems, negatively affect the human–animal relationship, suggesting current law requires improvement.

> There may [...] be good reason to worry about the weakening of farmers' attachment to certain animals, in sectors such as meat production, where scale-enlargement and intensification is ongoing. [...] This could be counterbalanced by a tightening of animal welfare legislation, to promote the adaptation of production systems that strengthen farmers' contact with individual animals, counteract the disappearance of individuality within the group and prevent farmers from seeing animals as part of the 'production machinery'. (Bock et al., 2007: 121)

Even where a connection between farmer and animal exists, there are several reasons why improvements to animal welfare may not be made. In their semi-systematic review of 30 years of research focusing on large-scale farms around the world, Balzani and Hanlon (2020) identified a total of 26 factors that influenced farmers' likelihood of implementing welfare innovations. The two leading factors preventing improvements were found to be a dearth of farmer knowledge of good practice and concerns over the possible changes not being cost-effective. For example, in a recent survey, 42% of a sample of 43 English sheep farmers with a median flock size of 500 did not know about the code of practice relating to the treatment of lame sheep (Liu et al., 2018) and a study of 122 UK and Irish pig farmers found farmers were reluctant to employ strategies to reduce aggression between pigs due to profitability concerns (Peden et al., 2018). Balzani and Hanlon (2020: 16) stress that farmers were found to be "vulnerable to economic pressures that led them to take short-term decisions that might be contrary to their animals' needs; thus, increasing farmer stress due to frustration".

Still another factor in reticence to raise welfare standards was found to be farmers' wish to protect the status quo. "We have always done it in this way" is a common statement by farmers who do not implement welfare innovations (Balzani and Hanlon, 2020: 15). Such research suggests that efforts to address the complex financial, educational and cultural issues facing those running intensive farms must be urgently made if animals are to be taken seriously as moral subjects.

Social pressures, such as those from other stakeholders in the highly integrated animal product industry, will also determine what quality of life animals are afforded. Among UK chicken farmers contracted to large production companies, Miele and Lever (2013) note that animal welfare was felt to be predetermined by the company who provide the farmer with the animals themselves and their food, instructions for their housing, and their transport to slaughter. The placing of distance between the suffering and those who benefit from it (e.g., placing abattoirs away from residential areas) is a recognised phenomenon in meat consumption literature as are 'neutralisation' techniques used to justify one's harmful actions or inactions to oneself and others (e.g., Oleschuk, Johnston and Baumann 2019). This is perhaps an example of both, as the production companies 'outsource' exploitative practices to farmers, who in turn construct the suffering as the responsibility of the company.

Although farmer's roles should not be downplayed, it is important to note that the shaping of the concept of animal suffering extends well beyond them. As Lang (2004: 9–10) discusses, "[a] web of contractual relationships turns the farmer into a contractor, providing the labour and often some capital, but never owning the product as it moves through the supply chain. Farmers never make the major management decisions."

## Food companies

Of those who are making such decisions, including producers and retailers, the 2015 Business Benchmark on Farm Animal Welfare (BBFAW) found that 19 out of 90 surveyed companies did not recognise animal suffering as a relevant issue (figure 2). Only 4 companies showed the highest level of commitment to animal welfare, defined as including clear policy positions on key concerns such as close confinement and mutilations, policy implementation through the supply chain, reporting of performance against welfare objectives, employee training, and involvement in research and development to advance welfare (Amos and Sullivan, 2017).

Pressure on companies to reduce animal suffering comes via monitoring entities such as BBFAW and many other stakeholders. One incidence, which illustrates pressure from a network of actors including investors, an NGO and the media, took place in 2008 when Tesco became the subject of a campaign led by celebrity-chef Hugh Fearnley-Whittingstall backed by CIWF to raise chicken welfare standards. In light of the bad publicity, and unusually for the UK, a shareholder resolution was put forward against the company whose policies, allowing 19 fully grown birds to be kept in a metre square, did not meet the government's codes of recommendation. While the campaign resulted in the company merely expressing willingness to explore chicken welfare developments, it was regarded as a success by CIWF, who reported raised awareness among consumers and a significant increase in free-range chicken sales (CIWF, 2008).

Tesco are particularly proud of their beef standards, imposing on their suppliers regulations regarding animal housing and feeding, diet, transportation and medical treatment and ensuring the least painful methods in surgical procedures. In the mark of a neoliberal political landscape and "hybrid governance" (Miele and Lever, 2013: 64), it is Tesco who enforce the government's Code of Recommendation for Cattle Welfare (Lindgreen and Hingley, 2003). Similarly, Marks and Spencer (M&S), regarded by BBFAW as a market leader in animal welfare, became in 1997 the first major UK retailer exclusively to sell free-range eggs and in 2002 the first to use only free-range eggs in all their products. Their website emphasises that they are working with suppliers and farmers to help them address the ethical challenges they face (Marks and Spencer, 2023).

While large retailers are keen to claim animal welfare as a brand value in the fight for a share of the high welfare market (Miele, Murdoch and Roe, 2005), they are also motivated by risk management (Bredahl et al., 2001). Food-borne illnesses (e.g., bovine spongiform encephalopathy from beef, and salmonella in eggs) constitute a significant threat to trade, investment and human health. Where human wellbeing is threatened, the law is also more proactive. The *Food Safety Act 1990* required participants in the food supply chain to ensure their food was safe for human consumption. As Bredahl et al. (2001: 91) note, "retailers were no longer shielded from liability by a warranty or guarantee from their suppliers. They were required [...] to proactively ensure that the food they sell is safe". As far as making animal products safer for human consumption coincides with providing greater animal welfare, and to the extent that there is a market for higher welfare products, some improvements for animals may coincide with this goal. However, since animals are not central to the motivation, the concern remains that benefits to them will be limited and fragile (Miele and Lever, 2013).

## NGO involvement - A look at the Royal Society for the Prevention of Cruelty to Animals (RSPCA)

Given the anthropocentric motivations of both government and company policies, it is perhaps to NGOs that we can look for the concept of necessary suffering to be sufficiently questioned. The RSPCA, accredited with being influential in the creation of the AWA, the UK's most progressive animal welfare legislation to date (Hughes and Lawson, 2011), has since 1994 run the Freedom Food scheme, renamed in 2015 to RSPCA Assured, which they describe as "a welfare-focused food assurance scheme to [...] incrementally reduce the proportion of animals in intensive farms, and increase the proportion farmed to higher welfare standards" (Slawinski, 2022). It is widely regarded as one of the best of many assurance programmes (CIWF, 2012). A recent independent review described the scheme, to which farms, hauliers and abattoirs conforming to RSPCA above-legislation standards can apply for membership, as having "a positive and significant impact on improving the lives of 136 million animals in the U.K. per year" (Slawinski, 2022).

However, the NGO treads a fine welfarist line between representing animal interests and appeasing those who benefit from their exploitation. Pro-farming group Countryside Alliance criticise them for admitting 'vegan extremists' to their ranks, warning that "[t]he society risks losing the confidence of the rural community" (Animal Activist Watch, 2019), while animal liberationists condemn their collaborative relationship with the farming industry, evidenced, for example, by the membership of meat producers and manufacturers in the RSPCA Chicken

Standards Technical Advisory Group (RSPCA, 2022a). Though the RSPCA believes this necessary to maintain open communication with those they wish to influence and ensuring their standards are achievable (RSPCA, 2022b), activist groups regard such practices as conflicts of interest (e.g., Animal Rebellion, 2022).

This RSPCA description of their food assurance scheme (cited in Miele et al., 2005: 15) reveals their paradoxical position:

> [T]raceability must be established through the supply chain. If the farmer is a chicken producer [...] the hatchery from which they were sourced must be accredited. The haulier who delivered them to the farm and who will eventually take them to the abattoir must have been successfully assessed. (Bock et al., 2007: 121)

Here, indication of a potentially positive impact on various actors throughout the industry is situated in an acceptance of chickens as things to be sourced and destroyed. The word 'eventually' obscures the shortened life that such farmed animals will experience, and debate regarding the morality of creating lives of suffering to satisfy human appetites, given our nutritional necessities can be met in other ways (Hull, Charles and Caplan, 2023), is conspicuous in its absence.

On the topic of the approximately 29 million male chicks per year who are routinely killed at a day old in the UK egg industry (Humane League, 2021), the RSPCA (2022c) once again objectifies them as "an unwanted by-product". Referring to the practice as something they "hope will one day no longer be necessary" (RSPCA, 2022c) clearly positions this suffering as currently necessary. Similarly, their hope in future technologies which "aim to do the sexing and disposal before the embryo can feel pain" (RSPCA, 2022c), omits to explore the idea that switching to a post-lethal agricultural system is entirely possible (Mann, 2020).

Indeed, Francione and Garner (2010: 53) argue that the RSPCA's and others' labelling schemes are intended "to make the public feel more comfortable about animal exploitation". The RSPCA's inaugural mission statement – "the mitigation of animal suffering, and the promotion and expansion of the practice of humanity towards the inferior classes of animated beings" (Radford, 2001: 41) – does something to explain its anthropocentric bias and apparently contradictory position of aiming to reduce some animal suffering while normalising the system in which it is situated.

Of the many other NGOs who vie for influence in UK animal farming, CIWF, together with charity OneKind, is notable for its monitoring of farm assurance schemes, including that of the RSPCA (CIWF, 2012). With the World Society for the Protection of Animals, they run a programme of engagement with investors and monitor supermarkets, presenting biennial awards to those with the highest welfare standards (Sullivan, Amos and Ngo, 2012), thus lending retailers their legitimising power to engage consumers.

With NGOs assessing farmers as well as retailers, who in turn impose welfare standards on their suppliers, harnessing media power and even monitoring each other, the result is a complex, integrated network of diverse actors slowly putting in place slightly improved standards for animals, yet without questioning their categorisation as resources for human use.

## Consumers

A recent review of FAW policies in Germany, France, Italy and the UK showed that farmers were greatly influenced by the level of societal concern (Vogeler, 2019). Consumer demand is also a strong influence on food companies' approach to farmed animal welfare. However, an increasing consumer awareness of farmed animal suffering is rarely translated into a significantly increased consumption of welfare-friendly products (Miele and Lever, 2013). While confusing food labelling and the widely spread misperception that any higher quality product is higher welfare may in part be responsible for this (Miele and Lever, 2013), motivations underlying particular food choices are often complex and highly culturally specific. As Joy (2011: 17) explains:

> [W]ithin the broad repertoire of the human palate, we like the foods we've learned we're supposed to like. [...] [A]nimal food, is highly symbolic, and it is this symbolism, coupled with and reinforced by tradition, that is largely responsible for our food preferences.

Hence those who recognise the ethical issues associated with meat-eating commonly persist in purchasing the problematic food. This apparent contradiction, often referred to as the Meat Paradox (e.g., Bastian and Loughnan, 2017), is commonly rationalised by constructing meat-eating as normal, natural and necessary (Joy, 2011: 74). Piazza et al. (2015) later added to this list a fourth 'n': nice. Such psychological techniques serve the purpose of justifying one's actions to others, as well as conserving a positive self-image.

However, if normal equates to having done something for many thousands of years, in Francione's (2022: 53) words, "that carries no moral weight whatsoever. We have had rampant misogyny for at least that long." Equally it would be difficult to persuade a person affected by a natural disaster that its naturalness made it good. Regarding the fourth 'n', gustatory delight in consuming meat, as Engel (2000) argues, is very unlikely to provide pleasure compared to that one would derive from an alternative enjoyable food which can morally outweigh the prolonged and intense pain animals routinely suffer in intensive farming, for example.

If consuming meat is necessary, just what the consumer feels it is necessary for should hold moral weight greater than animals' interests. While it is not impossible that such reasons could be argued (some communities may not currently have access to nutritious plant-based food, for example) and there are unresolved questions about the short-term impact of populations ceasing to consume meat on the environment and those whose livelihoods depend on the current farming system (Dorgbetor et al., 2022), nonetheless it is important to guard against accepting such issues as insurmountable too easily. Charities such as Stockfree Farming, for example, exist to assist farmers in the UK to transition out of animal farming into alternative forms of land management (Stockfree Farming, 2023).

As Joy (2011: 75) discusses, the 'ns' have been used to justify all exploitative systems and are maintained ardently by the "mythmakers", that is, the major institutions in our society, noting "[c]hances are, your doctors and teachers didn't encourage you to question whether meat is normal, natural, and necessary. Nor did your parents, pastor, or elected officials."

The industry-funded Agriculture and Horticulture Development Board (AHDB), for example, influences consumers directly with marketing efforts such as the current £3.5 million We Eat Balanced campaign (AHDB, 2021) in which animal consumption as normal, natural, necessary and nice is portrayed through depictions of family love and idyllic countryside and by highlighting the nutrient content in their products. The campaign, supported by Sainsbury's, Waitrose, Co-Op, Tesco, Asda, Aldi, Morrisons and Lidl presents consumers with images in which the animals themselves are either "absent referents" (Adams, 2015: 20), in this case literally absent from the photographs, or they are pictured as content beings who do not suffer (see figure 3).

Other groups, including vets, as well as being influential in NGOs and government (the Animal Welfare Committee, for example, largely comprises vets), compete to influence consumers through media campaigns, such as the British Veterinary Association's (BVA, 2024) #ChooseAssured campaign. Though consumers are urged to choose products displaying the more meaningful of the quality assurance food labels, animals are still often framed as resources for whom at least some suffering is necessary. Advocating genetic selection of laying hens to be able to withstand more freedom of movement, for example (BVA, 2018), is an improvement on the current practice of genetic selection for greater egg production but it is still assuming as necessary all other causes of distress which cannot be genetically manipulated, as well as the suffering of being controlled and exploited, and premature death.

Animal liberation groups also have the potential to influence consumers as well as large corporations and legislation. In the 1980s, campaigns against the veal trade led to a significant consumer boycott resulting in Britain's largest veal producer granting its calves marginally improved living space for the duration of their short lives (Singer, 1985). By 1992 veal crates were banned in the UK.

UK vegans are a growing group. Defined as "those who do not consume any animal-derived food products or ingredients" (unlike vegetarians who simply avoid eating meat), their number increased from 3% to approximately 4% of the population between 2021 and 2022 (Statista, 2023). For many though, veganism is an ethical choice. The Vegan Society

notes that vegans "exclude – as far as is possible and practicable – all forms of exploitation of, and cruelty to, animals for food, clothing or any other purpose including where possible those products tested on animals". Even by this narrower definition, the number of vegans in Great Britain quadrupled from 0.25% to 1.21% between 2014 and 2019 (Vegan Society, 2023). For a society in which the assumed importance of animal body consumption bears forcefully on the concept of unnecessary animal suffering, this cohort represent a body of resistance. However, the propensity of some UK media to frame them as extremists (Sorenson, 2009), and for legislation like the *Serious Organised Crime and Police Act 2005*, potentially to categorise them as terrorists threatens their attempts to depict farmed animal suffering as unnecessary.

## Conclusion

The concept of farmed animal suffering is shaped by a complex network of actors, including government, the farming industry, retailers, NGOs, consumers and animal liberationists. Miele, Murdoch and Roe (2005: 17) summarise the situation as follows:

> [T]he Government sees the RSPCA and supermarkets as key agents in the delivery of its own animal welfare strategy; the RSPCA works through supermarkets and other retail outlets to ensure that its products reach large numbers of consumers; and the U.K. Government's own animal welfare strategy seems to be mainly aimed at regaining consumers' confidence [following food safety scandals] and the share of export market.

Though this network's activity has led to some small improvements in animal welfare, as illustrated by Tesco's beef and M&S's egg standards, the extent to which the concept of unnecessary suffering is imbued with human self-interest means that reducing animal suffering is achieved only to the limited extent that it is profitable for business, affordable and desirable for the consumer and inoffensive to the industry and the public. Outside animal liberation group activities and a growing number of vegan citizens, the concept of animal suffering as mostly necessary is endemic in the UK's key institutions and remains a societal norm.

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***Acknowledgements:*** *With many thanks to Jess Gröling and all the Anthrozoology teaching staff for their much-valued support, advice and encouragement.*

***Suggested citation:*** Cowan, C. (2024). How is the concept of unnecessary suffering shaped by diverse actors in the context of UK animal farming? In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 127–139.

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## Figures

| Farmer–animal relationship | Perspectives on the animals | Most common among... |
|---|---|---|
| Concerned detachment | Animals are viewed as sentient commodities but are not recognised as individuals. This may be due to conscious avoidance of attachment to animals who will soon be killed, or for reasons of physical safety, for example. | Commercial farmers who rear livestock for slaughter<br><br>Farmers who work with large numbers of animals |
| Detached detachment | Animals are viewed as pure commodities and are not recognised as individuals. | Commercial farmers who only deal with their animals from a distance and do not handle them directly |
| Concerned attachment | Animals are de-commodified and re-commodified. They are individually recognised.<br><br>There is a degree of meaningful human–animal interaction. | Hobby farmers and commercial farmers<br><br>Farmers working with breeding animals since these animals stay on the farm for a longer period of time, or any individual animal who for various reasons might require more attention from the farmer |
| Attached attachment | Animals are de-commodified. They are individually recognised.<br><br>There is a greater degree of meaningful human–animal interaction. | Hobby farmers |

Figure 1. Farmer–animal relationships. Adapted from Wilkie (2005: 218).

| *Tier* | *Number of companies* | | | |
|---|---|---|---|---|
| | *2012* | *2013* | *2014* | *2015* |
| 1: Leadership | 0 | 2 | 3 | 4 |
| 2: Integral to business strategy | 3 | 5 | 7 | 7 |
| 3: Established but work to be done | 6 | 10 | 14 | 16 |
| 4: Making progress on implementation | 18 | 16 | 16 | 27 |
| 5: On the business agenda but limited evidence of implementation | 18 | 14 | 19 | 17 |
| 6: No evidence that on the business agenda | 23 | 23 | 21 | 19 |
| Total | 68 | 70 | 80 | 90 |

Figure 2. The number of BBFAW-surveyed companies holding animal welfare standards at various levels of importance (Amos and Sullivan, 2017: 163).

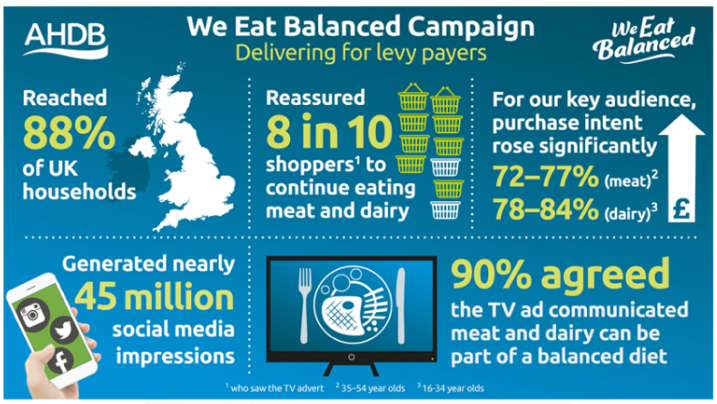


Figure 3. Images from AHDB 'We Eat Balanced' campaign (AHDB, 2022).

# Should animal consumption be criminalised? An analysis of food politics and carceral policy from the theoretical perspective of Carol Adams

*Natasha Matsaert*

***Abstract:*** *In light of the violent and yet socially acceptable, legal consumption of animals as food in the context of the United States, this paper discusses to what extent Adams' feminist–vegan theory and practice can lay a foundation for the criminalisation of animal consumption through an improved version of link thinking. Adams' work establishes a broad version of link theory which connects sexist and speciesist oppression in the politics of food, supporting a need to redress animal consumption as a crime. However, her feminist–vegan theory also introduces a critique of punitive carceral policy in the US as underpinned by a masculinist rhetoric, which fuels rather than challenges oppression. Consequently, this work suggests that a feminist–vegan response can be used to argue for an abolitionist ethic of care which is attuned to context and which nuances the general reliance on carceral law and punishment.*

WITHIN ANIMAL LAW AND THE ANIMAL freedom movement there is an increasing desire to utilise carceral systems to combat the abuse of other-than-human animals (henceforth animals). The institution of criminalisation and punishment has a long legacy and is underpinned by the notion that sufficient discipline, social control and threat of punishment will deter offending[1]. Today, animal activists use the severity of punishment as a measure of the social significance of a crime and thus a yardstick for the status and standing of animals within society (Marceau, 2019). As animal suffering is often invisible and devalued under the law, courts and prisons have been a central focus to punish offenders and publicly condemn this violence, and many animal groups are campaigning for tougher sentencing (Gruen, 2022; Gruen and Marceau, 2022). However, in their new book *Carceral Logics: Human Incarceration and Animal Captivity* (2022), Lori Gruen and Justin Marceau argue that the assumption of the utility of criminal punishment demands interrogation. Relevant here is the work of feminist and ecofeminist theorists, which increasingly incorporates the domination of animals into discussions of subordination, informing a new approach to (animal) exploitation and crime (Kemmerer, 2011). At the forefront of this discourse is Carol J. Adams' (2015) feminist–vegan theory, which recognises the relationship between speciesism and sexism and fo-

[1] Within this paper, I take criminalisation to mean the designation of a harm as a reproachable illegal crime, subject to punishment which aims to abolish said harmful practice (Sollund, 2006).

cuses on meat-eating as a site of intersectional, interlocking oppressions[2]. This discussion thus asks: to what extent can Adams' feminist–vegan theory and praxis be used to argue for the criminalisation of animal consumption? Specifically, how does it reinforce the view of animal consumption as a socially significant crime and in what ways does it question the carceral mindset itself?

For most humans today, the most frequent contact with animals is through their consumption as food (Wolfson and Sullivan, 2006). This is a profoundly political and violent interaction, which is nevertheless widely accepted as a socially acceptable, legal harm. I examine how Adams' theory can be used to interrogate this legal status in the context of the United States, where eating animals is unnecessary for survival but over nine billion animals are killed for food annually in factory farms (Adams, 2015) and granted little to no legal protection (Wolfson and Sullivan, 2006). In the context of recent debates over the efficacy of incarceration and carceral policies for preventing harm and promoting justice, the aim of this paper is to reimagine the possibilities of carceral response in line with a feminist methodology that aims to improve the lives of oppressed animals and humans (Gaard, 2013; Gruen and Marceau, 2022).

I begin this discussion by setting out Adams' feminist–vegan theory and practice and arguing that this can be seen as an improved version of link thinking, which lays a strong foundation for the criminalisation of animal consumption. This is illustrated through the example of dairy, which through Adams' theory can be seen as comparable to and thus deserving of similar criminal punishment as sexual assault. However, I go on to note that the nature of Adams' work fundamentally conflicts with the rigid and punitive masculinist rhetoric underlying criminalisation in the US, raising questions regarding the legitimacy of this approach in pursuing social justice. With this in mind, I weigh up this critique with Adams' own recognition of the need to take a universal moral stand and end by arguing that feminist–vegan theory might be used to support a more empathetic and holistic approach to the abolition of non-vegan food practices.

## Feminist–vegan theory

Adams' (2007) feminist–vegan theory is pertinent to a discussion of meat-eating and criminalisation in making the link between animal suffering and a patriarchal system.[3] Adams (2002) reveals the connection between meat and masculinity, noting that in American culture, manhood and male power is (partially) constructed through meat-eating and the domination of other bodies – whether women's or animals'. Indeed, studies have shown that men who identify as more masculine eat more meat than women and justify this with unapologetic strategies (Stanley et al., 2023), in the US, eating red meat is affiliated with the attributes of 'real men' (Stibbe, 2004) and the most egalitarian communities are plant-based (Rothgerber, 2013). Adams (2007: 175) terms this "overlapping, interdependent relationship of sexual inequality and species inequality" a 'sex-species system'. She notes how this entails a "cycle of objectification, fragmentation and consumption" which "links butchering and sexual violence", as both women and animals are transformed into "pieces of meat" and "absent referents", whose full, living being disappears (Adams, 2017: 279–282). In this way, Adams' theory powerfully recognises that "oppression stems from and parallels the same sources as the dominionistic treatment of all Others" (Beirne, 1999: 138). This presents a challenge to the speciesism that has underpinned social justice struggles in the 21st century and constructs a more systematic theory of violence (Gruen, 1997). By connecting the oppressive practices of a larger patriarchal culture with animal exploitation and emphasising that "interrelated oppressions cannot be attacked separately", Adams (2018a: 128) sets the groundwork for increased attention to the use of animals as food in criminology. This is fortified through her praxis of veganism.

[2] Coined by Kimberlé Crenshaw in 1989, intersectionality is a term which describes how identities such as race, class and gender overlap and create interdependent systems of discrimination.

[3] I foreground the intersection of species and gender in this discussion but by its nature Adams' feminist–vegan theory also has implications for other overlapping oppressions such as race and class.

## Veganism as ethical and political praxis

Crucially, Adams also strengthens the theoretical and moral basis for a prohibition of animal consumption by arguing that combating a sex-species system entails the embodied political praxis of a vegan diet.[4] Considering the ways that meat-eating constructs and re-inscribes masculine power-over, food choices are fundamentally political, rather than an apolitical personal privilege or private choice (Adams, 2018b). As such, Adams understands veganism to be a "moral–political act that seeks to subvert [controlling relations] by intentionally restoring the absent referent into consciousness" (Yilmaz, 2019: 28)[5]. This is achieved through the emotive and embodied. Veganism entails a felt response to suffering through identifying with animals and learning about their suffering (Adams, 2018b) and understanding that the bodily self "becomes violent by taking part in violent food practices" (Curtin, 1991: 70). This compassionate reclamation of one's own body and its full emotional capacity is directly linked to reclaiming animals' and women's bodies, transforming absent entities back into living, feeling subjects (Adams, 2007). As Adams (2018b: n.p.) puts it, "the process of objectification/fragmentation/consumption can be interrupted by the process of attention/nowness/compassion". This focus on emotion and caring is part of a feminist ethic of care, which uses responsible caring as a political tool to displace and intervene in power hierarchies (Cloyes, 2002). In this way, veganism does not signal a loss of autonomy (violating rights to pleasures, as is often argued) but is a political response that allows one to achieve autonomy and empowerment in a culture where animal consumption is intertwined with systematic oppression (Adams, 2018b). Adams thus makes a compelling argument as to why meat consumption should be criminalised and replaced by the intersectional praxis of veganism. I suggest that the strength of this feminist–vegan argument can be attributed to its basis in link theory.

## An expansive and non-speciesist link theory

Adams' feminist–vegan theory of interlocking oppressions and compassionate dietary praxis sets out an ameliorated corollary of link thinking, which makes the case for expanding criminological inquiry to include the socially acceptable harm of animal consumption. The link theory posits that "that violence begets violence, and thus that violence against animals is [linked to] violence against humans" (Marceau, 2019: 193) and has been used effectively by animal advocates in support for tougher criminal laws against animal cruelty. This has included, for instance, links between domestic violence and harms against companion animals (Arkow and Ascione, 1999) and between animal abuse and bullying (Gullone and Robertson, 2008). However, such arguments have tended to focus on criminal and *individualised* acts of animal abuse in a chronological causal relationship – what Piers Beirne (2004: 40) terms "the progression thesis". In contrast, Adams' praxical theory expands on and strengthens link thinking by broadening it to include multiple forms of human and animal harm and the *socially accepted*, institutionalised and systematic animal harm in 'personal' dietary practices. Moreover, her thesis escapes a common criticism of link strategy, that this is an anthropocentric approach which is ultimately about protecting the human, denying "the notion that animals warrant protection for their own sake" (Beirne, 2004: 248). Adams (2007: 173-179) claims that she values animals and their pain *equally*, not because women are "'closer' to them" or because they "'suffer like humans'" but simply because they are oppressed, and this is an experience we should care about. This is fundamentally an intersectional approach, attuned to the entanglements and interdependence of oppressions in a sex-species system.

[4] Adams (2018b) often uses the label 'vegetarian' in her work but terms herself a 'feminist–vegan', or 'vegan–feminist'. Hence, I have taken her arguments to extend to all animal products and have chosen to use the term 'vegan' in this discussion.

[5] The Vegan Society (n.d.) defines veganism as "a *philosophy* and way of living which seeks to exclude — as far as is possible and practicable — […] all products derived wholly or partly from animals". This differs from 'plant-based' diets, which do not necessarily eliminate all animal products.

Consequently, a feminist–vegan approach provides a more holistic and non-speciesist link theory, which increases the relevance of animal abuse to appeal for a ban on animal consumption in law. This is well-illustrated in the case of dairy.

## Making the case for criminalisation: Dairy and reproductive rights

The efficacy of Adams' expanded link theory for broadening the scope of criminal harm to encompass animal consumption is practically demonstrated in the case of dairy products. Ecofeminist scholar Carmen M. Cusack (2013: 38) takes up Adams' approach in arguing that the dairy industry is inevitably a matter of patriarchal sexual oppression, and emotively identifying with cows (*Bos taurus)* as "mothers, daughters and mammalian females". Cusack (2013) notes that the clinical, legally accepted practice of artificial insemination – standard to breeding methods – can be considered rape on the grounds of the Federal Bureau of Investigation's (FBI, 2013) definition of this crime as "[t]he penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim". Linking the abuse of human and animal vaginas in a sex-species system in this way thus holds the power to broaden concepts such as rape and reproductive rights beyond their speciesist human focus, recentre the animal as victim and question the palliative term 'husbandry' (Cusack, 2013).

What Adams (2010: 305) calls "feminised protein" (dairy products and eggs) come to light as "the end products of gendered forms of labor exploitation and violence", which the dairy consumer in turn participates in and becomes liable for (Yilmaz, 2019). In this way, Adams' emotive, broadened link thinking can be utilised to contend that dairy products are continuous with the illegal violence of rape and sex trafficking and hence that their consumption should be considered, termed and punished as such in law (Cusack, 2013). However, the nature of feminist–vegan theory also exposes key issues with the established system of criminalisation itself.

## A feminist–vegan critique of carceral logics

Even as Adams' praxical theory presents a strong argument for the criminalisation of an animal-based diet, her thinking also critiques the mainstream punitive and carceral approach to criminalisation in the US (Marceau, 2019). The logic of criminal law in this context can be seen as underpinned by a dominating, masculinist rhetoric which conflicts with Adams' notion of interconnectedness, solidarity and emotional knowledge as political response to oppression. Criminal charges and prison sentences are often classist and racist and lack care and empathy, entailing a universalising and "short-term form of masculine (or vengeance-based) satisfaction" (Marceau, 2019: 2–8), whose long-term benefits are unclear. Indeed, Justin Marceau (2019) notes that consequences like mandatory arrest can *exacerbate* recidivism by further outcasting aggressors from society, sustaining a systematic cycle of oppression. Is this punitive justice system consistent with an animal protection movement opposed to institutionalised violence (Marceau, 2019: 11)?

Moreover, the rights-based and utilitarian arguments of Peter Singer (2015) and Tom Regan (1983) – which predominantly underpin animal rights arguments for criminalising animal harms – have also been criticised by feminists for their "masculinist adherence to scientific rationalism" (Beirne, 1999: 136). This thinking is committed to non-sentimental enquiry and entails false dualisms such as human/animal, male/female, and reason/emotion that are antithetical to a feminist–vegan response rooted in an ethic of care (Beirne, 1999; Kemmerer, 2011). In critiquing the basis of criminal law as itself fixed in the patriarchal values which fuel oppression, Adams' work resonates with Audre Lorde's (2019: 103) recognition that "the master's tools will never dismantle the master's house". Feminist–vegan theory can hence be a tool to argue *against criminalisation*, asking: is the mass criminalisation of meat culture the best legal tool for broad social change? Or is it a mechanism for entrenching institutionalised abuse (Marceau, 2019)? Nevertheless, Adams still acknowledges the need to condemn animal consumption as morally wrong.

Despite Adams' critique of a punitive criminalisation approach, she does recognise the need to take a clear moral stand when it comes to harm, suggesting that her theory does not condone complete decriminalisation when it comes to violent food practices. The emotional knowledge of Adams' vegan praxis is morally and politically valuable when it comes to determining who counts in justice, however David Sztybel (2011) notes that experiences of empathetic identification and sympathy can be arbitrary, irrational and exploitable. He argues, "sympathy is not a disembodied thing – sympathy always belongs to someone" and so is not universalisable as a basis for ethics (Sztybel, 2011: 223). For instance, many experience empathy toward animals and yet continue to eat meat, animals not considered to be friends or family become subject to utilitarian rationalisations, and trying to universalise 'caring' is problematic when it comes to identifying with offenders (Sztybel, 2011). Adams (2007: 173, emphasis added) does recognise this fact – that within the "practical vagueness" (Sztybel, 2011: 222) of emotive appeals there are and should be concrete arguments regarding moral rights and wrongs, as she advocates caring "because it is *good*" and addresses oppression and suffering as *bad*.

There is, on some level, an understanding from Adams that universal moral arguments are called for beyond the vague language of empathy. It can be argued that criminalisation does hold value in offering a means to take such an ethical stand. Criminalising animal consumption sends a universal message that animal consumption is wrong, that animals should not be edible as the norm and that animal suffering matters (Robinson and Darley, 1997). We risk complicity unless we are against those who would harm sentient beings (Sztybel, 2011). Consequently, what Adams' theory perhaps ultimately calls for is a modified approach to criminalisation.

## Rethinking criminalisation: An abolitionist ethic of care

Adams' critique of criminal punishment, alongside her acknowledgment of the moral need to condemn violence, suggests that her theory can be used to argue for the abolition of violent food practices, provided that this is built on a feminist ethic of care. A non-traditional justice system based on feminist–vegan theory is aware of linked oppressions and focused on long-term societal change, attuned to context and specifics of individual situations, centres solidarity and empathy and is also prepared to condemn that which is morally wrong (Gruen, 2022). Practically, this abolitionist ethic of care would avoid carceral solutions to instead utilise re-integrative, compassionate approaches to crime punishment, a sensibility that is known as restorative justice. Here, reparation is not about dominance or power-over but rather addressing the roots of patriarchal oppression through rehabilitation and reintegration programmes which strive to understand and change behaviour, and ultimately re-incorporate criminals back into better(ing) society. For instance, in Pima County, Arizona, individualised assessments refer offenders to either animal welfare education classes or an Animal Treatment Offender Program (ATOP), which places participants in group and one-to-one sessions (Gupta, Lunghofer and Shapiro, 2017).

It is also important to note that a comprehensive feminist–vegan criminalisation must go hand in hand with a greater focus on Situational Crime Prevention (SCP). SCP amends the environment to prevent offending opportunities from being presented in the first place (Wellsmith, 2011) and could include increased contact with food animals, improving understanding of gender socialisation (Rothgerber, 2013), a commitment to addressing other interrelated societal oppressions, and making veganism "more accessible to all classes, cultures, and demographics" (Marceau, 2019: 11).

Gruen (2022) argues that this abolitionist ethic of care exposes people to more empathetic ways of understanding other animals and hence may more effectively and positively shift perceptions. Indeed, restorative justice processes have been proven to produce new norms and enhance social learning and understanding of responsibilities and rights (Menkel-Meadow, 2007). Feminist–veganism hence supports an argument for an effective restorative justice system which condemns violent dietary practices, whilst also confirming the dignity of both humans and animals and deepening caring relations (Gruen, 2022). Even so, problematic features of Ad

ams' approach leave one inquiring whether it should be used.

## Risk of essentialising and reducing oppression

I have argued that Adams' praxical theory can be used to support a more caring approach to combating injustice, however it is perhaps worth questioning whether her argument risks reductivism in tracking varied oppressions back to the same patriarchal source. This discussion has demonstrated that violence against animals in dietary practices is far from an isolated event, however Adams' claim that this parallels the process of sexual violence misses the important ways that these harms are dissimilar. In a culture of human exceptionalism, there is clearly a power differential between the female human and the non-human animal, and one must ask how appropriate it is for Adams (2017: 280) to use metaphorical language such as 'butchering' to describe women's oppression (Kopnina, 2017). Despite her claims that her work equally considers and values all female bodies, does this signal an underlying anthropocentric precedence in her work?

Similarly, Adams' claim that the roots of oppression can be tracked to human male domination ignores the ways that women have been involved in abuse (Donovan, 1990). Stereotypical masculine traits like emotional distance and hostility clearly feed animal exploitation, but does Adams' theory "turn uncritically to women as a group or to a female value system as a source for a humane relationship ethic with animals" (Donovan, 1990: 352)? Moreover, does this argument perpetuate stereotypical associations of reason with males and emotion with females (Sztybel, 2011)? According to Heather Piper (2003), link research such as Adams' portrays its theory as basic truth and its labelling of individuals can hence become a self-fulfilling prophecy. There are clearly aspects of this broad feminist–vegan theory that make overly simplistic claims which overlook elements of interspecies power inequalities and perpetuate sexist stereotypes. Does this make Adams' work an insufficient basis for guiding and regulating the treatment of animals? Nevertheless, I argue that while this theory is indeed limited in certain ways, by making links between systems of oppression, it still provides an effective basis for criminalising the moral transgression of animal consumption.

## Conclusion: feminist–vegan theory as an opening into accountability

Adams' feminist–vegan theory can be used to argue for the criminalisation of non-vegan dietary practices to the extent that this is a more empathetic and comprehensive approach attuned to interlocking oppressions. Adams establishes a broad version of link theory which connects sexist and speciesist oppression in the politics of food, supporting a need to redress socially acceptable animal consumption as crime. However, her empathetic philosophy also critiques the dominant punitive approach to criminalisation in the US as underpinned by a masculinist rhetoric, which fuels rather than challenges patriarchal roots of oppression. Nevertheless, the claims to emotion in vegan praxis are arbitrary and Adams recognises that universal moral arguments must support the pursuit of justice, indicating that her theory does support criminalisation as a tool to take a clear ethical stand. As such, I have argued that a feminist–vegan response can be used to argue for an abolitionist ethic of care which combats animal consumption by embracing the possibility for human transformation and rehabilitation.

However, I have ended this discussion by questioning whether, in lumping forms and causes of oppression together, Adams' theory makes the kind of broad analogies that reinforce sexist and speciesist power hierarchies. Nevertheless, though elements of this approach may be reductionistic, I ultimately suggest that the usefulness and strengths of Adams' feminist–vegan theory exceed these oversights. An approach to the politics of "what, or more precisely *who*, we eat" (Adams 2015: xxvi, emphasis in original) that focuses on interdependent oppression builds mutual support and importantly rejects the obstructive "either/or perspective" when it comes to addressing human and animal abuse (Adams, 2011: x). This is crucial, as embracing this intersectionality may enhance resources and energy in the animal rights movement by joining advocates for all oppressed groups together and may combat negative

stereotypes of animal rights activists as "misanthropes" (Cupp Jr., 2022: 43). In an increasingly entangled world of blurred boundaries this may well be the most promising and restorative way forward in addressing all forms of (animal) abuse and cruelty.

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***Acknowledgements:*** *I would like to thank the anonymous reviewers for their insightful comments. I am also grateful to Dr Jessica Gröling, who provided me with thoughtful suggestions and guidance throughout the teaching of the Animal Criminology module.*

***Suggested citation:*** Matsaert, N. (2024). Should animal consumption be criminalised? An analysis of food politics and carceral policy from the theoretical perspective of Carol Adams. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 141–148.

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# Can participation in socially accepted forms of other-than-human animal abuse lead to higher rates of interhuman violence? An examination of the effects of slaughterhouse work

*Jessica Stevens*

***Abstract:*** *Whilst there is a great deal of research exploring the 'link' between animal cruelty and human violence, particularly the graduation of gratuitous forms of violence committed against individual companion animals towards interhuman violence, little has been done to assess whether socially accepted forms of animal abuse that occur in industries such as food production, medical experimentation and hunting result in greater instances of interhuman violence. The scope of this research focuses on the institutional culture of slaughterhouse work and how the situational forces of this industrialised, profit-driven industry legitimise the abuse of animals, enabling violence to flow between species and social environments. Through an examination of existing yet limited studies on the correlation of slaughterhouse presence and increased crime rates in surrounding communities, socially sanctioned violence is identified as emergent from a network of cultural, social and psychological processes.*

ABUSE TOWARDS OTHER-THAN-HUMAN animals (henceforth animals) has received growing academic, legislative and ideological attention. For the most part, however, this is concentrated on abuses occurring within domestic environments from individual humans upon their companion animals (Fitzgerald and Taylor, 2014), as opposed to socially accepted forms of abuse legitimised by institutional practices such as medical experimentation, food production and hunting (Beirne, 2004). Largely, recognition of the domestic, gratuitous abuse is driven by the societal gains that result from research into the links between animal cruelty and its progression to interhuman violence (Taylor, 2012). This anthropocentric interest in animal abuse is reflective of how the social sciences have, until recently, framed animals within the 'social': as objects whose importance derives only from their use to humans (Taylor, 2012). This is significant when understanding how social ideology contributes to the sanctioning and perpetuation of animal cruelty within accepted institutions.

Sociologist Nik Taylor, who researches human relationships with other species, has written extensively on the reconceptualisation of the social and how this may expose the interrelating systems that permit and justify animal exploitation (Fitzgerald and Taylor, 2014; Taylor, 2011; Taylor, 2012). Her work is among several key multi-disciplinary scholars of the last two decades (e.g., Latour, 2013; Haraway,

2003), who have sought to dismantle the conceptual dualisms (nature vs culture, human vs animal), embedded within Western social structures, towards an idea of the social that is "emergent and performatively constructed by the relational interactions of its members which in turn constitute networks" (Taylor, 2012: 42). By moving away from what Taylor describes as the "inherent psychologism of Sociology" (Taylor, 2011: 205), that emphasises the relationships between individual people, networks help to expose these relating processes that maintain human superiority as they become visible to scrutiny in the context of human–animal abuse.

CAS scholar Jessica Gröling further criticises the psycho-individualist approach to understanding social interactions and how it is conventionally applied to the forensic examination of animal abuse employed in link research. Within her analysis of perpetrators of socially sanctioned violence, she observes the following:

> The stereotyping and demonizing of individual perpetrators of socially-sanctioned violence against other-than-human animals gives us little understanding and interventionist power to subvert or dismantle the structures of speciesist practice; in fact, it may serve to cover up these structures and their imperative towards violence. (Gröling, 2014: 92–93)

As such, Gröling indicates that a situational approach is a more effective form of analysis to "outline how the defensive devices and ideologies that offer justifications and rationalizations for experimentation on live animals are embedded in the collective consciousness, cultural tools, regulatory practices and infrastructure of the institution in question" (Gröling, 2014: 93). This paper seeks to examine how the situational forces of the industrialised, profit-driven slaughterhouse industry (particularly in the US) legitimise the abuse of animals. The reconceptualisation of the social as a co-producing and co-emergent network of animals and humans, market-driven economies and working conditions narrows the margins between human–animal violence and interhuman violence. Rather than progressive, abuse is fluid, co-evolving from a web of systems that result in the cultural neutralisation towards socially sanctioned violence.

Aspects of the institutional culture of slaughterhouse work shall be examined in its propensity to enable violence to flow between species and social environments. The cycle of inputs and outputs from the increasing industrialisation of meatpacking industries driven by a capitalist economy to the diminished, volatile working conditions and resulting desensitisation to violence is contextualised by ideologies that are sustained through power, authority and its relation to visibility (or lack thereof) (Porcher, 2011).

## 'Link' theory and animal abuse

'Link' theory is a growing body of interdisciplinary research that examines the 'link' between animal cruelty and human violence, premised on the progression thesis (Beirne, 2004) that violence towards animals (usually in childhood) graduates to interhuman violence, signifying animal abuse as an indicator or predicter crime (Flynn, 2011). Whilst the focus of this body of research tends to be on gratuitous forms of violence committed on individual companion animals within familial contexts (Taylor, 2011), particularly child and domestic abuse, little has been done to assess whether socially accepted forms of animal abuse result in greater instances of interhuman violence (Fitzgerald and Taylor, 2014). In addition to the exaggerated claims, poor data sets and limited evidence highlighted by Beirne (2004) and Marceau (2019), link theory has been criticised for neglecting the wider institutionalised processes that are implicated in instances of animal abuse, whilst favouring "potential remedies at an individual, as opposed to societal, level" (Taylor, 2011: 254). Its privileging of some harms (gratuitous) over others (deemed necessary) reinforces a form of speciesism, as the species belonging to the institutionalised forms of abuse (i.e. food production) are excluded from consideration under legislative definitions of abuse (Fitzgerald and Taylor, 2014). The lack of attention surrounding this issue can be seen as deliberately obfuscating systemic abuse, highlighting the relation between discourse (exposure) and power, which will be further explored later.

It is important to consider here the definitions of animal abuse, the semantics of which can be manipulated in a way that allows not only for the justification of abuse but exemptions for it, legislatively as well as ideologically. Terms such as animal abuse and animal cruelty are inconsistently defined within

academic and legislative contexts. As such, they can provide ample opportunity for exploitation. Evidence supporting link theory itself has been considered weak because of these incohesive concepts (Beirne, 2004). Typically, most definitions are premised on the "socially unacceptable behavior that intentionally causes unnecessary pain, suffering, or distress to and/or death of an animal" (Ascione, 1993: 228). However, upon closer inspection, according to criminologist Robert Agnew (1998: 179), "many of the activities which contribute to the suffering of animals, like the consumption of meat, are condoned by most people, are not performed with the intention of harming animals, and are perceived as necessary for health, economic or other reasons". Consequently, the most pervasive forms of abuse evade not only criminalisation but academic attention, further enabling the concealment and thus suppression of a link between institutional animal abuse and interhuman violence.

To contextualise the necessity for this line of investigation, consider how, within the US, approximately 98% of all animals interacting with humans are animals raised for food and over 9.5 billion animals are annually slaughtered for food (Marceau, 2018). If we are to collectively and legislatively recognise abuse based on a dichotomy of 'necessary' and 'unnecessary' comparative to human interest then the pain and suffering experienced by billions of individual animals within these 'necessary' institutions are simultaneously overlooked and socially sanctioned. This indicates how definitions, particularly those that are enshrined in legislation, whilst striving for an objective framework, can legitimise abusive behaviour and benefit the vested interests that perpetuate abuse. Furthermore, even if a variety of species have legislative representation through anti-cruelty statutes, the definitions include exemptions that prevent harms perpetrated on these individuals from being acknowledged, let alone enforced.

## Exemptions to animal abuse

US animal welfare legislation in the form of anticruelty statutes contains broad exemptions for institutional practices including animal agriculture and medical experimentation (Ibrahim, 2006). Understanding the factors that cause these exemptions is imperative in contextualising the likelihood of intersectional abuse across species and social spaces. Whilst anticruelty statutes are put in place to protect animals from abuse, their efficacy is undermined by the limited range of species covered and a lack of enforcement (Ibrahim, 2006).

In their exploration of farmed-animal law, Wolfson and Sullivan (2005:11) expose how "the farmed-animal industry has persuaded the majority of state legislatures to actually amend their criminal anticruelty statutes to simply exempt all 'accepted', 'common', 'customary', or 'normal' farming practices". They argue that this is an acknowledgement by the industry of the 'unacceptable' practices taking place, suggesting that the legitimisation of criminal conduct is yet another tool to conceal systematic abuses. This legislative capture of powerful interest groups, a demonstration of industry shaping legislation to represent their own interests (Ibrahim, 2006), exploits and benefits from the legal classification of animals as property. Legal scholars Darian Ibrahim (2006) and Gary Francione (1996) have both identified the conflict between human and animal interests in relation to legislative protection from abuse and how this consequently facilitates institutional animal cruelty. Francione (1996: 10) explains how "the law requires that animal interests be balanced against human interests, but in light of the status of animals as property, this is a balance performed on a rigged scale: virtually every human use of animals is regarded as 'significant'". This utilitarian 'greatest overall good' valuation of animal welfare protects interest groups and further compounds the anthropocentric social ideology that animal exploitation is justifiable for human gain. Ibrahim (2006) argues that legislation is representative of society's collective choice to exploit animals in their preference to indulge in human interests.

Whilst most people indirectly condone exploitation and thus animal suffering through consumption choices, when questioned about their beliefs, many find animal suffering abhorrent and support the protection of animals (Ibrahim, 2006; Loughnan, Bastian and Haslam, 2014). This dissonance between caring about animals, not wanting to see them harmed, yet adopting diets that require the death and likely suffering of animals is referred to

as the Meat paradox (Loughnan, Bastian and Haslam, 2014). Research examining the psychological processes that negotiate this paradox identify the beliefs, values and perceptions that might perpetuate consumption despite negative emotions, for example the perception of animals as lacking sentience and a capacity for pain (Loughnan, Bastian and Haslam, 2014). However, these perceptions, whilst internal experiences, are likely developed from situational forces deliberately working to maintain a hegemonic ideology: human exceptionalism (Fitzgerald and Taylor, 2014).

Processes that seek to preserve human superiority are multi-layered but are best conceptualised by Michel Foucault. He explains that "it is in discourse that power and knowledge are joined together" (Foucault, 2008[1976]: 100). Dominant discourses, such as animal inferiority, can become widely accepted as fact and those with vested interests in sustaining these dominant ideologies benefit and sustain such narratives (Taylor, 2012). In relation to food production, there are several tactics used to sever the individual relationship between human and animal, increasing the authority of the animal inferiority narrative and the subsequent psychological strategies employed to overcome the moral conflict of eating meat. These include the commodification of animals through objectification, distancing devices such as 'othering' and the abstraction of meat as an unidentifiable product (Purcell, 2011).

In her ethnographic account of the US dairy industry, Kathryn Gillespie outlines how these processes might interfere with our relationships with animals. She explains that "the act of commodifying nonhuman animals like cows, shapes how humans know them, how humans care for them in different spaces, and how knowledge is produced about them" (Gillespie, 2018: 25). This echoes feminist philosopher Donna Haraway's (1988) notion of 'situated knowledges', which distinguishes knowledge as a sociocultural phenomenon that arises from social interactions and social contexts, as opposed to an objective and inherent truth. Fitzgerald and Taylor's (2014) aforementioned study examines the role of the media in perpetuating these dominant discourses, particularly in normalising the consumption of animal products. Strategies including the replacement of 'realistic' animals with 'happy' animals, the romanticisation of nature, the greenwashing of animal welfare-friendly concepts such as 'free-range' and 'cage-free' validate a consumption that "is so taken for granted in modern industrial societies that there exists a cultural hegemony regarding not just the acceptability, but the necessity of animal consumption" (Fitzgerald and Taylor, 2014: 166).

These factors contribute to the undermining of an individual animal's intrinsic value of life. The absence of the 'someone' within commodified animal products, the language used (beef, cattle, poultry, pork) to strip individual identity from consumption (Gillespie, 2018), is the silencing of beings and the source of moral dissonance. How this paradox relates to legitimised violence shall now be explored within slaughterhouse work and whether its desensitising nature proliferates across species and social boundaries into the human sphere.

## Link studies: Slaughterhouse work and interhuman violence

Though research into the connection between slaughterhouse work and interhuman violence is limited, there is a correlation within existing studies between the presence of meatpacking plants within rural American towns and increased crime rates, (Fitzgerald, Kalof and Dietz, 2009; Jacques, 2015), demonstrating a potential for the transference of aggression towards animals into surrounding communities. The study conducted by Fitzgerald, Kalof and Dietz (2009:5) sought to identify the existence of the Sinclair Effect: "the work of killing animals in an industrial process [which] may have social and psychological consequences for the workers over and above other characteristics of the work". They summarise existing literature in community crime theory, identifying three factors commonly used to explain the increased crime rates in slaughterhouse communities. These include workers' demographic characteristics (their age, gender etc.), social disorganisation in the communities (as a result of a population boom) and increased unemployment rates (from high turnover) (Fitzgerald, Kalof and Dietz, 2009). However, in comparing slaughterhouse communities to those with comparison industries – i.e., dangerous, repetitive work, with a similar demographic – these were not associated with a rise in

crime. In some cases, they seemed to bring the crime rate down (Fitzgerald, Kalof and Dietz, 2009). Instead, results indicated that increases in arrests for crime (especially for rape and other sexual offences) were inextricably linked to slaughterhouse employment (Fitzgerald, Kalof and Dietz, 2009). Fitzgerald, Kalof and Dietz (2009: 17) observed that the correlation was not as strong for smaller farms where animals were killed, which "suggests that the industrialization of slaughter has the strongest adverse effects". Whilst their study offers considerable evidence for the link between slaughterhouse presence and the subsequent increased crime rates within local communities, it does not offer insights into the social-psychological aspects of this work and whether these conditions are causally connected to the increase in violence.

Jessica Racine Jacques' 2015 study similarly examines the relationship between the presence of a slaughterhouse plant in the community and increased crime rates. Jacques (2015) equally accounts for variables associated within the literature on social disorganisation, acknowledging the effects of demographics, unemployment rates and, in addition, immigrant presence. However, in controlling for these key variables, Jacques reports that slaughterhouse presence within rural counties, compared to those without, corresponds to an increase in the number of total arrests by 22%, a 90% increase in the number of arrests for offences against the family and an increase of 166% in the number of arrests for rape (Jacques, 2015). Unlike Fitzgerald, Kalof and Dietz (2009), Jacques theorises that the key drivers for these increases relate to the physical and psychological toll on the workers, including stress, injury and a detachment to the suffering of animals. She observes that "the setting of slaughterhouse work promotes a disconnection between humans and nonhuman animals, one in which nonhuman animals are treated as 'products' and the act of slaughtering a nonhuman animal is compartmentalized into separate tasks from the kill floor to the fabrication room" (Jacques, 2015: 596).

Whilst Jacques' study touches upon the potential psychopathology experienced by slaughterhouse workers and both studies control for variables associated with crime rates such as demographics and unemployment, neither study identifies *if* and *how* slaughterhouse working conditions cause the associated increase in crime rates (Slade and Alleyne, 2021). It is necessary, therefore, to bolster the assertions made in the above studies with research that examines the specific quality of slaughterhouse work, the institutional mechanisms that frame it and whether those conditions uniquely account for the violence spill-over into surrounding environments.

## Physical and psychological implications of slaughterhouse work

Crucial in understanding the possible provocation for extra-institutional violence is the social-psychological consequence of working within a slaughterhouse. One piece of research to emerge from the limited academic consideration given to this issue is Jennifer Dillard's (2008) study on the psychological harm of slaughterhouse work, along with propositions for reform. She argues that the financial and physical hardships of the work, combined with the emotional impact of witnessing and inflicting extreme suffering on animals, results in the psychological trauma of the workers (Dillard, 2008). The industrialisation of food production over the past several decades, driven by intensive economic and technological rationalities (Porcher, 2011), has profoundly transformed both the working conditions and the relationships between species (Purcell, 2011). The growth and consolidation of corporate giants has led to total industry domination, yet simultaneously workers' wages have been falling rapidly. Dillard (2008: 392) indicates that wages were "a whopping 24% lower than the average manufacturing wage by 2002". The surge in demand for meat has forced slaughterhouses to increase production pace, effects of which are most notable on the eviscerating lines. In his review of the US *Animal Welfare Act* (AWA) Justin Marceau illuminates how "[a]t the time of the AWA's enactment (1966) […] these lines would move approximately six chickens per minute [...] but by 2016 […] the line speed for killing chickens in the US, as approved by the United States Department of Agriculture ('USDA'), is between 140 and 175 birds per minute, that is between 2.5 and 3 chickens per second" (Marceau, 2018: 935). Unavoidably, these conditions cause "the highest annual rate of nonfatal injuries and illnesses and repeated-trauma disorders" (Beirne,

2004: 54) within the workers amongst all private sector US industries.

This monotonous, unrelenting working environment can contribute to the inevitable desensitisation towards animal suffering, as Natalie Purcell (2011: 72) indicates in her study of intimacy within human–animal relationships.

> In this zero-sum game of speed and survival, to care for cattle is often to fail in caring for the wellbeing of oneself, one's coworkers, and one's family.

However, it is the implication of a worker's involvement in thousands of painful deaths that has been observed to lead to psychological defence mechanisms that distance oneself from the killing of sentient beings (Dillard, 2008), not altogether dissimilar to the strategies adopted by consumers experiencing the Meat Paradox. In her 1997 book *Slaughterhouse: The Shocking Story of Greed, Neglect, and Inhumane Treatment Inside the U.S. Meat Industry*, Gail Eisnitz interviewed dozens of slaughterhouse workers regarding their time in the workplace. The following testimony captures the suppression or void of empathy:

> Down in the blood pit they say that the smell of blood makes you aggressive. And it does. You get an attitude that if that hog kicks at me, I'm going to get even. You're already going to kill the hog, but that's not enough. It has to suffer. When you get a live one you think, Oh good, I'm going to beat this sucker. (Eisnitz, 1997: 92)

Richards, Signal and Taylor's (2013: 404) comparative investigation of occupational attitudes towards animals revealed that, compared to farmers and other primary animal industries, meatworkers scored highest in levels of propensity for aggression, "with the highest propensity for aggression being seen in those involved in 'load out' (95.5), followed by those on the 'kill floor' (86.3)". Although it is important to state that these assertions are based on a small sample size, Slade and Alleyne (2023) systematically reviewed all studies that assess the psychological impact of slaughterhouse work (14 met the inclusion criteria), and the concluding consensus of all 14 studies determined that slaughterhouse workers experience lower levels of psychological wellbeing compared with other professions. Whilst psychopathological responses to slaughterhouse conditions varied across the studies and included trauma, anxiety, depression, psychosis, guilt and shame, symptoms such as depression, aggression and anxiety were more prevalent amongst employees working directly with the animals, i.e. on the kill floor (Slade and Alleyne, 2023). To perform their duties and assuage their cognitive dissonance, these psychological stressors typically result in the adoption of "maladaptive regulatory strategies" (Slade and Alleyne, 2023: 430).

One such strategy can be identified in Rachel MacNair's (2002) study of Perpetration-Induced Traumatic Stress (PITS) disorder in combat veterans, Nazi soldiers and executioners, which describes a form of Post-Traumatic Stress Disorder (PTSD) brought about from the participation in the act that causes the PTSD (MacNair, 2002). She claims that slaughterhouse workers may be susceptible to PITS given their direct involvement in their resulting psychological damage (Dillard, 2008). She further describes the phenomenon of 'doubling', a symptom of PITS that refers to the compartmentalisation of different selves, employed to disassociate from the moral ambiguity of the profession (MacNair, 2002). This echoes the Meat Paradox, the conflict between two opposing positions: in the case of the slaughterhouse worker, the individual that violently kills thousands of animals every day, and the prior self, the parent, partner or friend that participates in society and greets their companion animal with open arms. As Gröling (2014: 92) underlines, "[w]orkers do not enter the profession with a pathological desire to deliberately inflict suffering on sentient animals, but become socialized into an institutional culture and form of rationality that necessitates and approves of such actions and allows individuals to return home to their companion animals without experiencing a sense of guilt or hypocrisy".

The physical and psychological consequences to slaughterhouse work are further exacerbated by the concealment of joint suffering experienced by animal and human. Originating in the 19th century when slaughterhouses were banished to the fringes of society due to changing public attitudes towards their presence (Vialles, 2002), invisibility has enabled multiple means of oppression. Firstly, the condemnation of working on the outskirts has led to

what human–animal relations researcher, Jocelyne Porcher (2011: 8) refers to as Multiple Recognition Deficit, the feeling of being ignored and unrecognised "by their animals, by their peers [and] by consumers" from the resulting distance between the individual and the product. Secondly, the lack of transparency surrounding the inner operations of slaughterhouses legitimises the abuses taking place. The existence of ag-gag laws in certain states, which seek to silence whistleblowers and criminalise the undercover reporting of animal abuse (Gillespie, 2018), combined with new USDA rules allowing slaughterhouses to self-police in place of external inspection (Khimm, 2019), authenticates violent behaviour by eliminating individual and corporate accountability. The social sanctioning of institutionalised violence through the absence of structural surveillance makes both workers and animals vulnerable to abuse and further reinforces the normalcy of such behaviour. This relates to the basis for social control methods, predicated on the idea of Jeremy Bentham's panopticon, the architectural model for a prison that prompts self-discipline through the threat of constant observation (Gröling, 2014). The absence of continued surveillance dissolves the internalisation of discipline and with it, moral self-regulation.

## Reforms

How can these implications of slaughterhouse work be minimised to reduce the likelihood of violence spill-over? Dillard (2008) calls for legal redress for the psychological injuries experienced by workers along with the reformation of safety regulations to acknowledge psychological harm. Whilst this approach may inadvertently increase protection for animals by tackling the individual psychopathology of the workers, there are wider social issues needing to be addressed.

> They involve not only individual animals and industry workers, but also a larger web of socioeconomic, cultural, historical, and environmental conditions that tie livestock animals and industry workers to local communities and ecosystems, and to capitalists and consumers far from feedlots and slaughterhouses. Understanding animal–human encounters in meat production entails close attention to encounters between people and animals as they exist within, and are structured by, larger systems and logics. (Purcell, 2011: 76–77)

These entrenched and ubiquitous institutional practices demand a "webbed analytic" (Purcell, 2011: 11) approach to reform. They must be understood and thus addressed as an intersectional problem. Such measures may include enforced CCTV within slaughterhouses, the proposed *Farm System Reform Act Bill 2020* (Plant Based News, 2020) that seeks to phase out factory farms in support for small/medium farms, restructuring towards a plant-based economy through initiatives such as the Trans'farm'ation project that supports farmers in their transition from animal farming to crop production (Arora, 2020), and advocation for vegetarian/vegan diets and 'clean' or 'cultured' meats (Bollard, 2021).

## Conclusion

Both studies examining the correlation between slaughterhouse presence and increased crime rates substantiate a link (Fitzgerald, Kalof and Dietz, 2009 and Jacques, 2015). Equally substantiated from the research is the link between working conditions within the slaughterhouse and resulting psychopathological impacts. However, there is a jump between slaughterhouse presence, the environmental conditions within and the excess violence external to the slaughterhouse. The data from the studies cannot assume that slaughterhouse employment causes these outcomes. Slade and Alleyne (2023) propose that slaughterhouse work, being typically low-paid and low- skilled, might attract people with existing vulnerabilities. The etiology of the desensitisation toward violence might be worth examining in light of this counterargument: do slaughterhouses desensitise workers to killing? Or, could the work attract people who are less sensitive to begin with? A further area for discussion that might strengthen these links is how the influence of 'maleness' in its relation to power and authority (Groombridge, 1998; Presser and Taylor, 2011) may rationalise the domination and control over others, both within and outside the slaughterhouse.

It is evident that further research is needed to clarify how underlying institutional mechanisms (i.e. ag-gag laws, industrialised working conditions, self-po-

licing) and psychological processes link slaughterhouse employment to associated externalised violence. In order to consolidate the correlations found in these few studies, a comprehensive, regional or national comparative study of all slaughterhouse plants would be valuable. As with the emergence of the 'social', violence within slaughterhouses is a co-producing phenomenon that interchanges between species and, as studies have suggested, between extra-institutional social environments. From the utilitarian logic of capitalism to an industry that prioritises production and profit at the expense of its employees' physical and mental health, workers and animals are victimised by greater situational forces that may inevitably result in the perpetuation of violence. Though research into the link between socially accepted animal abuse and interhuman violence needs to be furthered, we must confront larger questions about the interrelated systems that legitimate animal cruelty. As Purcell (2011: 73) emphasises "[w]ho else—employers? shareholders? consumers?—is implicated but invisible in the cruel encounter between worker and food animal?"

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***Acknowledgements:*** *I express my gratitude and appreciation to Dr Jess Gröling for her support and encouragement in writing this piece. Additionally, thanks to Dr Fenella Eason, Professor Samantha Hurn and Dr Alexander Badman-King, in their tutorship and inspiration throughout the MA.*

***Suggested citation:*** Stevens, J. (2024). Can participation in socially accepted forms of other-than-human animals abuse lead to higher rates of interhuman violence? An examination of the effects of slaughterhouse work. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 149–157.

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# The green crimes of Industrial animal agriculture

*Holly Gerberich*

***Abstract:*** *Animals are abused and killed every day in the United States, but in some cases the perpetrators are charged as criminals. In other cases, society wantonly accepts these activities as business as usual. In this paper, I explore several aspects of industrial animal agriculture using the rubric of green criminology, which evaluates harm done rather than laws broken. First, I address the outsized contribution of animal agriculture as a whole towards the warming of the planet and the complete absence of liability the industry realises. Second, I address the harms inflicted on humans for compelling killing and other forms of animal cruelty as a condition of employment without provision of adequate mental health support for the psychological toll this work takes on the employees. Finally, I address some of the animal welfare laws that are in place in the United States that don't apply to animals raised for food and how inherently criminal slaughterhouses are. The conclusion is simply that all animal agriculture, and factory farming in particular, is a green criminal enterprise that is socially sanctioned due to a combination of ignorance, apathy and America's insatiable appetite for meat.*

THERE'S A PLAQUE AT THE GATE OF Watchtree, an old airfield turned nature reserve in Cumbria, a county in the northwest of England, that says "[a] Memorial to 448,508 sheep, 12,085 cattle, 5,719 pigs buried here during the Foot and Mouth outbreak of 2011" (Lingard, 2016). The commemoration of the half million other-than-human animals (henceforth animals or non-human animals) who were systematically killed – most of whom were not infected with the disease (Lingard, 2016) – is symbolic of the paradoxical way that we as a species generally feel about the killing of animals when not for the benefit of human consumption, profit or enjoyment (e.g., sport hunting). Undoubtedly, a large majority of these animals would have eventually ended up in a slaughterhouse and quite possibly on the plates of those who affixed the placard at the entrance of the nature reserve.

There are other examples of this disengaged phenomenon, but on a criminal level: In Montana, a man was charged with several felonies for animal cruelty after fatally shooting several beef cattle (Riesinger, 2022). In Ohio, a reward was offered for the apprehension of the individual(s) who wantonly killed a cow, who, according to the indignant owner, had a 3-week-old calf (WSAZ News Staff, 2022). In Florida, a man was arrested for killing his neighbour's pet rooster, to which he rather factually replied "[c]hickens die every day, people" (Robinson, 2022).

How can this be? How can we arrest and charge people for killing animals in one situation, memorialise the mass extermination of animals in another situation, but maintain dutiful compliance about the "crime of stupefying proportions" (Coetzee, 1999, as quoted in Schuessler, 2003). The crime

that occurs with exacting routine on a massive scale every single day all around the world is factory farming,[1] inclusive of the abuse and slaughter of millions of animals for human consumption, the perfunctory killing done by workers and the psychological impact it causes (Dillard, 2008), and the outsized impact the industry has on climate change (Poore and Nemecek, 2018; Willett et al., 2019). There are a host of theories for the cognitive dissonance of people (Festinger, 1962; Herzog, 2010, Joy, 2020; Zukier, 1989), how they can love their pets on the one hand, claim to love animals, and then continue to purchase and consume animal products, the demand for which sustains factory farming. For the sake of this paper, however, the focus will be on three ways the industry gets away with offences that would be considered criminal in any other industry if not legally exempted – or what might be considered 'green crimes'.

Green criminology is a relatively new term that refers to the criminological study of harms, including those that are not classified as crimes. The term makes a distinction between a harm and a crime, which is a punishable offence against a law, code or regulation. The field emerged as researchers around the world developed the same concerns about environmental harms and crimes simultaneously but independently of one another (South, 2014), and is becoming more established as environmental crises become more urgent and society as a whole increasingly recognises them as such (Hall et al., 2017). Ever-expanding, green criminology manifests broader implications inclusive of "those harms against humanity, against the environment (including space), and against nonhuman animals committed both by powerful institutions (e.g., governments, transnational corporations, military apparatuses) and also by ordinary people" (Beirne and South, 2007: xiii). Whilst the field has roots in harms against the environment, it has broadened to include wrongdoings such as discrimination, methods of exploitation, forms of abuse, infliction of pain, injury, loss or suffering (Beirne and South, 2007: xiv).

The green crimes of factory farming are activities that are harmful but are not (yet) codified as criminal, for which the industry is responsible but is not held liable. The most obvious and the most pressing is the amount of greenhouse gas emissions (GHGEs) that can be attributed to the factory farming supply system, as well as impacts on soil, water, ecosystems and biodiversity. In addition to their massive environmental offences, the industry is responsible for a broad spectrum of green crimes toward both human and non-human animals. The two addressed in this paper are the infliction of psychological trauma on slaughterhouse workers and the severe abuse and premature death for billions of animals every year. According to Erika Cudworth (2017), the process of animal agriculture is innately cruel and violent and not just for the non-human animals. The US *Animal Welfare Act* (AWA), in stark contrast to its name, legally permits blatant, routine cruelty[2] and killing of animals raised for human consumption. In fact, if not exempted, the industry would be one of the largest criminal offenders of the meticulously detailed regulations for the handling and care of other categories of animals, such as those used for research or companion animals. Even regulations in place for the 'humane' treatment of animals in modern slaughterhouses are routinely evaded, as the profit-driven culture of the industry encourages shortcuts for which animals pay dearly.

## Green crimes against the environment

There are countless ways that factory farming adversely impacts the environment for which the industry is not held liable. The 37-member EAT-Lancet Commission on Food, Planet, Health found that food sourced from animals is responsible for about "three-quarters of climate change effects" (Willett et al., 2019: 471), the most profound of which is the amount of GHGEs that the industry produces. The

[1] For the purposes of this paper, factory farming is best described by Jacy Reese as "large scale, industrial animal farming" (2018: 167) and is used interchangeably with 'industrial animal agriculture'.

[2] While the definition of cruelty varies state to state, some common practices in the factory farm industry include "confining pregnant pigs to crates so small they cannot turn around, confining hens to cramped, barren cages, castrating male pigs without anaesthesia, and killing sick and injured animals with blunt force" (Animal Welfare Institute, 2018: 1).

research is clear that "reductions in GHGEs are urgently needed to ensure long-term sustainability of human societies, ecosystems, and the agricultural sector itself" (Boehm et al., 2018: 67).

Other harmful effects include biodiversity loss, water usage, nutrient leaching, deforestation and the use of pesticides industry-wide that harm far more flora and fauna than their intended targets, compromise soil quality and contaminate groundwater (Gunstone et al., 2021; Willett et al., 2019: 470). In their expansive study, EAT-Lancet Commission researchers took an in-depth look at the intersection of the current global food system, human health and the environment and projected that if nothing changes (the 'business-as-usual scenario'), that "food production could increase greenhouse-gas emissions, cropland use, freshwater use, and nitrogen and phosphorus application by 50–90% from 2010 to 2050" (Willett et al., 2019: 471), with food sourced from animals comprising the majority of this.

Another landmark study (Poore and Nemecek, 2018) assessed the impacts of the entire supply chain of animal food products, from the clearing of land for grazing, to the farming of crops raised for animal feed, to aquaculture, fertiliser production, animal emissions, to food processing operations and distribution channels. The results were astounding. They found that food production is responsible for 26% of GHGEs worldwide, 58% of which can be directly attributed to animal food products (figure 1). When grouped for primary dietary contribution, the GHGEs of 100 grams of protein from beef on the lowest end is far more than any of the plant-based products. Even the most sustainable, least impactful way to produce any of the animal products in figure 2 is far greater than any of the plant-based foods. It's also important to note that the foods listed in figure 2 are not a random sampling. They are the primary sources of protein in the human diet worldwide (aside from grains, which are not shown). This extreme variation trend was also found to be true for other areas of environmental degradation, including acidification, eutrophication, and water use (Poore and Nemecek, 2018). Further, when accounting for the nutritional benefits of food, the study found an enormous disparity in the nutrition humans obtain from farmed animal products compared to the amount of damage that is caused in the process of their production (figure 3) (Poore and Nemecek, 2018).

## Green crimes against humans

Perhaps least addressed by scholars is the chronic and routine infliction of psychological trauma on slaughterhouse workers. Jennifer Dillard (2008) describes the cost of a hamburger as inclusive of all physical, financial and *psychological* costs. Smith (2002: 52) demonstrates that the work of slaughterhouse killing requires the individual to construct a detached psychological disposition that allows them to repeatedly do this work in a manner "almost as mechanistic as the factory itself". This is a phenomenon unique to slaughterhouses and *no other line of work* (Fitzgerald, Kalof and Dietz, 2009).

While post-traumatic stress disorder (PTSD) is well-documented in military veterans (Kulka et al., 1990), victims of crime and disasters (Norris, 1992), and concentration camp survivors (Favaro et al., 1999), MacNair (2015: 313) notes that there is little research on killing non-human animals as a cause of PTSD, not because the matter is debatable, so much as an issue of inattention in the literature about PTSD as a whole. In fact, as a result of an extensive study on the psychology of Nazi killers, Mac Nair (2001) suggests that there is a specific kind of psychological damage that occurs when someone is the perpetrator of the traumatic event, which she calls Perpetration-Induced Traumatic Stress (PITS).

It's also well-documented that the degree to which PTSD symptoms manifest has a direct relationship to the severity and chronicity of the traumas experienced, which is a way of confirming that the traumas are in fact causing the symptoms (MacNair, 2001; 2015): "Therefore, the greater number of executions participated in by one individual, the more likely the symptoms are to appear and the more severe the symptoms are likely to be" (MacNair, 2015: 319). This might explain why Tim Pachirat, Professor of Political Science at the University of Massachusetts Amherst, who worked undercover at a slaughterhouse, learned that knockers (employees who operate the bolt gun) are required to have psy-

chological evaluations every three months "because … that's killing", as explained by his colleague on the kill floor (Pachirat, 2011: 153). In fact, Dillard (2008: 398) also found that "a survey of some relevant publications indicates that slaughterhouse work is very likely to have a serious, negative psychological impact on the employees".

According to MacNair (2015), violence is not an inherently human instinct (though this is debatable) and the commission of it actually inflicts us with mental illness. Knockers and stickers (employees who use knives to sever the jugular veins of animals), workers who are required by their employers to enact hundreds of violent acts per day, are at risk of severe and chronic PITS. They should see these symptoms as a "work-related injury […] and are therefore entitled to the psychological treatment necessary to help them recover" (MacNair, 2015: 319).

In the United States, the Occupational Safety and Health Administration (OSHA) is responsible for ensuring "safe and healthful working conditions for workers by setting and enforcing standards and by providing training, outreach, education and assistance" (USDA OSHA, 2024a). However, "OSHA has no procedures in place for a workplace stress inspection" (Seyfarth Shaw LLP, 2022) and no indication whether workplace-induced psychological stress would even be considered a violation of the OSHA General Duty Clause that requires the workplace to be hazard-free (USDA OSHA, 2024b). There is no mention of mental or psychological health risks on the OSHA page outlining the safety and health hazards of the meatpacking industry (USDA OSHA, 2024c).

In fact, OSHA's astonishing failure to recognise the psychological stress and risks of slaughterhouse employment suggests that they do not see their workers as *full* humans but rather extensions of the machines that they operate that likewise require certain care and maintenance. This is in line with how the meat industry has overtly encouraged workers to see their victims: "Forget the pig is an animal — treat him just like a machine in a factory," recommended *Hog Farm Management* in 1976 (as quoted in Prescott, 2014). In 1978 *National Hog Farmer* likewise advised: "The breeding sow should be thought of, and treated as, a valuable piece of machinery whose function is to pump out baby pigs like a sausage machine" (as quoted in Prescott, 2014).

In the UK, the situation is similar. While the meatpacking Health and Safety Executive (HSE) makes no mention of the potential for mental harms and resulting psychological trauma induced by chronic killing, there is a section that addresses workplace stress and mental health conditions, stating that "whether work is causing the health issue or aggravating it, employers have a legal responsibility to help their employees" (UK HSE, 2024). It's unclear, however, if these legal parameters have ever been used as grounds for any kind of action against the working environment of a slaughterhouse.

## Green crimes against non-human animals

When the *Animal Welfare Act* was signed into law in the United States in 1966 by President Lyndon Johnson it was widely celebrated as the animal welfare movement's landmark piece of legislation for the protection of animals from human harms. This law contains regulations for seemingly everything with the aim to protect the lives of animals, from transportation, to licensing and even the cleaning and maintenance of enclosures (Marceau, 2018). It also includes clear prohibitions on the killing of a dog or a cat for consumption (OLRC, 2018: §2160). What most Americans likely do not realise, however, is the existence of an enormous loophole in the bill that exempts animals raised for food (OLRC, 2018: § 2132 [g]). This exclusion leaves an astounding 98% of all the animals in the United States unprotected (Marceau, 2018).

In 2019, the *Preventing Animal Cruelty and Torture Act* (or PACT Act) was enacted, making some of the more abhorrent forms of animal cruelty a federal crime, "specifically crushing, burning, drowning, suffocating, impaling or sexual exploitation" (Animal Legal Defense Fund, 2023). However, here again, "among its numerous exemptions [is] […] slaughtering animals for food." (Animal Legal Defense Fund, 2023). Further, every state has its own laws against animal cruelty, though the definition of cruelty varies state to state and even the definition of animal varies state to state. Many of these state

cruelty codes "are generally aimed at prohibiting intentional conduct against animals such as torture, beating and mutilation" (Mosel, 2001: 179), but again, they are limited to non-farmed animals whilst practices regularly performed on animals raised for food are exempted (Animal Welfare Institute, 2023). The New Roots Institute (New Roots Staff, 2022: n.p.) state that "[t]his essentially means that factory farms can legally use inhumane practices that cause immense pain and distress to animals as long as the practices are routine and widespread within the industry". Examples include kicking an animal who is down, debeaking a conscious hen, tail docking cows and pigs without anaesthesia or stabbing an animal with a pitchfork, all actions that could be criminally prosecuted if performed on a dog or a cat (Ibrahim, 2006).

At its core, the very nature of animal farming is "institutionalised animal abuse" (Taylor and Fraser, 2017: 160). Yet very few people would ever intentionally treat an animal as cruelly as these animals are treated day in and day out, let alone deliberately kill them. It is this baffling Meat Paradox (Herzog, 2010; Joy, 2020) – the moral conflict of not wanting to harm animals but enjoying eating them – that is at the core of the demand for animal products and is illustrative of our complicated relationship with animals overall.

Among animals in the United States, it is those that are farmed that are in need of the most legal protection against harms at the hands of humans. The few laws that do exist only address the most severe forms of cruelty and even then are poorly enforced. The reality is that most anti-cruelty laws do very little to address the misery and suffering that factory farmed animals endure. Every day inside slaughterhouses, thousands of animals are purposefully (and lawfully) killed. In a single cattle facility, a knocker kills upwards to 2,500 cows a day (Solomon, 2014) and "[a] hog sticker may cut the throats of as many as 1,100 hogs an hour — or nearly one hog every three seconds" (Eisnitz, 1998, as quoted in Smith, 2002: 52). Per the AWA and other state animal cruelty laws, if blatant killings like this were perpetrated outside of a meatpacking facility, the offenders would face serious criminal charges much like the aforementioned individuals who killed a pet rooster and several cattle.

In addition to the socially and legally sanctioned mass executions that occur daily in slaughterhouses, there are methods of both treatment and killing that are regularly employed inside these operations that are in violation of the oxymoronically named *Humane Methods of Slaughter Act of 1958* which exists in order to minimise the pain and suffering of individual animals as they meet their ultimate fate. Violations of this laws inside slaughterhouses still occur. They include throat slitting, beatings with pipes, scalding, excess use of electric prods, trampling, prodding, dragging of a fallen animal and even shooting with a gun in the event that an animal survives the knocker's bolt and the conveyor belt is not stopped in time (Eisnitz, 1998; Pachirat 2011).

The mere existence of and need for the *Humane Methods of Slaughter Act* itself suggests that the victims are sentient beings (Smith, 2002). To complicate matters further, the enforcement of this law is so weak that many employees don't even know about it, let alone the contours of its statutes that regulate their daily work (Mo, 2005). The United States Department of Agriculture (USDA) is the enforcement body for this law, but this is "practically nonexistent", according to Mo (2005: 1319) because the USDA and big agriculture are close bedfellows. She explains that USDA officials are easy on slaughterhouses to curry favour for future high-paying jobs in the private sector as industry consultants. The USDA demonstrated such loyalty to the meatpacking industry by opposing the *Human Methods of Slaughter Act* when it was introduced (Mo, 2005: 1318–1319).

A closer look at the chronic mistreatment of animals within the system even prior to slaughter reveals that pressures of the abattoir environment, employee safety concerns, and the push for steep production numbers are closely tied to instances of animal abuse (Hall et al. 2017). The extreme degree of excess animal suffering and death is a direct result of "unfettered capitalism" (Scully, as quoted in Pollan 2002: n.p.), the industry's attempt to increase efficiency and productivity to meet demand. The dizzying speed and immense pressure to meet the burgeoning demand for meat has resulted in slaughterhouse workers who are often impertinent toward the experiences of the animals they kill and

dismember in the name of production line speeds necessary to maximise output and minimise expenses and disruptions (Mallon, 2005). In fact, despite having more animal welfare laws than ever, the situation in the United States is outlined by Mo (2005: 1318) as follows:

> The cruelty inflicted on farm animals has increased over the last several years. As Americans increase their consumption of meat and kill rates rise, the 'performance [of slaughterhouse workers] doesn't simply decline – it crashes.' Because of the rise in standard kill rates, workers are pressured to kill more quickly and therefore become sloppy.

This can lead to rampant violations of any applicable animal welfare laws. These conditions alone invite a broader application of the green criminology concept to the entire factory farm system and the development of a much more serious green criminology of industrial animal agriculture (Hall et al., 2017: 154).

## Final thoughts

Pollan (2002) calls the perpetual acceptance of the farmed animal industry a moral breakdown, with one of the biggest casualties being the profound erosion of our compassion for *every* living thing:

> More than any other institution, the American industrial animal farm offers a nightmarish glimpse of what capitalism can look like in the absence of moral or regulatory constraint.

The true cost of industrialised animal agriculture, specifically "cheap meat" (Sollund, 2015: 7), is far, far greater than we may even realise. While there are a number of formidable nonprofit organisations dedicated to the work of improving animal welfare on the factory farm (and even at slaughter), in reality, the only way to ensure that these crimes cease is to curb the insatiable demand for animal products. So much suffering, harm and green crimes could be prevented with a simple but mass reduction in the purchases of slaughterhouse output and other animal products.

> By signaling to the slaughterhouse industry that the current conditions suffered by the workers and by the animals are unacceptable, the general public can use its most powerful weapon – the dollar – to help change the policies of the slaughterhouse industry. The social effects of slaughterhouse product consumption are harmful and far-reaching, and the legal regime and the general public must act to reduce those deleterious effects on society. (Dillard, 2008: 18)

Pollan (2002) wonders, if slaughterhouse walls were made of glass, revealing the awful truth of the final moments of animals' lives and the horrifying realities of slaughter, whether this would stem the tide of animal suffering. If all this brutality and cruelty was common knowledge, would it *really* change our consumption habits or merely twist our moral compasses even further toward some kind of justification or dismissiveness toward the mass suffering of millions of individual animals? Would humans simply develop another form of dissociation, continuing to make it possible for us to consume animal products, all the while being fully aware of the incredibly high cost of our food on not just the animal, but the workers and our planet as well?

CCTV cameras became mandatory in England's slaughterhouses in 2018 "as part of a series of measures to bolster welfare standards and enforce laws against animal cruelty" (Smithers, 2017: n.p.). While footage is not available to the public, it is kept for 90 days and available to inspectors without restriction (UK Department for Environment, Food and Rural Affairs, 2018). Interestingly, despite having been in use for more than a decade in the United States, "there is no published evidence that CCTV improves animal welfare at slaughter" (Wigham, 2019, n.p.) yet animal welfare advocates in the UK lobbied for them for years (Smithers, 2017). To date, there are no empirical studies on whether or not the presence of cameras is working to improve compliance with animal welfare guidelines in the UK. Anecdotal evidence is both self-reported and mixed (Animal Ask, 2022; Hamlett, 2023) and breaches of regulations are still found to occur (Hamlett, 2023).

Even so, the slaughterhouse is but the penultimate stop along the journey of an industry-farmed animal who will bear the brunt of harms endemic to the system from the moment they are born. Any welfare improvement would be at best marginal. Likewise, it's difficult to imagine, cameras or not, that animal welfare regulations could ever be perfectly adhered to in an environment that's driven by speed of slaughter of terrified, anxious animals who are in a

state of fight or flight. As Animal Aid director Isobel Hutchinson points out, "although this development [of mandatory CCTV cameras in UK slaughterhouses] is a huge step forward, we urge the public to remember that even when the law is followed to the letter, slaughter is a brutal and pitiless business that can never be cruelty-free" (Smithers, 2017), by virtue of its mere *raison d'être*: to kill innocent animals.

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***Suggested citation:*** Gerberich, H. (2024). The green crimes of industrial animal agriculture. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 159–169.

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## Figures

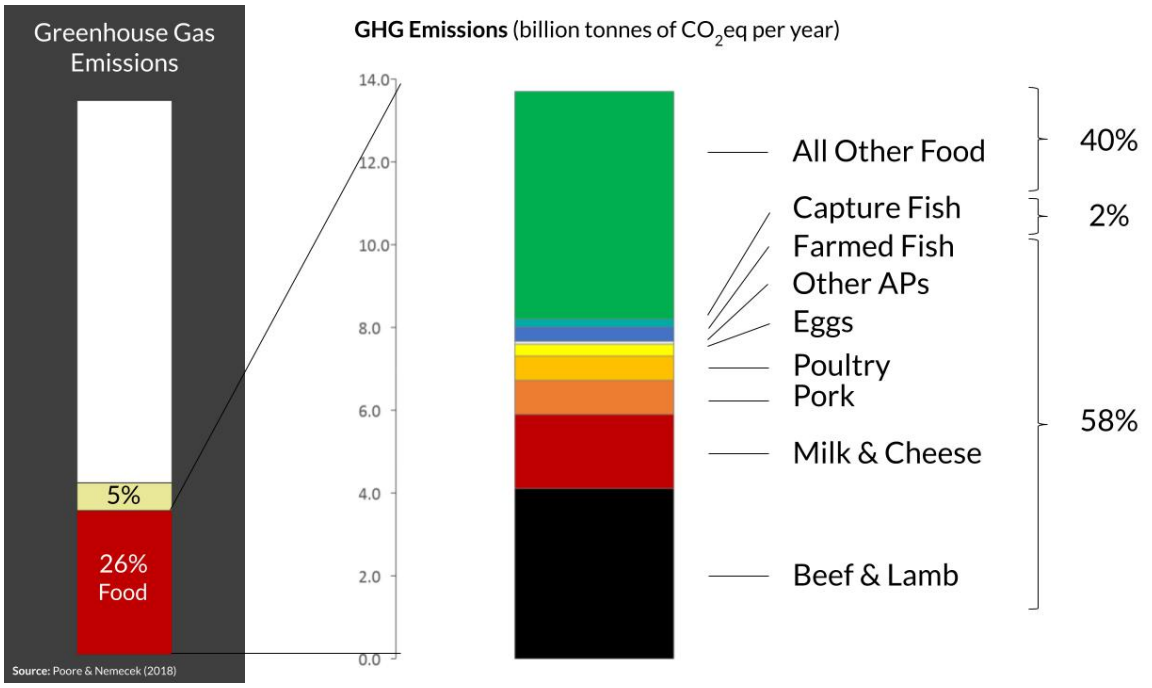


Figure 1. Greenhouse gas emissions attributed to food and the large contribution of animal food products to that number (Poore and Nemecek, 2018).
Figure used with permission from the authors.

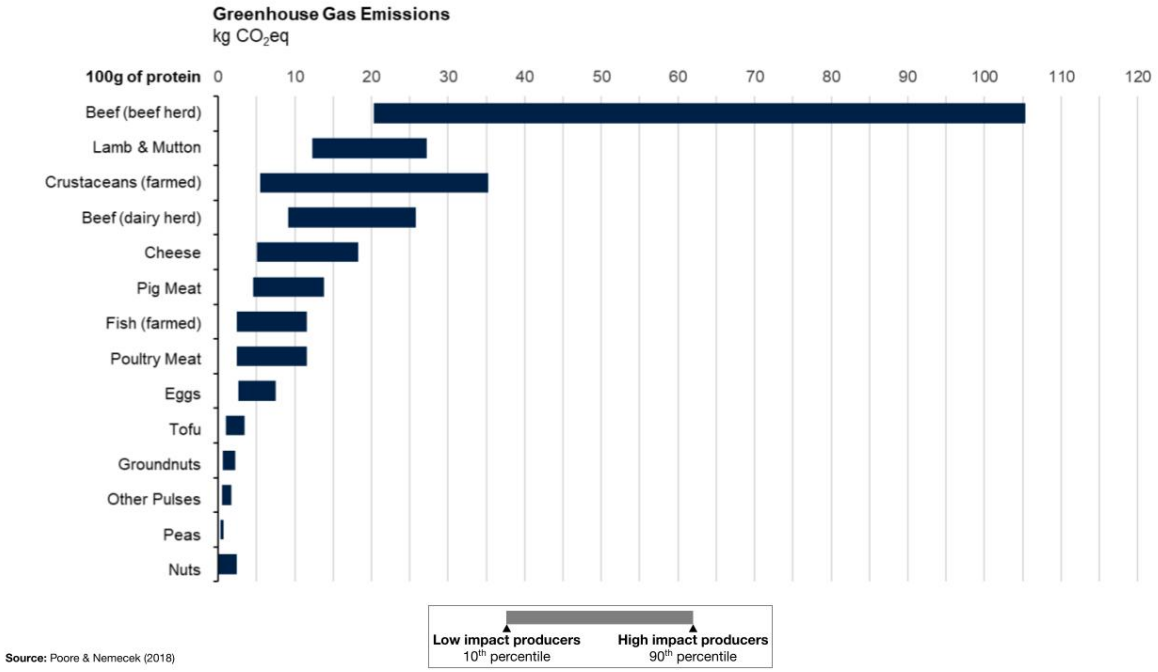


Figure 2. Range of greenhouse gas emissions from the top protein sources in the human diet worldwide, excluding grains (Poore and Nemecek, 2018).
Figure used with permission from the authors.

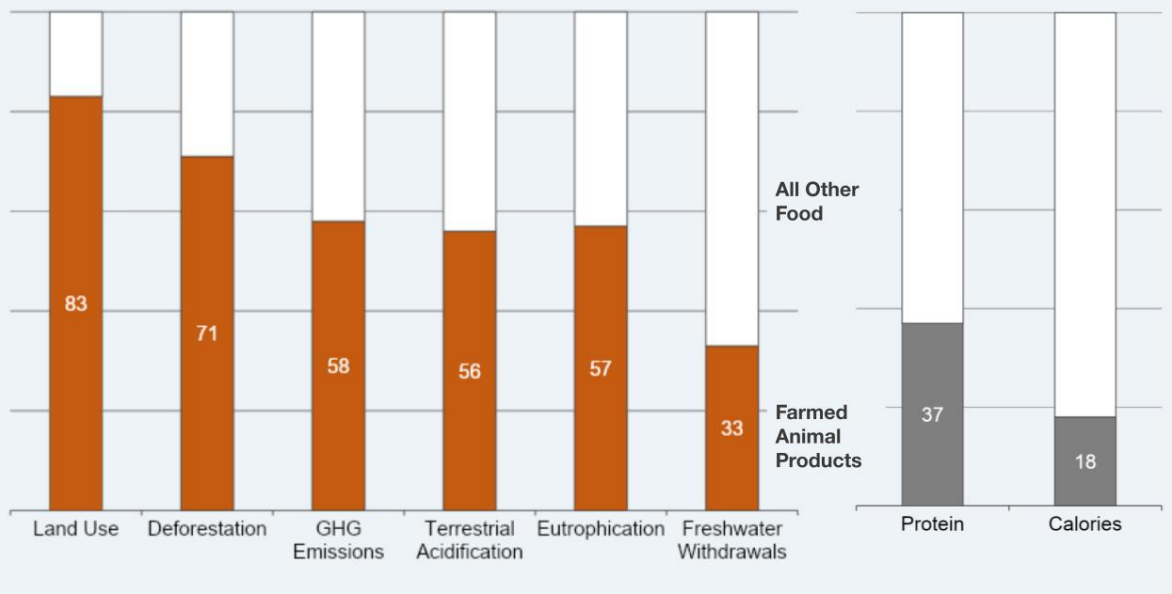


Figure 3. Several types and degrees of impact that farmed animal products have on the environment as compared to the nutritional value to the human diet gained from those products (Poore and Nemecek, 2018).
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# From tree-hugger to eco-terrorist: The criminalisation of effective animal activism in the US

*Sarah Buck*

***Abstract:*** *With increased internet access came the mass mobilisation of well-organised animal activists who have successfully and effectively disrupted the daily operations and financial integrity of animal enterprises. Consequently, the US government, animal industries and the media have played a central role in rebranding animal advocates as violent domestic eco-terrorists. The activists, like the animals whom they seek to protect, are increasingly silenced by new ag-gag legislation, which criminalises peaceful protests despite the constitutional protection of the First Amendment of the US Constitution. Activists continually find themselves needing to transgress laws, the boundaries of which are constantly changing in line with neoliberal interests. This paper considers how the Animal Enterprise Terrorism Act 2006 and state-wide ag-gag laws have been implemented in direct response to effective activism to reframe activists and whistleblowers as subversive actors who threaten the American way of life.*

*"The people can always be brought to the bidding of the leaders. That is easy. All you have to do is tell them they are being attacked and denounce the pacifists for lack of patriotism and exposing the country to danger."*
–Hermann Göring, second in command to Adolf Hitler (Smith, 2008: 563)

THE OTHER-THAN-HUMAN ANIMAL SOCIAL justice movement in the US has gained momentum following the formation of the professionalised NGO sector (Wrenn, 2019) and the American Animal Liberation Front (ALF) in the 1980s (Newkirk, 2011). More recently, activists have increased their visibility by organising and mobilising through the internet and by creating far-reaching social media content (Mummery, Rodan and Nolton, 2016). The majority of animal activists utilise non-violent tactics to raise awareness of the plight of animals hidden behind the doors of secretive animal enterprises (Munro, 2012). However, the US government, animal industries and the media have played a central role in rebranding animal advocates as eco-terrorists (figure 1) (Cohen, 2002; Potter, 2008). This relabelling of non-violent activism as a form of domestic terrorism created intense public fear in the years that followed the 9/11 attacks, which advanced widespread support of the criminalisation of animal activists (Salter, 2011). Moderate animal activists, who were previously considered tree-hugging pacifists, have been transformed into militant and violent criminals (Aaltola, 2012; Lovitz, 2007; Sorenson, 2016) when their activism successfully disrupts the daily operations of animal enterprises and threatens the financial integrity of their major umbrella corporations (Best and No-

cella, 2004), even when the tactics are peaceful and constitutionally protected under the First Amendment of the *Constitution of the United States* (Best and Kahn, 2004; Potter, 2011).

In the last two decades, legislation has been hurriedly drafted by senators and representatives (figure 2) to silence and criminalise these politically motivated acts of non-violent activism on behalf of animals as eco-terrorism, particularly activism directed at the economically important pharmaceutical and agricultural animal–industrial complexes (Potter, 2011). Activists who engage in previously legal and successful animal campaigns have been reconstructed into subversive characters who threaten not only animal industries but the very fabric of the American way of life. This paper will explore this assertion by considering two case studies: (1) the enactment of the federal *Animal Enterprise Terrorism Act 2006* (AETA) in response to the Stop Huntingdon Animal Cruelty (SHAC) anti-vivisection campaign and (2) by examining how statewide ag-gag laws, sometimes referred to as anti-whistleblower or animal enterprise interference laws, have been drafted in as emergency PR, as digital mass media exposes the usually hidden practices of the animal–industrial complex to American consumers.

This analysis proposes that these laws protect, elevate and legitimise the rights of humans who commodify, exploit and harm other animals in their enterprises by invisibilising and instrumentalising sentient animals as foods or research subjects within the American context. This hidden, legally protected status of animal experiences in laboratories and on farms ensures that conversations around improving industry standards of animal welfare or discussions around the ethics of animal use more generally are quashed and silenced, effectively absolving the industries of responsibility for ensuring high standards of animal welfare and food safety without facing legal repercussions. Furthermore, these industries are largely unaccountable for public health, environmental concerns and workers' rights. This paper argues that the work of whistleblowers and animal activists is a crucial part of bringing these issues to public and legal attention.

## The illusion of good animal welfare in the neoliberal animal–industrial complex

Neoliberalism is a contested term, but it is generally agreed that "the neoliberal state should favour strong individual private property rights, the rule of law, and the institutions of freely functioning markets and free trade" (Harvey, 2005: 64). Monbiot (2016) contends that competition is the defining characteristic of neoliberal human relations and redefines citizens as consumers of resources. One of the key tenets of neoliberalism is continuous increases in productivity and growth, which, it is assumed, will have a trickle-down effect and deliver higher living standards for all (Harvey, 2005). However, animals as property and as resources for human use are not privy to these benefits. In 1980, President Ronald Reagan sought to revitalise the US economy by introducing policies "to deregulate industry, agriculture, and resource extraction" (Harvey, 2005: 1). The commodification of animals as resources was then intensified or, as Stache (2023: 2) terms it, "super-exploited", in order to extract the maximum amount of surplus. Brown (2019) too, has warned that neoliberalism can lead to hierarchical and traditional attitudes. These attitudes are likely to reinforce the speciesist idea that the commodification of animals as resources is permissible for economic growth.

American consumers generally accept that animals may live short and painful lives but believe that this is morally permissible for the purposes of progress, to develop life-saving pharmaceuticals or essential consumables such as cheap meat, where unnecessary suffering is negated (Tyler, 2019). The neoliberal economic system is reliant upon the property status of animals to provide consumables and maintain hierarchical institutions that rely upon revenue created by animal use. Welfare legislation exists to ensure minimum standards of husbandry are met and to reduce instances of abuse or malpractice, rather than to end profitable forms of animal use (Francione and Charlton, 2015). The US *Animal Welfare Act 1966* (AWA) is the legal instrument that ostensibly always protects the interests of animals in research and agricultural settings. However, the AWA excludes most invertebrate species and live-

stock and also exempts specific uses for enterprising purposes, particularly in laboratory and farm settings (World Animal Protection, 2020). The exclusion of farmed animals under the AWA allows practices of systemic abuse which cause the greatest amount of animal suffering, both in severity and number (with the exception of industrial fishing) (Marceau, 2019).

Business Benchmark Farm Animal Welfare found that in 2012 and 2013 around 70% of companies acknowledged animal welfare as a business issue (Sullivan, Amos and van de Weerd, 2017). In the US, the pharmaceutical industry contributed US$1.3 trillion and 4% of Gross Domestic Product (GDP) in 2015 (ITA, 2016). The pharmaceutical industry supports more than 4.7 million jobs across the US, accounting for a third of all STEM workers in the country (McGee, 2018). Animal agriculture accounted for US$1.109 trillion and 5.2% of GDP in 2019 as well as providing 22.2 million jobs (United States Department of Agriculture, USDA, 2020). Neoliberal capitalist America, Nibert (2017) argues, will always ensure the illusion of a welfare paradigm continues, as it is in the oppressors' interest to support minimum welfare reform whilst maintaining maximum productivity. The vested interests of both industries are of huge financial importance to the capitalist political economy of the US and its stakeholders, which both the government and corporations are keen to protect, as well as the continued legitimisation of the property status and commodification of animals. The victims at the centre of the animal–industrial complex annually number around 55 billion terrestrial animals and fish (including bycatch killed for human consumption in the US), the majority of whom were slaughtered in factory farm–industrial complexes (USDA, 2018). In terms of the number of animals used in research, the latest official USDA statistics for 2021 show that 712,683 animals were used in the US, which includes monkeys, dogs and cats (USDA, 2021). However, Cruelty Free International (2023) estimate that when mice, rats, birds, fish, reptiles or amphibians are included in the figure, around 14 million animals are used in laboratories per year.

Animal enterprises are self-regulated (Wrock, 2016) and most animal welfare laws are in fact guided by the bodies responsible for setting industry standards, which unsurprisingly are the large multinational corporations with high financial stakes in animal use (Anthis and Shooster, 2017). Even when animal welfare legislation is present, it is typically implemented to the absolute minimum standard, which is set and regulated by the industries themselves. Welfare reform is generally only enacted when it is financially viable for the industry or may potentially be profitable to do so (Eadie, 2012; Mummery et al., 2014). For example, Tyson (2021), who slaughter 45 million chickens each week, is considering installing windows in their chicken factory farm barns. This was not in response to consumer demand to do so but to increase the yield and quality of meat, therefore increasing profits (Sinclair, Fryer and Phillips, 2019).

## The Green Scare: Framing the eco-terrorist

The term eco-terrorism is widely believed to be coined by Arnold (1997), who refuted the severity of harm caused by industries to animals and the environment. The term, Nocella (2007) contends, was formed in 1985 to ensure that activism on behalf of animals and the environment is perceived negatively by society and not as heroic acts of counter-terrorism. Arnold (1997) hoped to discourage acts of domestic terrorism, which outnumber international acts by a ratio of seven to one in the US (LaFree et al., 2006). However, terrorism in the US is defined as the use of unlawful violence and intimidation in pursuit of political advancement or to create change in society (*18 US Code 1992, Chapter 113B - Terrorism*). The misapplication of the term terrorism to non-violent actions of animal activist groups, Sorenson (2009) suggests, undermines legitimate grievances in opposition to animal exploitation industries. The term 'eco-terrorism' has been weaponised against peaceful activists, Best and Nocella (2004) argue, to deter the assembly or dissemination of knowledge, which could defame and economically impact animal enterprises.

To highlight the relatively benign nature of the movement, no human nor other animal has died following ALF actions (Brown, 2019; Mann, 2009). Following the September 11$^{th}$ 2001 (9/11) attacks

on the US, animal industry groups, particularly in the animal testing and fur farming industries, utilised the context of the political war on terror to lobby the Justice Department (Best and Nocella, 2004; Lovitz, 2010; Phillips, 2004). These industries hoped the US government would take seriously their concerns about the individuals who had been plaguing their industries for the last decade by enacting a new federal law (Final Nail, 2021). The attacks of 9/11 provided the perfect pretext for government crackdowns on dissent and to formulate rhetoric that vilifies animal activism (Sorenson, 2009). This political environment created the perfect conditions to justify the criminalisation of any activity that did not support the state. As animal activism targeted industries within the country during this politically sensitive period, animal activism became synonymous with anti-patriotism and therefore terrorism (Yates, 2011). The US neoliberal context post-9/11 called for the country to reassess, identify and crackdown on the enemies of the state (Klein, 2007).

The Green Scare describes the crackdown process, and its success as a tool of repression against animal activists (Kahn, 2009; Potter, 2011). The terminology was inspired by the legal restrictions of the Red Scare(s) and McCarthyist rhetoric following the World Wars. US politicians on the brink of the Cold War perpetuated widespread fear of subversion by anarchists or communists and subsequently repressed any individuals who were unpatriotic or resonated with socialist ideology, which they warned would cause the fall of the country to anarchy. The Green Scare instead frames its repression and rhetoric on the threat of domestic eco-terrorism rather than on anarchy or communism (Boykoff, 2007; Potter, 2008) by targeting individuals who hold radical reductionist or non-use views around ecological resources and animals (Salter, 2011). The Scare has been effective in laying the foundations for the construction of any animal activism, even non-violent activism, as an activity that can be criminalised once it becomes effective and threatens any institution which represents the US collective consciousness.

## The criminalisation of effective activism for animals: The AETA and ag-gag

Yates (2004: n.p.) asserted "in animal rights activism, tactics which are effective […] tend to be criminalised" to protect what Noske (1989) terms the capitalist animal–industrial complex, which argues that under neoliberal capitalism, commodified animals will always be subjugated. American neoliberalism celebrates constant development, consumerism and material wealth (Jacobs, 2017), which usually comes at the expense of exploiting natural resources and animals (Joosse, 2012). As animals lack legal rights equivalent to those possessed by humans, animals are not considered victims, socially or legally, of this kind of exploitation (Sollund, 2017), particularly when there are financial benefits that satisfy neoliberal ideals of success and development. There is clearly a distinction to be drawn between the status of inanimate objects and sentient animals, both of which are considered the legal property of their owner (Wise, 2000; Zaibert, 2012) but the difference has not yet been recognised by legislators. Francione and Charlton (2015) found that without legal personhood, the meagre protections that animals are currently afforded by US legislation allow perpetration of institutional violence and harm. The law is, after all, a social construction that registers the amount and kinds of harm that social forces allow, rather than acting as an objective measure of harm (Stretesky, Long and Lynch, 2013). Evidently, the financial benefits to the minority of human individuals in seats of power trump the interests of the majority of animals, 266 of whom ultimately are killed per second on the slaughterhouse kill floors across all 50 states (USDA, 2018).

Animal activists, who recognise the harms to animals in the animal–industrial complex, form a movement that is comprised of several factions with sometimes radically different ideologies, tactics and structures (figure 3) (Einwohner, 2002). Campaigns for welfare reform have typically been considered the most acceptable form of activism, as these are generally non-subversive and not economically

damaging to animal enterprises (Rishel, 2020). Animal rights activism, on the other hand, and particularly the abolition of all animal use, rather than simply the criminalisation of particular forms of abuse, is how the Federal Bureau of Investigation (FBI) (2016) benchmark ideology that may result in an individual degeneration into animal rights extremism. Generally speaking, the animal movement is managed by large, professionalised charities that utilise moderate tactics. These groups are generally accepted by the public and garner sufficient donations to be financially sustainable. Wrenn (2019) argues that the professionalisation of the movement superficially challenges animal industries, as the state relies on these NGOs to actively police and quash radicalism. As NGOs are reliant upon donations and funding from moderate supporters, Wrenn (2019) states that animal rights groups must hold the moderate line of animal protection in cooperation with the industries rather than engaging in subversive activism. It is also worth noting that radical activism gives moderates greater legitimacy and favour with policymakers and more ability to create change through a phenomenon known as the radical flank effect (Dalton, 1994). In a study exploring the radical flank dilemma and the case of SHAC, Ellefsen (2018) found that the effect facilitated a moderate change, which, whilst unlikely to challenge the systemic use of animals, may contribute to a favourable attitudinal shift towards animals over time. A report by Animal Charity Evaluators (2018) found that repeated protests with multiple approaches are usually more successful in obtaining the goals of the group.

A diversity of tactics was employed by SHAC USA as part of a diverse pressure campaign approach in the early 2000s (Phillips, 2004), which legally but relentlessly pressured shareholders to defund multinational animal testing laboratory Huntingdon Life Sciences (HLS). However, there was also a decentralised underground network causing illegal financial damage to property, which created an atmosphere of panic within HLS and its associated targets (Aaltola, 2012). The FBI (2016) and the US government used the illegality of the underground activism, not directly related to the legal face of the SHAC campaign, to elevate the nature of the perceived threat, rather than the actual threat to the public, by framing and vilifying the group as terrorists (Sorenson, 2009; 2016). Underground ALF activist Daniel Andreas San Diego detonated two incendiary devices at the empty building of a biotechnology corporation in California in 2003 to cause economic damage (Potter, 2011). This resulted in San Diego becoming the first domestic terrorist on the FBI Most Wanted list and he remains on the list and at large to date (FBI, 2021). During the time of San Diego's detonations, SHAC were portrayed by the government, industries and journalists as anti-scientific, hostile to medical progress and all-round enemies of the state (Best and Kahn, 2004; Regan, 2004). An industry animal researcher, Doctor Zola (2004), was quoted during a hearing at the US Senate, stating that "if this continues, the animal extremists will have won, and the loser will be humanity", alluding that animal activists will use violence to force animal laboratories to cease what he considered essential animal research.

The FBI concluded that "SHAC is the most serious domestic terrorist threat today" requiring a need to become as "creative as we possibly can to charge them with a violation" (cited in Lewis, 2004: n.p.). Senator Inhofe (2005: n.p.) at the congressional hearing on eco-terrorism at the Environment and Public Works Committee SD-406 also declared the "need for tighter legislation to curb this criminal activity that up to date has been impervious to law enforcement authorities". The continued calls for legislation followed directly after SHAC's successful campaign where multiple secondary and tertiary suppliers and financiers severed ties with HLS, causing the crash of the HLS stock market share price (Best and Kahn, 2004). This, Best and Khan (2004) assert, ensured that any threat of economic loss could then be framed as terrorism under the AETA as animal enterprises feared that if HLS fell, any other animal industry could be next, unless effective actions were criminalised and halted.

There were also fears that SHAC would focus their attention on the timber industry, which concerned many of the elected members of the Senate who were funded by timber and oil companies in addition to the pharmaceutical and agricultural funding that SHAC were already aware of (OpenSecrets, 2004). In a high-profile case, Earth Liberation Front activist Daniel McGowan was indicted as part of FBI

Operation Backfire on multiple counts of arson and conspiracy committed in 2001 in relation to the Superior Lumber company in Oregon (Mueller, 2006). McGowan, facing a life sentence, opted to take a plea bargain in 2006 to reduce his sentence to 7 years, but a 'terrorism enhancement' was applied to his sentence, meaning that he was labelled a terrorist in the hope to deter future attacks on the timber industry (Gallagher, 2023). As a result of growing fears that SHAC may extend their focus to other industries, the AETA was passed unanimously through the Senate and rushed through the House of Representatives using the suspension of the rules (Hall, 2008), thereby shifting the status of activists into terrorists overnight (Lovitz, 2007). Enterprises and their lobbying groups, such as the Center for Consumer Freedom and the United States Sportsmen's Alliance rallied behind the AETA, many of whom were well-connected to powerful politicians such as Senator Inhofe (McCoy, 2007). Inhofe spearheaded the Senate Bill 3380 which later became the AETA in order to strengthen the existing *Animal Enterprise Protection Act 1992* (AEPA). Previously legitimate and legal pressure campaigns such as SHAC were effectively shut down by the sudden enactment of the AETA, expanding upon the *USA PATRIOT Act 2001* and the AEPA. For the first time, the AETA codified animal activism and made any disruption to animal enterprises, primarily testing laboratories, a felony offence (Urbanik, 2012). The Act also criminalised any activity against a company tangential to a primary animal enterprise target which results in any form of economic damage (Potter, 2011). SHAC7, the legal organising group based in New Jersey, was raided and arrested as soon as the legislation was passed and eventually six defendants were handed custodial sentences after being convicted of conspiracy to commit acts of terror under the new AETA legislation, despite a lack of physical evidence to link the individuals charged with the aforementioned crimes (Best and Kahn, 2004; Potter, 2011). The defence for activists were forbidden to discuss or use visual aids to display what happens inside of HLS in court, as to do so would defame the laboratory, giving the jury and judge an incomplete picture of the case (Vlasak, 2005).

Both the AETA and ag-gag laws seek to silence activists and invisibilise the animals in a country that was formed on the tenets of free speech and liberty in 1791. Sorenson (2016) concurs, expressing that corporations and politicians with vested interests in the animal–industrial complex understand that animal activism is a threat to economic success and have collectively mobilised to undermine that threat. Legal scholars have critiqued the AETA and ag-gag laws as unconstitutional because it infringes upon US citizens' First Amendment right to free speech (Chafee, 2013; McCoy, 2007; Loadenthal, 2016), as well as for the overbreadth, vagueness and therefore increased likelihood of misinterpreting the laws (Ireland-Moore, 2005). Both the AETA and ag-gag laws are largely deterrent in nature, as few prosecutions have been brought since the advent of the legislation. However, in combination with the Canadian *Agricultural Employees Protection Act 2002*, and the *USA PATRIOT Act 2001*, an environment has been created where animal activists must carefully consider their actions before engaging in any activism (Boyer, 2017).

So-called ag-gag laws differ from the AETA by seeking to maintain a distance between consumers and the realities of big-animal agriculture by legally gagging whistleblowers. Individuals who investigate farms or laboratories undercover can be penalised for recording or disseminating footage, photographs or audio from the industry without the owner's consent (Lovitz, 2010). It is also a felony offence to obtain a job in an animal industry without declaring an existing or planned affiliation to an animal protection organisation. The animal agriculture industry has experienced exposés previously, which resulted in public demand for better treatment of animals and therefore a decrease in profits for the industry (Wrock, 2016). The desire to create ag-gag legislation was demanded by pro-agricultural lobby groups after undercover footage obtained by the Humane Society of the United States (HSUS) at Hallmark Meats in California in 2008 exposed ritual animal cruelty, unsanitary conditions, environmental degradation and the use of an undocumented workforce who are unable to raise a legal complaint without risking deportation. This exposé led to the largest recall of meat in history, substantial fines, damage to the reputation of the farms in question and the industry at large, as well as contributing to a sharp decrease in demand from both

consumers and stockists (Pacelle, 2012). This was not an isolated incident, as the industry initially retorted, which became clear when further footage was released from other sites with similar conditions that ultimately represented the industry standard to the consumer (Shea, 2015).

Pro-factory farm legislators, on the other hand, claim that farmers feel that urban-dwelling activists have little understanding of animal husbandry and welfare. Alvarez (2014) discusses how it is felt that these activists are ill-informed and unfairly target and expose reasonable, standard agricultural practices as animal abuse, threatening the livelihoods and traditional way of life of farmers. The meat and poultry industry began to lobby for emergency state legislation in the form of ag-gag laws in 2008 to halt further exposés and attempt to recover the image of the industry. This could be described as a prime example of regulatory capture, which occurs when industry regulators favour private groups or corporations over the public, or in this case when the industry needs are placed above the welfare of the animals (Springlea, 2022). Advertising using romanticised rural marketing of the vast open plains of the Wild West, usually featuring a lone cowboy and a small herd of cattle riding out on idyllic pasturelands (Krymowski, 2018) is an example of the type of advert used to perpetuate the illusion of spacious husbandry conditions (Savage, 1979). This myth is far from the reality of the farming landscape of the US, where the majority of animals raised for consumption live in crowded concrete feedlots and factory farms (Moen and Devolder, 2022). The animal–industrial complex works hard to construct a rosy image of happy animals in wholesome and idyllic settings, where fulfilled workers peacefully conduct work essential for human flourishing. This careful but mythical marketing fits in well with the collective neoliberal psyche of Americans living the so-called American Dream. Regan (2004) argued that challenges to the ideology and social construction of animal bodies as commodities upheld in propaganda are a threat to the country and *Americanness* as a whole (Regan, 2004). In his book exploring the Green Scare, Potter (2011) argued that any serious uptake of pro-animal thought could be considered a genuine threat to the American way of life and may eventually result in the subversion of the human–animal binary entirely.

Ag-gag laws have been rapidly proposed in states with a high proportion of animal agriculture, where whistleblowers and activists seek to bring the insufficient industry-standard practices of factory farming to the public domain (Pacelle, 2012), shattering the rosy façade of a halcyon rural farming idyll (Danbom, 1991). Once again, this occurs where animal enterprises are financially damaged by effective activism and the state is lobbied to swing into action to legislate in favour of the industries. To date, ag-gag legislation is active in 6 states: Alabama, Arkansas, Iowa, Missouri, Montana and North Dakota, but it was unsuccessfully proposed or ruled unconstitutional in 23 others (American Society for the Prevention of Cruelty to Animals, ASPCA, 2022; Fiber-Ostrow and Lovell, 2016).

Increased access to mobile internet networks, social media and handheld recording devices has increased consumer access to information regarding the previously hidden manufacturing processes of animal products (Lovitz, 2010), which may result in individuals exploring enterprises in person. Only one person, Amy Meyer of Utah, has been charged with ag-gag legislation (*UT ST §76-6-112*) to date for filming a meatpacking facility owned by the town mayor from a public sidewalk, a charge which was later dropped (Agostinelli, 2013). In another case, two activists from Direct Action Everywhere (DxE) were initially charged in 2017 for filming pigs at Circle Four and Smithfield Farms in Utah (Tanner, 2022). Both activists were unanimously acquitted by a jury in 2022 but the group has a number of other felony charges related to ag-gag legislation in other states (DxE, 2023).

The nominal laws that do exist to protect animals are insufficient and poorly enforced, particularly in farm, slaughterhouse and laboratory settings, where rates of animal abuse are low (HSUS, 2023). The non-human individuals on the receiving end of the inherent harm of their exploitation by the institutional violence perpetrated by animal enterprises receive little to no meaningful legal protections, whereas the perpetrators are largely protected from prosecution. Those found guilty of committing animal abuse offences face relatively light punitive

measures, typically a fine or, less commonly, a custodial sentence of up to six months (Bagaric, Kotzmann and Wolf, 2019). On the other hand, those charged under ag-gag legislation could face on average one year in prison, a 100% increase simply for exposing animal abuse (ASPCA, 2022). In Montana, an individual can face up to 10 years in prison and a US$50,000 fine if the activist is found to have, by way of defamation, caused the loss of earnings of US$500 or more (Kim, 2022). Additionally, the pace at which ag-gag laws are submitted, discussed, voted and signed into law as a bill is unparalleled. In Iowa, for example, legislators took just 10 days to pass the most recent version of the state ag-gag bill, a process which would usually take a number of years (American Civil Liberties Union, 2019).

As animal industries tend to be hidden from the public, we only now know of animals' hidden plights and of animal abuses generally in laboratories and agricultural conditions, as a result of undercover whistleblowers such as those in the famous Hallmark case (Frank, 2004; Alvarez, 2014). Without whistleblower footage very little would have changed in the way of welfare reform in recent decades, as exposés of conditions inside laboratories and farms have been made accessible to the consumers for the first time, causing outrage and moral shock (Frank, 2004). One of the main purposes of ag-gag laws, however, is to make it difficult for whistleblowers to gather evidence in cases of animal abuse, essentially protecting the abusers and inhibiting the democratic process of achieving justice for animals (Fiber-Ostrow and Lovell, 2016). Most ag-gag laws stipulate that any incidence of animal abuse must be reported to the USDA within 12–24 hours of the crime taking place (Shea, 2015). The whistleblower must also identify themselves to law enforcement and hand over all evidence they have gathered, which ultimately will result in the end of their investigation. This is problematic as whistleblowers typically need to observe operations for an extended period of weeks or months in order to build a case to prove that any legal infractions are instances of systemic malpractice and not just a one-off. Green (in Piper, 2019: n.p.), who specialises in Animal Law, draws on a helpful analogy to explain this:

> Say you have a DEA agent who spends months undercover to infiltrate a drug cartel, this is like requiring them to reveal themselves the first time they see a $5 drug buy. You'll never get to the heart of the abuses that way – which, of course, may be exactly what the industry, which backs quick-reporting, wants.

All of the points discussed paint a bleak picture of the situation for farmed and laboratory animals in America. Ag-gag laws deny animals any semblance of real protection by criminalising the primary means by which animal advocacy organisations expose abuse and cruelty on factory farms (ASPCA, 2022; Shea, 2017). The treatment of animals may outrage consumers, but discourse should still be facilitated to promote democratic discussion to tackle the plight of animals raised for food (Leslie and Sunstein, 2007). After all, the only reason that *any* legal animal welfare protection exists is thanks to the countless investigations and tireless campaigning of activists and whistleblowers since industrial-scale animal industry practices began.

## Conclusion

This paper has described how the US government has successfully moved to criminalise, silence and cease all effective forms of activism for animals to protect corporations with vested interests in the animal–industrial complex. Animal advocates have been rebranded as violent domestic eco-terrorists by means of legislation and green scare framing. Animal activists now find themselves in a legal quandary, whereby actions that were previously legal now require the transgression of the law, the boundaries of which are constantly changing in line with neoliberal interests. Activists who refuse to be silenced are now in a position where subversive and illegal action is a requirement to challenge and bring to light hidden systemic animal use and abuse under the US neoliberal political economy. The law has been weaponised and politicised against activists, as a fluctuating toolkit to continue the commodification and exploitation of animals by quashing subversion and radical effective activism on behalf of animals. There can be no justice or even a guarantee of minimal welfare standard adherence for the animals in laboratories and in agricultural settings whilst the realities of their lives are shrouded in secrecy.

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***Acknowledgements:*** *My deepest gratitude goes out to the organisers and editors of the EASE Working Paper Series for their tireless work in facilitating opportunities for early career academics. Thanks in particular to Dr Jessica Gröling, who kindly encouraged me to submit this paper. I stand in solidarity with the billions of animals held within the animal–industrial complex. We will continue to resist and fight for you. This work is dedicated to the undercover whistleblowers and activists who selflessly risk their freedom in order to bring hidden animal realities into public awareness.*

***Suggested citation:*** Buck, S. (2024). From tree-hugger to eco-terrorist: The criminalisation of effective animal activism in the US. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 171–184.

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## Figures


Figure 1. Animal rights activist or eco-terrorist? Protesters take to the streets in New York. Royalty-free image courtesy of Pixabay (Jones, 2017).


Figure 2. The United States Capitol where Congress meets to write new law. Royalty-free image courtesy of Unsplash (Feliciotti, 2019).


Figure 3. DxE activists protesting factory farms in Sacramento, CA. Royalty-free image courtesy of Unsplash (Maya, 2021).

# Activism, morality and the law: The case study of the Sea Shepherd Conservation Society

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***Abstract:*** *The Sea Shepherd Conservation Society (SSCS) is an environmental pressure group that uses confrontational direct action tactics to protect marine life from human exploitation. This article analyses one of the SSCS's most high-profile campaigns, against Japanese whaling in the Southern Ocean between 2005 and 2017, to discern whether the group's tactics were justified. The first section shows that there was insufficient legal justification for the SSCS's self-appointed role as protectors of the ocean. In contrast to this, the second and third parts argue that there was sufficient moral justification for the SSCS to act and that the strategies they chose were effective at enforcing this agenda. In approaching the topic in this way, legal and moral considerations are shown to be distinct and not necessarily consistent with one another where protest is concerned.*

THE SEA SHEPHERD CONSERVATION SOCIETY (SSCS, or Sea Shepherd) is an environmental pressure group that uses confrontational direct action tactics to protect marine life from human exploitation. Over its forty-plus year history, the organisation has become both famous and controversial. Some, such as the Japanese government and scholars including Andrew Hoek (2010) condemn the group as eco-terrorists who target lawful practices and put human lives at risk, whilst others, including the governments of Gabon, Liberia, Mexico, Tanzania and Namibia, have actively cooperated with the group, perceiving it instead as a legitimate law enforcement organisation (Berube, 2021).

This article will put the spotlight on Sea Shepherd's direct action tactics and will question whether they are justifiable. To do so, it will use the group's campaign against Japanese whaling in the Southern Ocean as a case study. This campaign lasted from 2005 until 2017 and was the most famous in the group's history, being the subject of the hit TV series *Whale Wars* (Robe, 2015). During this campaign, Sea Shepherd used a variety of direct action techniques to hinder the progress of the Japanese whaling fleet. These included using smoke bombs and lasers to hinder navigation, throwing butyric acid onto the ships to spoil whale meat (Magnuson, 2014) and ramming ships to force the fleet back to shore (Khatchadourian, 2007). Sea Shepherd claimed victory in the campaign when Japan announced an end to its Southern Ocean missions in December 2018 (Sea Shepherd, 2018). This case study is chosen because its high profile means that detailed analyses have been conducted of it and because the tactics it used are typical of Sea Shepherd's signature direct action approach (Magnuson, 2014).

This article will ask whether Sea Shepherd's direct engagement in marine issues is justifiable both in theory and in practice. The first part will consider

the extent to which its involvement in the Southern Ocean was legally justifiable. With reference to academic analyses from scholars including Gerald Nagtzaam and to treaties such as the United Nations *World Charter for Nature* (UNWCN) (see UN General Assembly, 1992) it will show that it is not possible to persuasively justify Sea Shepherd's campaign in the Southern Ocean in legal terms. However, after highlighting that legal and moral justifications are not one and the same, the second section will show that Sea Shepherd's targeting of whaling ships was in principle morally justifiable. It will do so using a utilitarian perspective. The third and final part will build upon this and show that the specific tactics used in this campaign were justified as they were effective in executing this justifiable moral agenda. It will also comment that these conclusions could potentially be applied to Sea Shepherd's other campaigns. In showing that Sea Shepherd's actions were not in this case legally justifiable but did successfully execute a valid moral agenda, legal and moral issues are demonstrated to be distinct and potentially contradictory where activism is concerned.

## Legal justifications

The first part of this article will focus on potential legal justifications for Sea Shepherd's tactics. These legal justifications are focused upon because they play a large role in the organisation's own public relations agenda. For instance, Sea Shepherd's website claims that it is "committed to the protection and enforcement of conservation law", therefore seeking to draw authority from legal sources (Sea Shepherd, n.d.). This pattern was also followed in its Southern Ocean campaign. Here, the group has appealed to a range of laws and treaties to justify its interventions. A number of scholars, including Gerald Nagtzaam (2014), Whitney Magnuson (2014), Anthony Moffa (2012) and Andrew Hoek (2010), have systematically looked through the relevant laws to which SSCS has appealed, to assess the validity of these claims. This section will review their analyses of the main sources of relevant legal authority, to show that Sea Shepherd's appeals to the law were flawed and failed to justify its self-appointed role as a "conservation police force" (Magnuson, 2014: 924). It will assess the three most prominent legal sources analysed by these scholars: "the International Whaling Commission (IWC) moratorium on commercial whaling" (Nagtzaam and Lentini, 2007: 123), "the United Nations World Charter for Nature" (Nagtzaam, 2017: 278) and the "Australian EEZ" (Williams, 2008: para. 1).

The present section will be guided by a distinction between two core sides of law enforcement: deciding who has broken the law and having the authority to intervene (Moffa, 2012: 203). Under this conceptualisation, Sea Shepherd would need to fulfil two criteria to be legally justified in intervening in the Southern Ocean in the way it did. First, it would need to be able to prove that Japan was breaking the law. Second, it would have needed to have had legal authority to enforce the law following its "direct enforcement" agenda (Phelps Bondaroff, 2015: 170). This section will show that Sea Shepherd failed to justify this campaign in either of these two respects.

Sea Shepherd's failure to justify its campaign in legal terms is exemplified in its appeals to the United Nations *World Charter for Nature* (UNWCN). This agreement was signed in 1982 and asserted five "principles of conservation by which all human conduct affecting nature is to be guided and judged" (UN General Assembly, 1982: 17). The first of these was that "nature shall be respected and its essential processes shall not be impaired" (UN General Assembly, 1982: 17). Paragraphs 21 to 24 go on to outline the responsibilities of stakeholders to uphold these principles (UN General Assembly, 1982: 18). This was one way in which Sea Shepherd was seeking to justify its interventions: by claiming authority from the UNWCN to act as an interested group against Japan, on behalf of nature (Caprari, 2009). However, these attempts have been heavily criticised by legal scholars. Nagtzaam (2014: 678), for instance, has highlighted that as a charter, it is "merely a non-binding resolution and is not considered a formal source of international law", meaning that Japan cannot be held accountable to it. This sentiment is echoed by Caddell (2014) as well as Moffa (2012), who also notes that no enforcement measures are identified in the Charter. As a result, Sea Shepherd's appeal to the UNWCN failed in both aspects of law enforcement being assessed here.

Sea Shepherd also appealed to the IWC's moratorium on commercial whaling to justify its actions (Hoek, 2010). However, the moratorium also failed to demonstrate Japanese lawbreaking or give Sea Shepherd any authority to intervene. The moratorium was passed in 1982 and came into full force in 1986, to set the commercial catch limit for all member states, which included Japan for the duration of Sea Shepherd's campaign, at zero (International Whaling Commission, n.d.). Although widely considered to be a scheme driven by demand for whale meat for food, Japan filed its programme as 'scientific research', as this was still permitted (Hoek, 2010). However, the programme was deemed to be incompatible with the moratorium by the International Court of Justice (ICJ) in 2014 for not being sufficiently 'scientific', and therefore breaking the rules of the IWC-recognised Southern Ocean Whale Sanctuary (Caddell, 2014; International Court of Justice, 2014; Magnuson, 2014). Despite this ruling, scholars have shown that there remained no persuasive justification for Sea Shepherd's interventions. First, the IWC does not specify any formal enforcement operations for its resolutions, instead tending to rely on diplomatic pressure among its members (van Drimmelen, 1991). Indeed, the IWC's founding convention does not allow it to grant enforcement rights to a third party like the SSCS (Nagtzaam, 2014). As a result, Sea Shepherd's unilateral adoption of this role was outside of the legal authority of the IWC. Second, the 2014 ICJ judgement against Japanese whaling also failed to give Sea Shepherd approval for its actions, either retroactively or otherwise. This is because it is the responsibility of the UN Security Council, not NGOs, to enforce ICJ rulings (Arnold, 2017). As such, neither the IWC's moratorium nor its related 2014 ICJ ruling gave Sea Shepherd authority for their interventions in the Southern Ocean.

The final legal justification to be reviewed here is that of the Australian Exclusive Economic Zone (EEZ). Under UN rules, which allow countries to claim sovereignty over waters up to 200 nautical miles from their coast, Australia asserts authority over much of the Southern Ocean through claiming territory over parts of Antarctica (Dodds and Hemmings, 2009). Australian law bans whaling, with a punishment of up to two years in prison, and Commonwealth law permits citizens' arrests (Anton, 2011). However, the very existence of this zone is highly contested, meaning that any appeals to Australian law are on shaky ground. As highlighted by Hoek (2010), only four countries recognise the Antarctic scope of the Australian zone and these countries do not include Japan. As such, although under the rules of the EEZ Sea Shepherd may have been able to justify some form of intervention, it is a tenuous basis upon which to justify such controversial actions.

Although only three justifications are assessed here, it is worth noting that scholarly analysis of the relationship between Sea Shepherd and the law goes beyond this narrow scope. These analyses have a clear tendency towards considering Sea Shepherd's strategies to be legally unjustified and in some cases to also be outwardly illegal. One example is Richard Caddell (2014), who highlights that in 2013 the organisation was deemed by the US Court of Appeals to have committed piracy in the Southern Ocean campaign. Meanwhile, Jackson Brown (2012) suggests that SSCS operations would be prosecutable by the states to which its boats are flagged, arguing that for one particular incident involving the *Ady Gill*, Sea Shepherd would likely have been prosecutable by the New Zealand government for common assault and intentional damage. This scholarship notes that the lack of prosecution does not prove legality: it is more likely to be evidence of governments being cautious of the bad press that such a prosecution would involve (Brown, 2012; Eilstrup-Sangiovanni and Phelps Bondaroff, 2014).

Therefore, Sea Shepherd's interventions in the Southern Ocean were not properly legally justifiable. This is because the legal sources to which Sea Shepherd appealed either failed to demonstrate Japanese illegality or failed to convincingly demonstrate Sea Shepherd's authority to intervene. As Donald Anton (2011: 145) summarises, "no such authority exists" from international law to justify Sea Shepherd's tactics. These conclusions have some implications for Sea Shepherd's broader strategies. Although they cannot be fully applied to its cooperative efforts with governments, the weakness of its claims to international legal authority could

potentially be applied to other similar campaigns, such as those against whaling in the North Atlantic in the 1980s and 1990s or their campaigning against Canadian sealing in the 2000s.

## Moral justifications

This lack of a solid legal justification does not make Sea Shepherd's tactics unjustifiable, however. Scholars such as Geoffrey Hazard (1994) and Hans Kelsen and Max Knight (1967) have suggested that moral and legal authority can be distinct. As such, it is also necessary to assess the extent to which Sea Shepherd had valid moral justifications for its interventions. Indeed, moral justifications were used by the organisation itself to support its anti-whaling campaigns. On its website it claims that it is "the only fleet in the world whose sole purpose is to protect all marine wildlife" (Sea Shepherd, n.d.) and its founder Paul Watson is known as a deep ecologist who is "prepared to die for these whales if need be" (Khatchadourian, 2007: para. 39; Nagtzaam and Lentini, 2007: 112). This section will use a utilitarian perspective to show that moralistic reasoning provides Sea Shepherd with a strong justification for its tactics.

Utilitarianism is uniquely useful for this assessment. Most famously put forward by Jeremy Bentham in the 1800s (Kniess, 2019) and specifically for animal issues by Peter Singer (1990), utilitarianism suggests that the action which causes the most happiness (and the least unhappiness) overall for all involved is the moral action. Although it is not uncontroversial, or even necessarily the best method for making decisions, utilitarianism has two major advantages as a tool of analysis in this context. First, it is methodologically clear: in this context, it requires weighing up the harms of whale hunting for wildlife against the benefits for humans. Second, it is widely culturally accepted as a tool of measurement, being the basis upon which animal experimentation is monitored globally (Fenwick et al., 2009). This section will first assess the extent to which Japanese whaling caused harm to whales, before outlining the benefits of it for humans. It will show that from a utilitarian perspective, Sea Shepherd's actions were justifiable as the harms amounting from Japanese whaling in the Southern Ocean exceeded the benefits.

The first side of this analysis shows that Japanese whaling in the Southern Ocean caused a large volume of suffering both for the captured whales as well as for the broader marine ecosystem. For the almost 1,000 whales due to be killed annually under JARPA II (Fitzmaurice, 2015) there was clear harm involved. Due to their size, anatomy and physiology, it is difficult to kill them quickly, with Japanese records suggesting that "time to death averaged 10 min, with some animals taking up to 25 min to die" (Waugh and Monamy, 2016: 234). Scholarly analysis of Greenpeace footage of Southern Ocean whaling in 2005/2006 showed that two of the 15 surveyed whales survived for over 25 minutes after being harpooned (Gales, Leaper and Papastavrou, 2008). These figures should be viewed as minimums: as large and deep-diving animals, whales can survive for a long time without breathing and may remain alive despite a lack of movement (Gales, Leaper and Papastavrou, 2008). There is also increasing evidence to suggest that whales are highly intelligent beings who form close communities and complex relationships with one another. According to Mark Simmonds and Desmond Tutu (2013: 43–4), "the killing of individual cetaceans is likely to constitute the loss of a member of a family […] and, in effect, part of a society", and as a result, "we can be sure that the losses do harm" to other whales too. Finally, whales play an important role in "ecological and nutrient cycling" in marine ecosystems, meaning that their removal also has negative consequences of unspecified magnitude for the broader environment (Nagtzaam, Hook and Guilfoyle, 2019). These harms are regarded as a significant reason for why Sea Shepherd has not been prosecuted by any Western country, despite tactics which are seen as infringements of international law (Fitzmaurice, 2015; Hoek, 2010).

The negative consequences of Sea Shepherd's campaign were less substantial. First, the direct impacts of its campaign on the whalers themselves were less severe than those of whaling for the whales. As of data in 2014, Sea Shepherd had never caused a human death (Magnusen, 2014) and its Southern Ocean campaign reportedly injured a very limited number of Japanese whalers, who complained of eye injuries resulting from butyric acid canisters (Caprari, 2009; Magnusen, 2014). This is perhaps a

consequence of the organisation's strict code of conduct which means that members "cannot undertake any action that could result in a physical injury to humans" because if human harm were to come about, "[Sea Shepherd] would be condemned by [their] governments" (Phelps Bondaroff, 2015: 107). On a broader level, there have been suggestions that Sea Shepherd's anti-whaling actions may form part of a Western cultural imperialism which seeks to define what other cultures should or should not do (Fitzmaurice, 2015). However, the cultural importance of whale meat to modern-day Japanese society appears to be in decline. One 2002 study showed that "4% of respondents ate whale meat 'sometimes', and 9% ate it 'infrequently' [...] [while] 86% said they had never eaten it, or had stopped doing so in childhood" (McCurry, 2006: para. 20). It is also questionable why the Japanese government would need to spend "five million dollars per year" in promoting the industry to schoolchildren if whale meat was not experiencing a decline in popularity within Japan (Hoek, 2010: 171).

Overall, then, it is possible to provide a valid moral utilitarian justification for Sea Shepherd's Antarctic campaign. It has been shown that the negative consequences of whaling were significant for whales, whereas the benefits were minor for humans. As such, the moral basis for Sea Shepherd's desire to act would appear to be justified under this calculation. This sort of conclusion also has broader consequences for other Sea Shepherd campaigns, with increasing scientific evidence highlighting the need to consider the welfare of fish and the damage to ocean ecosystems due to fishing, suggesting that similar conclusions might be made for Sea Shepherd's anti-driftnet and anti-tuna fishing campaigns. Therefore, although Sea Shepherd lacked a legitimate legal justification for its campaigns, its moral justifications for acting appear to have been valid.

## Effectiveness

The direct action agenda of Sea Shepherd was therefore justified in its purpose. However, this is not sufficient to show that its actions were also justified. To prove this, the specific methods used needed to be effective in promoting these ends. To assess this, theory from the field of social movement studies will be used. In particular, Christopher Rootes and Eugene Nulman's (2015) observation that movement impacts are split between direct and indirect outcomes will be utilised here to support analysis of Sea Shepherd's effects. This section will suggest that because the direct impacts of its tactics were positive and the indirect impacts were inconclusive, Sea Shepherd's methods were justified overall.

In terms of direct impacts, Sea Shepherd's Antarctic campaign appears to have been highly effective. This is shown in two respects. First, scholars such as Nagtzaam (2014) have observed that its actions were likely responsible for directly reducing the number of whales killed by Japanese ships, therefore reducing the amount of suffering inflicted upon them. This trend is seen across the period of the organisation's campaign in the Southern Ocean, with increasing impacts over time. In the 2005–6 whaling season, Japan was forced to "come up 83 whales short", a number which increased to "305 short in the 2008–9 season" (Hoek, 2010: 179). By 2012–13, Japan recorded "possibly [its] lowest catch on record" (Nagtzaam, 2014: 671). As such, Sea Shepherd's actions in this campaign show a likely correlation with a reduction in Japanese whaling in this region. Second, and perhaps more impressively, was Sea Shepherd's potential impact on Japanese government policy. In the 2011 whaling season, for instance, minister Michihiko Kano of the Japanese government called the fleet back "months ahead of plan" due to "harassment by a nongovernmental organization called the Sea Shepherd Conservation Society" (Moffa, 2012: 201). In the longer term, Japan cancelled all future expeditions to the Southern Ocean in 2019, a move for which Sea Shepherd claimed credit (Nagtzaam, Hook and Guilfoyle, 2019; Sea Shepherd, 2018). These two effects are likely to be connected. Environmental activists have often used direct action (sometimes classed as 'ecotage') to raise the costs of business activity, thereby cutting into the profit margins of the activity in question and making it financially unsustainable in the long-term (Phelps Bondaroff, 2008). By 2010–11, Japanese whalers were making a loss of $25.2 million and were entirely reliant on government subsidies (Nagtzaam, 2014). Indeed, the move to Japanese-controlled waters from 2019 onwards perhaps suggests that Sea Shepherd was generating

too high a cost in the Southern Ocean to warrant future investment in whaling there (Nagtzaam, Hook and Guilfoyle, 2019). Therefore, the evidence suggests that Sea Shepherd's Southern Ocean campaign had the effect of reducing Japan's catch of whales there.

The indirect impacts of Sea Shepherd's strategies are more vague. One example of this is that there are directly contradictory views as to the effects of such confrontational strategies on how the Japanese public thinks about whale meat. Some anti-whaling activists have made accusations that Sea Shepherd's confrontational activities have generated hostility towards their message, thereby driving future demand for the products they condemn (Hoek, 2010). This view has been supported by academics such as Jun Morikawa (2009) and Jennifer Bailey (2008). Other evidence contradicts this view. For instance, the aforementioned decline in the consumption of whale meat in Japan at the time of this campaign suggests that the impact of Sea Shepherd's actions in encouraging support for whaling there was perhaps limited.

However, establishing the effects of a protest group on culture and the circulation of ideas is notoriously difficult (Earl, 2004). A significant, overarching reason for this is the "sheer variety of potential cultural impacts" that a single protest may have (Amenta and Polletta, 2019: 279). One group's actions may have several different effects, some of which may be positive and some of which may be negative (Rucht, 2023). In the present context, Sea Shepherd could possibly have had a positive impact on how bystanders view whales but a negative impact on how these same people view other non-human animals or the validity of political protest. Similarly, a single protest might have different impacts on different groups of people (Rucht, 2023). This might be between people in different parts of the world (such as between Australia and Japan) or within one country (such as old and young people in Japan). For the present case study, we might ask whether the Southern Ocean campaign would be a success or a failure if it mobilised support for its cause in the US through its *Whale Wars* show (as suggested by O'Sullivan, McCausland and Brenton, 2017) but in doing so increased resistance to change in Japan (as argued for other anti-whaling campaigns by Sakaguchi, 2013). Furthermore, as argued by Amenta and Polletta (2019: 280), additional difficulties are found in distinguishing between movement impacts and "the changes in policies, values, and behaviors that would have occurred in the absence of those movements". Ultimately, establishing a cause-and-effect relationship between protest actions and social change is only really possible with extensive analysis. None of the referred-to analyses of the cultural effects of Sea Shepherd's Southern Ocean campaign provide such depth, and with the presented assessments seeming to contradict one another where cultural effects are concerned, the indirect impacts of Sea Shepherd's actions remain unclear.

Overall, the balance of evidence suggests that Sea Shepherd's actions were effective in enforcing their moral agenda. By taking direct action against Japanese whaling, they appear to have achieved a dramatic reduction in the number of whales being caught and forced changes to the Japanese government's whaling policies. These effects, which have been directly attributed to the organisation, therefore outweighed the more ambiguous effects of their activities on cultural perspectives around whaling in affected countries. As a result, the confrontational tactics of the organisation appear to have been justifiable in that they seem to have had the intended result of enforcing its valid moral agenda.

## Conclusion

This article has used the case study of whaling in the Southern Ocean to explore whether the direct action tactics of the SSCS are justifiable. It has reached several conclusions. First, it showed that despite its claims to the contrary, there was not a solid legal basis for these efforts. Sea Shepherd did not prove that Japanese whaling was illegal and had no provable legal authority to prosecute its judgment. However, the second part of the article demonstrated that the organisation did have valid moral justification for targeting Japanese whaling. This conclusion was reached using a utilitarian framework, which showed that harm to whales and the broader marine environment outweighed (human) social and cultural concerns. The final part of the article established that for enforcing these valid

moral concerns, the specific tactics of the organisation were also justified. This is because the evidence here suggests that they generated results for reducing the negative impacts of whaling on whales, through disrupting whaling ships themselves and likely contributing to changes in Japanese governmental policy. It can therefore be concluded that the tactics of the SSCS are justifiable in their effective enforcement of their valid moral concerns. They were not, however, legally justified – despite what the organisation itself might claim.

This argument has relevance beyond the specific case study of Sea Shepherd. One area of this relevance is the long-running debate about where the law gains its authority from. In showing here that legal and moral justifications for activism do not necessarily coincide and may even be directly contradictory, this article could be seen to lend its support to 'legal positivism' and to the 'separation thesis', which suggests that "there is no necessary connection between law and morality", and that "immoral norms can be (part of) law" (Spaak and Mindus, 2021: 9–10). This is of heightened contemporary relevance given recent cases where Extinction Rebellion activists have been acquitted of their charges despite strong evidence of lawbreaking (Townsend, 2021). From here we might ask the question: if the law is insufficiently backed by a moral imperative, how should individuals and potential activists relate to it? In addition to this, if Sea Shepherd's protection of whales is not legally justified, questions may be asked as to whether there is adequate legal protection of animals or the marine environment, especially in international law.

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***Suggested citation:*** Walker, R. (2024). Activism, morality and the law: The case study of the Sea Shepherd Conservation Society. In Gröling, J. (ed.) *Animal Criminology (EASE Working Paper Series, Volume 2)*. Exeter: Exeter Anthrozoology as Symbiotic Ethics (EASE) Working Group, University of Exeter, pp. 185–192.

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