

Chapter 7

Codifying Animal Welfare Standards: Foundations for Better Animal Protection or Merely a Façade?

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Introduction

While modern animal welfare legislation can extend over hundreds of complex provisions, the first animal protection laws, enacted in the United Kingdom in the early 19th century, were of a very simple nature. For the most part, they focused entirely on the prohibition of ‘cruelty’, leaving the thorny determination of what actually constituted ‘cruel’ conduct entirely to the courts. An early example of court-defined ‘cruelty’ is provided by the leading English case of *Ford v Wiley*.¹ In this case, it was alleged the defendant had breached the law which said (relevantly) it was an offence ‘if any person shall ... cruelly beat, ill-treat, over-drive, abuse, or torture, or cause or procure to be cruelly beaten, ill-treated, over-driven, abused or tortured any animal’.

The word ‘cruelly’ – the critical modifier in this instance – was not qualified or defined in the legislation itself. As a consequence, the court interpreted the term to give it a significant qualification, which was that cruelty is not unlawful if it is ‘reasonably necessary’.² Lord Coleridge held that such necessity includes consideration of whether the act was undertaken for an ‘adequate and reasonable object’.³ Judge Hawkins expanded on what was reasonable or necessary, giving examples of accepted practices such as the castration of male animals ‘intended for use or for food’. Both members of the bench said that the (allowable) cruelty should be proportional to the object.⁴

The decision to leave the definition of cruelty entirely to the judiciary had a number of drawbacks. The most obvious was that the law as defined operated at a high level of generality, providing little guidance about what

1 (1889) 23 QBD 203. The decision concerned the dehorning of cows.

2 Referring with approval to *Budge v Parsons* (1863) 129 RR 367; 3 B & S 382 at 385 (‘the cruelty intended by the statute is the unnecessary abuse of the animal’).

3 *Ford v Wiley* (1889) 23 QBD 203 at 203.

4 *Ibid.* For a critique of the welfare protection regime which this approach embodies see Chapter 1 in this volume.

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