

# What can Lawyers do for Animals? Education in and Practice of Animal Law in Scotland – Event Report

Iyan Offor & Julie Gibson, PhD Candidates at the University of Strathclyde

## Introducing the Landscape of Animal Law in Scotland

Scotland's law schools are failing to educate its students about animal liberation: one of the defining social justice movements of our time.<sup>1</sup> In Scotland, animals and their defenders are left in dire need of legal expertise. This is because a lack of education in animal law has led to a dearth in legal research and practice of animal law in Scotland. It doesn't have to be this way.

In March 2019 the UK's first animal protection law firm, Advocates for Animals, opened its doors in London.<sup>2</sup> In the United States, animal law is taught at law schools country-wide. Lewis & Clark law school in Portland, Oregon, hosts the world's first and only LLM programme in animal law.<sup>3</sup> So, why is it that Scotland has fallen so far behind and what can be done to change this?

In order to begin to tackle these questions, a panel discussion and workshop were held at the University of Strathclyde on 29 April 2019.<sup>4</sup> This event was co-hosted by the Strathclyde Centre for Environmental Law & Governance (SCELG) and the UK Centre for Animal Law (A-LAW). SCELG has begun to provide specialised seminars in animal law on the basis of doctoral research conducted at the centre. Meanwhile, A-LAW

has been instrumental in the advancement of animal law in the UK. A-LAW provides its members with networking and career-building opportunities in animal law, student engagement and support, as well as publishing the UK Journal of Animal Law and a student e-journal on animal law. A-LAW soon hopes to establish an A-LAW steering committee and events series in Scotland. The event held at the University of Strathclyde invited animal law and environmental law academics, practitioners, and students to critically reflect on the education in and practice of animal law in Scotland. In that regard, participants reflected on the question: what can lawyers do for animals? The participants were asked to recognise the necessity of maintaining a 'radical openness of mind' in order to work towards justice for animals.<sup>5</sup>

This report follows up on that event in two parts. First, this report distils key ideas that were established at the event through presentations by invited speakers and a workshop discussion. Second, this report maps out a suggested road forward for Scotland's law schools and its legal academics and practitioners.

## Scotland's Lack of Animal Lawyers

### The Problems with Animal Protection in Law

In Scotland, as in much of the world, animals are owned as property.<sup>6</sup> Libertarian law has created a host of

<sup>1</sup> For reference to animal rights as a social justice issue, see: Robert C Jones, 'Animal Rights is a Social Justice Issue' (2015) 18(4) Contemporary Justice Review 467.

<sup>2</sup> See: <https://advocates-for-animals.com/>.

<sup>3</sup> See: [https://law.lclark.edu/centers/animal\\_law\\_studies/](https://law.lclark.edu/centers/animal_law_studies/).

<sup>4</sup> See: <https://www.engage.strath.ac.uk/event/580>.

<sup>5</sup> Gary L Francione, *Rain without Thunder: The Ideology of the Animal Rights Movement* (Temple University Press 1996) 8.

<sup>6</sup> Theft Act 1968 (UK), Art 4(4); Criminal Damage Act 1971 (UK), Art 10(1).



problems for animals: humans are free to do as they wish, subject to limited legal regulation. This has meant, in practice, that practices such as fox hunting or factory farming have become entrenched within society and they become hard to oppose. It is typically assumed that fox hunting is banned in Scotland. However, the Protection of Wild Mammals (Scotland) Act has such extensive gaps that fox hunting largely continues as it did before the legislation came into force.

At the same time, different species are offered certain protections in the law. The level of protection varies widely depending on the human use to which the relevant animal is subject. Domestic pets are typically afforded the strongest protection, followed by those charismatic mega-faunas treated as totemic objects (such as whales or elephants). Farm animals, sea creatures, and pests, for example, trail far behind in

terms of legal protection. This is a display of moral schizophrenia in our legal approach to animals. Thus, in Scotland, it is a crime to neglect the welfare of domesticated animals<sup>7</sup> whilst poor welfare practices, such as factory farming and fox hunting, are permitted.

The welfare of Scotland's animals is regulated by law at multiple levels. Animal welfare is regulated domestically and at EU level.<sup>8</sup> There is also a growing movement for global governance of animals.<sup>9</sup> However, vast gaps remain in the law. Further, the welfare protection that is enacted in law is often inadequately drafted or enforced. In order to explore these issues and to identify what lawyers can do to improve the lives of Scotland's animals, two case studies were introduced at the beginning of a workshop discussion.

First Libby Anderson, policy consultant at OneKind, led a discussion regarding fox hunting in Scotland.

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<sup>7</sup> Animal Health and Welfare (Scotland) Act 2006, s. 19.

<sup>8</sup> Brexit has resulted in some good scoping work that sets out clearly the spread of animal law between the UK and the EU. For one such text, see: UK Centre for Animal Law and Wildlife and Countryside Link, 'Brexit: getting the best deal for animals' (2017), available at: [https://www.wcl.org.uk/docs/Link\\_A-law\\_Brexit\\_Animal\\_Welfare\\_Summary\\_Oct17.pdf](https://www.wcl.org.uk/docs/Link_A-law_Brexit_Animal_Welfare_Summary_Oct17.pdf).

<sup>9</sup> Anne Peters, 'Global Animal Law: What It Is and Why We Need It' (2016) 5:1 Transnational Environmental Law 9; and Anne Peters, 'Liberté, Égalité, Animalité: Human- Animal Comparisons in Law' (2016) 5:1 Transnational Environmental Law 25

Anderson noted how wildlife legislation provides much more limited forms of protection to animals compared to that provided for domesticated species. This moral schizophrenia is owed to the differing ontologies we have developed surrounding certain animals.

In this respect, Anderson noted how foxes are referred to as sly, greedy and cunning in literature and in popular media. Our governance of them centres upon human motives to 'control' or 'manage' their populations, whilst paying little attention to the needs of the fox. Our conception of protecting wild animals often equates to leaving them alone, which requires much less positive action than what we might consider appropriate for domestic species. It was noted that the Scottish Government intends to set up an Animal Welfare Commission which would consider, *inter alia*, issues of wildlife welfare. However, there is no clear direction regarding what is considered adequate welfare protection for wild animals.

Following this discussion, Alice Di Concetto, Farm Animals Programme Officer at Eurogroup for Animals, introduced issues regarding the welfare of dairy cows kept in Scotland and the rest of the European Union. At EU level, no species-specific legislation exists for dairy cows. The only legislation that can be used to protect the welfare of dairy cows is the General Farming Directive 1998.<sup>10</sup> This is too broad to motivate effective improvements to welfare in most cases.

In practice, the consolidation of the dairy industry has meant that more and more animals are being kept on fewer and fewer farms. At the same time, milk yields are increasing from individual cows and unproductive ('spent') animals are slaughtered.

These case studies helpfully framed the question: what can lawyers do for (these) animals (in Scotland)?

A Role for Lawyers in the Push for Better Animal Law<sup>11</sup>

Libby Anderson was the first to address this question, providing insights from a policy perspective. Anderson's presentation identified the way in which campaigning for animal welfare protection, policy and law flow into one another. Devolution and the establishment of the Scottish Government was

identified as a key moment in the history of animal governance in Scotland. This is because almost all animal welfare legislation has become a devolved issue, though regulation continues at the European level.

Prior to devolution, there was almost no involvement in policy advocacy by organisations like the Scottish Society for the Protection and Care of Animals (SSPCA). This has now changed and there is an increasing need for legal expertise amongst animal welfare NGOs in Scotland.

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Anderson introduced the tortuous tale of the passage of the Protection of Wild Mammals (Scotland) Bill through the Scottish parliament. This demonstrated the lack of, and need for, animal law expertise in Scotland.

Backbencher Mike Watson introduced this Bill in 1999 with no access to government lawyers. He relied almost exclusively upon the policy work of NGOs for drafting purposes. Indeed, Mike Radford, Reader in Law at the University of Aberdeen, noted that most animal welfare law in Scotland is introduced as private members' Bills and is frequently inspired by the work of NGOs. Animal protection was noted to be a process, not an event. Thus, the need for lawyers arises at many points in time. Indeed, in this case the act did not come into force until 2002 and the first prosecution did not take place until 2017. The fine imposed amounted only to £400.

The involvement of lawyers trained in animal law throughout this process would have mitigated many of the difficulties that have arisen regarding drafting and interpretation. One key issue was the addition of the word 'deliberately' to the offence of hunting a wild mammal with a dog. This has made it very difficult to enforce this provision.

<sup>10</sup> Council Directive 98/58/EC concerning the protection of animals kept for farming purposes [1998] OJ L221/23 (Farming Directive).

<sup>11</sup> The knowledge and ideas forwarded in the following sections stem from the presentations and wider discussion held at this event.

The act has been subject to numerous legal challenges and judicial review regarding the human rights of fox hunters. Further, in practice, the exceptions in the act have meant that fox hunting continues, and the sport has simply been rebranded as “pest control”.

These issues identify a clear role for lawyers in the protection of animals. Lawyers could encourage stronger drafting of animal welfare laws and work closely with NGOs on policy and advocacy work. Indeed, Alice Di Concetto noted that legislators write law in theory but, in practice, legislators often seek guidance on drafting from the likes of specialist NGOs. This is a process in which lawyers could insert themselves in order to propose stronger language.

Regarding stronger drafting, Radford pointed out that it is not just the effective enforcement of a law that is useful for animals. Animal law also has symbolic power in that it represents an effort to reduce the freedom to mistreat animals.

Beyond the legislative process, it was also identified that lawyers trained in animal law would improve enforcement and prosecution of animal law. They can also help with interpreting the concept of unnecessary suffering. This concept frequently lies at the heart of animal welfare protection legislation.<sup>12</sup> Indeed, as Radford pointed out, in many cases it may be that enhancing animal protection does not require a change in the law but, instead, requires a change in the standard of what is deemed acceptable.

#### The Lack of Legal Education in Animal Law as a Barrier to Effective Lawyering

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Having used case studies to clearly identify a role for lawyers in the protection of animals in Scotland, we turned to ask: where are the animal lawyers? Radford

provided insight, as the only academic in Scotland teaching an undergraduate course on animal law. There is a severe shortage of lawyers trained in animal law in Scotland. Before setting out why this is the case, Radford elaborated upon the reasons why lawyers ought to study and practice this intriguing area of law.

Radford recalled the way in which animal law has enriched the lives of his students by connecting them to the physical world around them and encouraging them to question their place within it. While Radford recognises that lawyers can do “a hell of a lot for animals”, he also recognised that animals can do a lot for lawyers and their lives, insofar as the study of animal law is an enriching experience.

Part of the draw of animal law is the limited spread of expertise. This means there is no shortage of interesting issues to be worked on, researched and litigated. Further, animal law is necessarily interdisciplinary. Thus, it encourages collaboration across the disciplines: lawyers engaging with scientists, historians, ethicists, political scientists, sociologists, and so on. A failure to recognise this has led to a categorisation of animal law as a “soft” subject. In fact, it requires academic rigour, an open mindedness, and an ability to tap into the research traditions of disciplines outside the law.

The impact that animal law education might have on the lives of animals is potentially vast. Radford cited John Adams as saying that “to teach is to be in touch with infinity because you never know where your influence will end”.

Of course, setting up a dichotomy of “us” and “them” between humans and animals, and focusing on what one can gain from the other, is dangerous. This glorifies anthropocentric advantage without prioritising the animals’ experiences. However, it is perhaps useful to explore how animal law, as an academic subject, can be marketed to students and researchers.

Moving on to critique the gap in education, Radford noted that animal law, as an academic subject, has struggled to catch on in Scotland and, to an extent, in England. The relevant courses which are available have largely relied on individuals who are interested in the subject to propose and continue with the courses.

<sup>12</sup> For example, Animal Welfare Act 2006, s. 4.

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There is typically no school-level interest in seeing these courses entrenched within curricula. For this reason, each course is very distinct, constituting a passion project of the relevant academic. There is no textbook or standardised way of teaching animal law in Scotland or the rest of the UK.

### Raising Animal Lawyers: Best Practice Examples

This event has thus identified a clear need for lawyers and a clear lack of relevant expertise in the protection of animals in Scotland. On that basis, the event moved on to envisage the road ahead, drawing upon best practice examples from other jurisdictions. Indeed, the overarching goal of the event was to seek to inspire action in Scotland.

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With regard to better legal education, it is useful to turn to the United States for inspiration. Animal law has taken hold there and is taught in most law schools. Alice Di Concetto is a graduate of the Lewis & Clark Law School, Center for Animal Law Studies (CALs) LLM programme. She spoke on behalf of Natasha Dolezal, Director of International Animal Law and Deputy Director of CALs.

Lewis & Clark law school has a rich history of teaching animal law spanning back to 1992. Their animal law conference, commenced in 1993, is the first and longest-running animal law conference. They also established the first animal law journal in 1994. Further developments have included the appointment of a dean of animal law, a full time animal law clinic, a summer school and a dedicated LLM programme.

Di Concetto was particularly careful to note the varying legal roles that have been filled by the graduates of CALs. CALs has demonstrated how the gap between scholarship and animal law and policy can be effectively bridged. Di Concetto, for example, now uses her legal training from CALs in order to advocate for better treatment of farm animals in her role as Farm Animals Programme Officer at Eurogroup for Animals. This lobbying work benefits greatly from legal

expertise. Scotland would do well to draw inspiration from US law schools where animal law has become entrenched within the curriculum.

The international dimension of the teaching at CALs exists in recognition of the fact that animal law stretches across borders. CALs has a host of international alumni who have taken their training back to their countries and who are using that training to improve the legal protection of animals. The value of a legal education in animal law is clearly demonstrated by the legacy of CALs.

Turning to animal law in practice, Edie Bowles provided an inspiring example of how knowledge of animal law can be used by practicing lawyers in order to improve animals' lives. Bowles shared her story about how she co-founded Advocates for Animals, the UK's first animal law firm, which opened its doors in March 2019.

Based in London, Advocates for Animals has begun to take on work related to Brexit, animal welfare policy, legal briefings and casework. The activities engaged with have included judicial reviews, freedom of information requests, undercover investigations, and work on soft law instruments. Bowles identified other key roles firms such as Advocates for Animals might fill. These included: responding to government consultations and drafting letters of complaint to demonstrate that the government is being held accountable. Bowles demonstrated, through discussion of her work, the way in which lawyers are needed to ensure effective enforcement of animal welfare protection legislation.

To encourage more lawyers to adopt roles regarding animal protection in Scotland will require engaging and training law students as well as identifying and inspiring interested academics and practitioners who can provide that training. In this regard, the UK Centre for Animal Law (A-law) provides a wealth of resources. Edie Bowles spoke on behalf of A-law in her role as student group manager. A-law has been instrumental in mobilising and coordinating legal expertise on animal law in the UK. The majority of their activities, however, have taken place in England (primarily London). A-law provides resources, networks and events that will prove invaluable in a move to bring animal welfare to more Scottish law schools. A-law produces the UK Journal of Animal Law as well as a magazine, essay competition, blog, and moot

contest. These outputs provide opportunities for students and academics to embark upon legal research and writing related to animal law.

A-law also has a network of student ambassadors and associated groups across the country. A-law's work in Scotland is due to increase with the upcoming establishment of an A-law steering committee for Scotland. It seems likely that this group will prove instrumental in carving out a road forward for the education in and practice of animal law in Scotland.

### The Road Forward

This event marks the beginning of a conversation on animal law in Scotland. The inadequacy of legal education in animal law and the lack of research and practice stemming from Scotland have been largely accepted until now. However, there was a clear sense in these discussions that this state of affairs ought to change.

The road forward requires the identification of opportunities to continue this discussion. A-law's steering committee for Scotland will be instrumental in organising follow-up events where solutions to the lack of legal expertise can be elaborated upon.

A key component of the solution must be an increase in legal education in animal law in Scotland. There are a number of activities that may help in achieving this.

Environmental law academics, and others, may be encouraged to side-step into animal law. This would facilitate a relatively quick increase in research output and training and education opportunities at Scottish law schools.

At the school-level, there should be a recognition that animal law education is something that law schools in Scotland should be providing. Passion project animal law courses by individual academics are an encouraging development but, by themselves, are not enough to ensure a legacy of animal law education in Scotland. SCELG provides an example of how this may be beneficial, though admittedly this progress has occurred at the level of a research group rather than at school level. SCELG has facilitated doctoral research on animal law to be shared with students through undergraduate and postgraduate seminars and events.

This has provided the opportunity for environmental law students to learn about and conduct research into animal law. However, without school-level engagement, it is difficult for such impact to continue in the long.

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Further, it may be that research into animal law education could be beneficial. This could include comparative studies of the US and other jurisdictions that provide animal law education. Linked to this, it may also be useful to explore funding opportunities for animal law research in Scotland. In order to achieve this, it will be necessary to provide more support and advice to students in order to encourage them to conduct self-directed research into animal law. Once again, A-law's steering committee for Scotland could be instrumental in achieving this.

It is hoped that counteracting the dearth of animal law education in Scotland will create more legally trained professionals who are able to conduct legal research and practice-oriented work on animal law, both independently and in partnership with NGOs. It is hoped that, in turn, this will have a concrete, positive impact on the lives of animals in Scotland and abroad.