



## SUFFERING VS. PROFIT: VEAL CALVES IN THE EUROPEAN COMMUNITY

As a subset of International Society for Animal Rights' unequivocal opposition to factory farming, ISAR has long deplored the barbaric treatment of countless veal calves - not only in the United States, but throughout the "civilized" world. Noel Sweeney, a British barrister in Bristol, UK, has long been an animal rights activist and a loyal supporter of ISAR. In the following essay Mr. Sweeney reports on a regrettable decision of the Court of Justice of the European Communities which has subordinated humaneness to commerce.

### *Animalkind and Human Cruelty*

Law is the universal language of natural justice. Part of its purpose is to protect people from the arbitrary power of the State and the caprice of the police. We have many legal bodies which help us to keep our hard-won freedom. They are necessary because human rights are beyond price, as without them people cannot live and die freely with dignity. Equally without them people are fettered by the chains of law and subjugation. Animal rights are precisely the same for the same reason. For almost three decades public opinion coupled with violent protests were aimed at the veal calf trade. Finally, the United Kingdom was forced to enact legislation making the veal crate system illegal. The reason it did so was not merely the result of growing public hostility but because expert scientific evidence too supported the view that it was blatantly cruel throughout the whole of the calves' lives. To put the case of *The Queen v Minister of Agriculture, Fisheries and Food ex parte Compassion in World Farming Limited* [1998] in perspective it is necessary to understand what the system actually means and its effects:

1. The term "veal crate" does not appear in either UK or EC legislation. However it is generally taken to refer to a solid sided crate made of wood:

- a) which is so narrow that the calf cannot even turn round from the age of about two weeks, and
- b) in which the calf is fed a carefully controlled unhealthy diet.

2. In the veal crate system the calf is given neither straw nor other bedding material throughout its life. The reason is if it ate the straw its flesh might change in colour to a healthy red. That would not satisfy European consumer's who want their flesh so pale it is real "white veal". This is achieved by denying the calf the roughage and fibre which it needs and is fed an all-liquid diet as long as it lives. Even the iron content is kept deliberately low in a further attempt to keep the flesh even paler. Professor John Webster, the Head of the School of Veterinary Science at the

University of Bristol and Britain's leading expert on dairy cattle, has declared that this type of diet " *completely distorts the normal development of the rumen,*" the calf's stomach system. In a desperate attempt to get solid food the calves often swallow their own hair.

3. British law expressly accepts the veal crate is cruel. Indeed even the Welfare of Livestock Regulations 1994 are headed "Prevention Of Cruelty". It has also been recognized as cruel by academic scientists. Professor Webster, has condemned it:

a) *"The most obvious insult to the welfare of the calf is to confine it in a box where, in the latter stages of growth, it cannot turn round, groom itself properly, adopt a normal sleeping position, or even stand up and lie down without difficulty. A more searching examination of a typical conventional commercial veal unit reveals abuses to each of the five freedoms. "*

b) *"Deprived of solid food to eat and ruminate upon, veal calves in crates engage in various purposeless oral activities, such as crate, licking, tongue rolling or, if they get the chance, sucking each other's mouths and tongues. In many commercial units this is considered unhygienic and calves are denied any direct physical contact whatsoever. In others they are muzzled so that they can do nothing with their mouths other than suck milk out of a bucket. "*

And why? All because the gullible consumer and the gormless gourmet demand white meat. There is no nutritional value in relation to the colour. Just like the burnished kipper it is no less than public prejudice.

Given that background Compassion in World Farming Limited [CIWF] applied in 1997 to the Court of Justice of the European Communities for a preliminary ruling on the question whether the United Kingdom could rely on Article 36 of the EC Treaty to *restrict* the export of veal calves to other Member States.

That was an important question with potentially far-reaching results. At once it raised the significant issue of animal rights and human rights within the context of law and morality. For the whole question to be analyzed and resolved entailed a detailed consideration of public policy on an international scale. It would not be an exaggeration to say the result could be bold and positive and so enhance human rights. Alternatively it could be banal and negative by just echoing the status quo.

Hence the decision would go beyond the mere judgement. It could be progressive and set the tone for future legislation which would affect Europe and ultimately the world. Or, of course it could be retrogressive by confirming that cruelty superseded compassion. In truth this was a case where money and morality met and the law would judge which would win.

The problems for the Court were that under International Law animals had the protection under the European Convention to be:

a) *" ... housed and provided with food, water and care in a manner which is appropriate to their physiological and ethological needs in accordance with established experience and scientific knowledge"; and*

b) *"given the freedom of movement appropriate to its species ... it was not to be restricted in such a manner as to cause it unnecessary suffering or injury": and*

- c) *"given space appropriate to its physiological and ethological needs ... if it was continuously or regularly tethered or confined"*: [See European Convention on the Protection of Animals Kept for Farming Purposes (1976) Articles 3 and 4 respectively]

Therefore in general under those Articles and related ones the animals were given *rights* which governed their treatment at the hands of *humans*. Those rights were concerned with their daily needs and promoted their welfare.

However it was not as simple or straightforward as it seemed.

The *Recommendation* which laid down special provisions for calves was just that, namely merely a recommendation. So it had no *legal* requirement that it was incorporated into law. Moreover to do so would cost money.

Then there is the *Directive* which allowed derogation by Member States from the protection afforded to the animal under Article 3. Consequently there was a conflict between the Convention and Recommendation and the Directive. Again it was a question which made profit and public policy collide.

Behind all the abstruse concepts in the various instruments relating to the veal calf system lay a simple idea and ideal: on the premise that such a system was outlawed in the United Kingdom on the grounds of its inherent cruelty, was it permissible for another Member State to adopt the *same cruel methods* in respect of exports from the UK?

The position was stronger in that regardless of public opinion there was authoritative scientific veterinary opinion that the system was unquestionably cruel. Allied to that Article 36 of the EC Treaty provides that the United Kingdom may justify *"restrictions on exports or goods in transit on grounds of public morality, public policy [or] the protection of health and life of... animals."*

It follows that this raises and reaches what is the core issue in a democracy namely the morality of law. After all if a law is immoral then is a citizen bound to obey it? Moreover, if it is immoral, can a subterfuge by words declare it moral?

In order to resolve the conflicting issues the Court had to consider how Article 36 impinged on the validity of the Directive. On its face it seemed irreconcilable for surely the United Kingdom could be justified in not being a party to an act they declared *illegal* in their own country? That truly was the real issue the Country had to grasp. Within that idea the additional factor that applies only to these particular exports is that they are living *sentient* creatures so permitting cruelty harms humans too.

The Court emphasized the benefit of *"buying and selling freely"* within the Community. They further reconciled the irreconcilable by concentrating on the result of any ban: it would affect the structure of the *"market and, in particular, would have a considerable impact on the formation of market prices..."*

The Court continued to explore how any *"unilateral rules"* would - outside the Member States' own territory - hinder the market on a reciprocal basis. They declared that Member States must have trust to uphold the mutuality of the market place. What they were really saying in barely concealed legal language was that cruel treatment of animals is secondary to the objective of the Community. So where cruelty and compassion intersect, nothing is to displace the primary object of profit for the farmer.

The Court concentrated and relied somewhat perversely on the notion that the Articles and Directives laid down "*minimum*" requirements of "*housing space*" and "*standards*". Therefore if the United Kingdom had stricter provisions they would impose less cruelty on the other Member States. That was wholly unacceptable as in turn it would mean less profit.

As a corollary the Court found that the United Kingdom could not rely on Article 36 as that would be out of harmony with the aims of the Community. Those aims firmly placed the profit motive above public policy. For obvious public policy could not reasonably favour money over morality.

Ultimately this decision has harmed human rights because it has disregarded public morality and accepted public prejudice in the guise of public policy - what is morally and legally conveniently overlooked is that one man's meat is another animal's life.

Racism is evil because it devalues and prejudices people without a valid cause. Sexism is base as it discriminates against humans purely as a matter of biology. The Judges in this crucial case chose to confirm that *deliberately* making and keeping animals unhealthy was an acceptable condition of the result was a healthy profit. As a perverse measure of market harmony they chose cruelty over conscience and thereby created *legal speciesism*.

Animal rights and human rights are connected as each depend on the vulnerable and weak being protected. For as with cruelty, so too is humanity indivisible. Humanity is consistent with and encourages progress. When the gain to man is measured by the pain inflicted on an innocent unwilling victim, it is inhumane and unethical for the practice to continue. Where it does the law thereby sanctions tyranny. To do so detracts not from the man but the law itself Part of the role of law is to quell the base desires of man. Another part is to promote the noble side of man's nature. Jurisprudentially the law is not concerned with mere ideas but ideals: it is the aspiration more than the attainment. Granting animal rights will in turn strengthen human rights. Finally the fate and future of man and animal is inextricably linked. In the mystery of living, their destinies are interdependent, interrelated and interwoven. Law as man's mirror of morality should reflect and respect that basic truth.