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The "Reasonable Ground" as a Problem of the German Animal Protection Act

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The German Animal Protection Act has been widely praised for its high ethical aims. Indeed, the law's intentions as well as its specific prohibitions should help to ensure a remarkably advanced stage of animal protection in the Federal Republic of Germany. However, laws can provide only a degree of deterrence. Humane conduct depends more on moral consciousness than on the fear of penalty.

How Effective is the Law?

One measure of the efficiency of a law is the associated number of sentenced violations. Other valid criteria for judgment exist, but it is difficult to ignore the fact that the number of sentences has been steadily decreasing since the animal protection law went into effect in 1972. According to an estimate by K.D. Wiegand (1979), only one out of every 5000 (unnotified as well as notified) offenses in the Federal Republic of Germany result in prosecution and sentencing.

The interpretive freedom allowed by the German Animal Protection Act is a major source of its ineffectiveness in that it leaves the judge with no objective criteria on which to base a decision. This uncertainty stems in part from the newly-introduced phrase, "reasonable ground," a term assumed to be helpful in evaluating judicial arguments. In reading the term "reasonable ground," the philosophical and ethical meaning of the word "reason" cannot be overlooked. Obviously, not every intellectually understandable cause can be accepted as a "reasonable ground" (von Loeper, 1979). Hence the uncertainty.

Commentaries on the Meaning of "Reasonable Grounds"

Paragraph 1 of the German Animal Protection Act states the law's fundamental aim and gives the general directive under which exceptions can be made: "This act serves the protection and well-being of animals. No one may be permitted to inflict pain, suffering or damage upon an animal without *reasonable grounds*" (emphasis added). Although no formal explanation of the term "reasonable ground" is offered, one can assume that a) all actions explicitly permitted by the Act are justified as being based on "reasonable grounds," and that b) all actions explicitly prohibited by the Act are unjustifiable because they evidently lack "reasonable grounds."

When situations arise which are not expressly discussed in the Act, the judge must make his or her own decision as to what constitutes "reasonable grounds" for exempting a particular action from the proscriptions of the law. The latitude

involved in making a judgement is a general problem of jurisdiction and can be found in connection with animal welfare legislation of other countries. Various commentators on the German Animal Protection Act have explored this problem and attempted to delineate categories of justifiable versus unjustifiable actions.

According to A. Lorz (1979), "reasonable grounds" for the killing or ill-treatment of animals do not include: annoyance, antipathy, disgust, aversion, boredom, 'devilry', whim, indolence, lust for hunting, planning or veiling a criminal offense, rage, vengeance, firearm training, sensationalism, vandalism, wantonness, weariness or working off emotional excitement.

Professor H. Kraft (1972), one of the experts who participated in the deliberations which preceded the final drafting of the German Animal Protection Act, tried to develop a system of superior, inferior, or equivalent animal uses. Among those uses considered inferior are any of those connected with the fashion world, personal hobbies, sports or the arts if these uses inflict animal pain, suffering, damage or death.

Another attempt to define the difference between "reasonable" and "unreasonable" grounds has been undertaken by E. Kadlec (1976). He concedes that man is entitled to make use of animals or plants in order to satisfy his vital needs. On the other hand, he rejects any misuse of animals or plants for the fulfillment of unrestrained wants. In distinguishing between needs and wants, Paragraph 9/1 of the Act acquires great importance. According to the regulation in this part of the Act, experimentation on living animals is not allowed if there is any possibility of attaining the desired result by a sound alternative method. The underlying principle of this regulation is that a "reasonable ground" exists only as long as the intended purpose cannot be achieved except through the use of animals. This principle can be generalized to other areas of animal exploitation. For example, the manufacture of fur coats may have been tolerable in former times, but it can no longer be justified in an age of mass production of textiles and fur substitutes which serve the same intended purposes.

A New Definition

I would like to present my own scheme for what constitutes "reasonable grounds," based on a combination of the attempts outlined above and proceeding from the assumption that purposes which are deemed justifiable entail the minimal necessary degree of pain, suffering or damage to the animal.

Reasonable grounds for inflicting pain, suffering or damage upon an animal exist if:

1. A person's life is being threatened by an attacking animal. (This does not include bullfighting or any other situation in which humans intentionally endanger themselves by inciting animals to attack.)
2. Animal products are to be used for food.
3. Animal products, special organs or substances (e.g., sera) are to be used to preserve human life and health.
4. Animals are to be used in experiments necessary to the preservation of human life and health, provided that there is no alternative method of experimentation.

5. Goods necessary to human life are being imperiled by animals.

Obviously, adherence to this code means that some of our traditional customs and patterns of behavior must be changed. In particular, the following practices would have to be discontinued:

1. Any killing of animals which does not fulfill vital human needs or which is carried out under painful conditions. (This includes the renunciation of any killing in order to obtain inessential products such as fur, etc.)
2. Painful experiments on and with living animals for nonvital purposes as well as any experimental procedure which could be replaced by another method.
3. The keeping of animals of whatever kind for whatever purpose under conditions which disregard their well-being and natural behavior.
4. Sport hunting. (Hunting is tolerated only as an aid to wildlife management or as a means of human survival.)
5. Fishing and harpooning as a sport or hobby.
6. Animal fighting or human-animal fighting which has been arranged for human entertainment and/or profit.
7. Exhibition of animals under conditions which disregard their well-being and natural behavior. This particularly concerns any form of inadequate living conditions in zoos as well as inhumane treatment in circuses and rodeos.

I realize that any attempt to define a legal term which possesses strong moral and philosophical overtones is bound to meet with some dissatisfaction. I myself cannot concede that the above formulations, though legally sound, are all totally justifiable from an ethical point of view. Some may find these definitions too radical, others may find them not radical enough. However, more radical definitions, which are not possible under the present law, would require a respective change in the ethical convictions of our society.

References

- Kadlec E. (1976) *Realistische Ethik. Verhaltenstheorie und Moral der Arterhaltung*, Duncker & Humboldt, Berlin, Fed. Rep. Ger., p. 144.
- Kraft, H. (1972) Quoted by H. Gerold in *Tierschutz*, Athenaeum, Frankfurt, Fed. Rep. Ger.
- von Loeper, E. (1979) Rechtsgutachten zur Nutztierhaltung, insbesondere zur Intensivkafighaltung von Legehennen. In *Intensivhaltung von Nutztieren aus ethischer, rechtlicher und ethologischer Sicht*, D.W. Folsch, ed., Birkhauser, Basel, Switzerland, p. 77.
- Lorz, A. (1979) *Tierschutzgesetz Kommentar*, (2nd ed.) C.H. Beck, Munich, p. 261.
- Wiegand, K.D. (1979) Die Tierqualerei. In *Kriminalwissenschaftliche Anhandlungen 11*, Schmidt-Romhild, Lubeck, p. 61.