

**Nicholas Humphrey.** Chapter 18 in “The Mind Made Flesh”, pp. 235-254, OUP, 2002

## BUGS AND BEASTS BEFORE THE LAW<sup>1</sup>

On 5 March 1986 some villagers near Malacca in Malaysia beat to death a dog, which they believed was one of a gang of thieves who transform themselves into animals to carry out their crimes.. The story was reported on the front page of the London *Financial Times*. "When a dog bites a man," it is said, "that's not news; but when a man bites a dog, that is news".

Such stories, however, are apparently not news for very long. Indeed the most extraordinary examples of people taking retribution against animals seem to have been almost totally forgotten. A few years ago I lighted on a book, first published in 1906, with the surprising title "The Criminal Prosecution and Capital Punishment of Animals" by E.P.Evans, author of "Animal Symbolism in Ecclesiastical Architecture," "Bugs and Beasts before the Law," etc., etc.<sup>2</sup> The frontispiece showed an engraving of a pig, dressed up in a jacket and breeches, being strung up on a gallows in the market square of a town in Normandy in 1386; the pig had been formally tried and convicted of murder by the local court. When I borrowed the book from the Cambridge University Library, I showed this picture of the pig to the librarian. "Is it a joke?", she asked.

No, it was not a joke.<sup>3</sup> All over Europe, throughout the middle-ages and right on into the 19th century, animals were, as it turns out, tried for human crimes. Dogs, pigs, cows, rats and even flies and caterpillars were arraigned in court on charges ranging from murder to obscenity. The trials were conducted with full ceremony: evidence was heard on both sides, witnesses were called, and in many cases the accused animal was granted a form of legal aid -- a lawyer being appointed at the tax-payer's expense to conduct the animal's defence.

In 1494, for example, near Clermont in France a young pig was arrested for having "strangled and defaced a child in its cradle". Several witnesses were examined, who testified that "on the morning of Easter Day, the infant being left alone in its cradle, the said pig entered during the said time the said house and disfigured and ate the face and neck of the said child .. which in consequence departed this life." Having weighed up the evidence and found no extenuating circumstances, the judge gave sentence:

We, in detestation and horror of the said crime, and to the end that an example may be made and justice maintained, have said, judged, sentenced, pronounced and appointed that the said porker, now detained as a prisoner and confined in the said abbey, shall be by the master of high works hanged and strangled on a gibbet of wood.<sup>4</sup>

Evans's book details more than two hundred such cases: sparrows being prosecuted for chattering in Church, a pig executed for stealing a communion wafer, a cock burnt at the stake for laying an egg. As I read my eyes grew wider and wider. Why did no one tell us *this* at school? We all know how King Canute attempted to stay the tide at Lambeth. But who has heard of the solemn threats made against the tides of locusts which threatened to engulf the countryside of France and Italy:

In the name and by virtue of God, the omnipotent, Father, Son and Holy Spirit, and of Mary, the most blessed Mother of our Lord Jesus Christ, and by the authority of the holy apostles Peter and Paul . . . we admonish by these presents the aforesaid locusts . . . under pain of malediction and anathema to depart from the vineyards and fields of this district within six days from the publication of this sentence and to do no further damage there or elsewhere.<sup>5</sup>

The Pied Piper, who charmed the rats from Hamelin is a part of legend. But who has heard of Bartholomew Chassenée, a French jurist of the sixteenth century, who made his reputation at the bar as the defence counsel for some rats? The rats had been put on trial in the ecclesiastical court on the charge of having "feloniously eaten up and wantonly destroyed" the local barley. When the culprits did not in fact turn up in court on the appointed day, Chassenée made use of all his legal cunning to excuse them. They had, he urged in the first place, probably not received the summons since they moved from village to village; but even if they had received it they were probably too frightened to obey, since as everyone knew they were in danger of being set on by their mortal enemies the cats. On this point Chassenée addressed the court at some length, in order to show that if a person be cited to appear at a place to which he cannot come in safety, he may legally refuse. The judge, recognising the justice of this claim, but being unable to persuade the villagers to keep their cats indoors, was obliged to let the matter drop.

Every case was argued with the utmost ingenuity. Precedents were bandied back and forth, and appeals made to classical and biblical authority. There was no question that God Himself -- when He created animals -- was moving in a most mysterious way, and the court had to rule on what His deeper motives were. In 1478, for example, proceedings were begun near Berne in Switzerland against a species of insect called the Inger, which had been damaging the crops. The animals, as was only fair, were first warned by a proclamation from the pulpit:

Thou irrational and imperfect creature, the Inger, called imperfect because there was none of thy species in Noah's ark at the time of the great bane and ruin of the deluge, thou art now come in numerous bands and hast done immense damage in the ground and above the ground to the perceptible diminution of food for men and animals; . . . therefore . . . I do command and admonish you, each and all, to depart within the next six days from all places where you have secretly or openly done or might still do damage.<sup>6</sup>

Experience had shown however that the defendants were unlikely to respond:

In case, however, you do not heed this admonition or obey this command, and think you have some reason for not complying with them, I admonish, notify and summon you in virtue of and obedience to the Holy Church, you by the power of and obedience to the Holy Church to appear on the sixth day after this execution at precisely one o'clock after midday at Wifflisburg, there to justify yourselves or answer for your conduct through your advocate before his Grace the Bishop of Lausanne or his vicar and deputy. Thereupon my Lord of Lausanne will proceed against you according to the rules of justice with curses and other exorcisms, as is proper in such cases in accordance with legal form and established practice.<sup>7</sup>

The appointed six days having elapsed, the mayor and common council of Berne appointed "after mature deliberation . . . the excellent Thüring Fricker, doctor of the liberal arts and of laws, our now chancellor, to be our legal delegate . . . [to] plead, demur, reply, prove by witnesses, hear judgment, appoint other defenders, and in general and specially do each and every thing which the importance of the cause may demand."<sup>8</sup> The defender of the insects was to be a certain Jean Perrodet of Freiburg. Perrodet put in the usual plea that since God had created the inger He must have meant them to survive, indeed to multiply. Was it not stated explicitly in Genesis that on the sixth day of creation God had given "to every fowl of the air and to everything that creepeth upon the earth . . . the green herbs for meat"?

But the defence in this case was outmatched. The inger, it was claimed in the indictment, were a mistake: *they had not been taken on board Noah's ark*. Hence when God had sent the great flood he must have meant to wipe them out. To have survived at all, the inger must have been illegal stowaways -- and as such they clearly had no rights, indeed it was doubtful wheter they were animals at all. The sentence of the court was as follows:

Ye accursed uncleanness of the inger, which shall not be called animals nor mentioned as such . . . your reply through your proctor has been fully heard, and the legal terms have been justly observed by both parties, and a lawful decision pronounced word for word in this wise: We, Benedict of Montferrand, Bishop of Lausanne, etc., having heard the entreaty of the high and mighty lords of Berne against the inger and the ineffectual and rejectable answer of the latter . . . I declare and affirm that you are banned and exorcised, and through the power of Almighty God shall be called accursed and shall daily decrease whithersoever you may go.<sup>9</sup>

The inger did not have a chance. But other ordinary creatures, field-mice or rats for example, clearly had been present on Noah's ark and they could not be dealt with so summarily. In 1519, the commune of Stelvio in Western Tyrol instituted criminal proceedings against some mice which had been causing severe damage in the fields. But in order that the said mice -- being God's creatures and proper animals -- might "be able to show cause for their conduct by pleading their exigencies and distress", a procurator was charged with their defence.<sup>10</sup> Numerous witnesses were called by the prosecution, who testified to the serious injury done by these creatures, which rendered it quite impossible for the tenants to pay their rents. But the counsel for the defence argued to the contrary that the mice actually did good by destroying noxious insects and larvae and by stirring up and enriching the soil. He hoped that, if they did have to be banished, they would at least be treated kindly. He hoped moreover that if any of the creatures were pregnant they would be given time to be delivered of their young, and only then be made to move away. The judge clearly recognised the reasonableness of the latter request:

Having examined, in the name of all that is just, the case for the prosecution and that for the defence, it is the judgement of this court that the harmful creatures known as field-mice be made to leave the fields and meadows of this community, never to return. Should, however, one or more of the little creatures be pregnant or too young to travel unaided, they shall be granted fourteen day's grace before being made to move.<sup>11</sup>

The trials were by no means merely "show trials". Every effort was made to see fair play, and to apply the principles of natural justice. Sometimes the defendants were even awarded compensation. In the fourteenth century for example a case was brought against some flies for causing trouble to the peasants of Mayence. The flies were cited to appear at a specified time to answer for their conduct; but "in consideration of their small size and the fact

that they had not yet reached the age of their majority" the judge appointed an advocate to answer for them. Their advocate argued so well, that the flies instead of being punished were granted a piece of land of their own to which they were enjoined peaceably to retire.<sup>12</sup> A similar pact was made with some weevils in a case argued at St. Julien in 1587. In return for the weevils' agreeing to leave the local vineyards, they were offered a fine estate some distance away. The weevil's lawyer objected at first that the land offered to his clients was not good enough, and it was only after a thorough inspection of it by the court officials that terms were finally agreed.<sup>13</sup>

In doubtful cases the courts appear in general to have been lenient, on the principle of "innocent until proved guilty beyond reasonable doubt". In 1457 a sow was convicted of murder and sentenced to be "hanged by the hind feet from a gallows tree". Her six piglets, being found stained with blood, were included in the indictment as accomplices. But no evidence was offered against them, and on account of their tender age they were acquitted.<sup>14</sup> In 1750 a man and a she-ass were taken together in an act of buggery. The prosecution asked for the death sentence for both of them. After due process of law the man was sentenced, but the animal was let off on the ground that she was the victim of violence and had not participated in her master's crime of her own free-will. The local priest gave evidence that he had known the said she-ass for four years, that she had always shown herself to be virtuous and well-behaved, that she had never given occasion of scandal to anyone, and that therefore he was "willing to bear witness that she is in word and deed and in all her habits of life a most honest creature."<sup>15</sup>

It would be wrong to assume that, even at the time these strange trials were going on, everyone took them seriously. Then as now there were city intellectuals ready to laugh at the superstitious practices of country folk, and in particular to mock the pomposity of provincial lawyers. In 1668 Racine wrote a play -- his only comedy -- entitled "Les Plaideurs" ("The Litigants"<sup>16</sup>). One scene centres round the trial of a dog in a village of Lower Normandy. The dog has been arrested for stealing a cock. The dog's advocate, L'Intimé, peppers his speeches with classical references, especially to the *Politics* of Aristotle. The judge, Dandin, finds it all a bit much. But the defence puts in a plea of previous good behaviour<sup>17</sup>:

L'Intimé: Fearing nothing, I reach  
The demands of my case and so open my speech.  
Aristotle, in "Politics" argues it thus,  
And with strength . .

Dandin: 'Tis a capon we're here to discuss.

Aristotle and "Politics" put on one side.

L'Intimé: But by taking the "Peripatetic" as guide  
You can prove good and ill . .

Dandin: But I rule, Sir, in short,  
Aristotle to be without weight in this court.  
To the point!

L'Intimé: Here's the point. A dog enters a kitchen. That's flat.  
And he finds there a capon deliciously fat.  
He for whom I am pleading with hunger is mad;  
He to whom I'm opposed lies there, plucked, to be had. .  
And what next, Gentlemen? Why, they come. On what score?  
In pursuit of my client. They break in the door,  
And accuse him of theft, nay of brigandage base.  
Then he's dragged by the scruff of the neck in disgrace. .  
Now if of my client it could be averred  
That he'd eaten the whole or best part of the bird,  
We should claim all the same that his past record still  
Shows sufficient good deeds to make up for his ill.  
Can they show one reproof that he's had beyond doubt?  
Who has guarded the house whene'er they have been out?  
Has he ever forgotten to bark at a thief?  
. . .

The judge unfortunately is unmoved by such considerations, and sentences the dog to the gallows. But the defence counsel has not exhausted his resources. In a last plea for mercy he brings into court a litter of puppies and appeals to the judge's paternal feelings:

L'Intimé: Come! . . poor desolate strays.  
O! come! for your father may soon be no more.  
With your infantile souls, come plead and implore.

Yes, gentlemen, -- see, Sirs -- our misery drear.  
We are orphans: restore then our father so dear.

Our father begot us; for mercy we pray.

Our father who now . . .

Dandin: Go away! Go away!

L'Intimé: Our father, good Sirs . .

Dandin: Go away!! My poor ears!  
They have wetted all over the place!

L'Intimé: See our tears!

Dandin: Och! Already o'erwhelmed with compassion I feel.  
See how telling, when timely, is such an appeal!  
I am puzzled indeed: by the facts quite distressed.  
The crime has been proved: the accused has confessed.  
Yet a sentence on him will not leave us content  
If this quiverful here to the poor-house be sent.

The good judge can stand no more; he is a father himself and has bowels of compassion; and besides he is a public officer and is chary of putting the state to the expense of bringing up the puppies. When finally a pretty girl turns up in court and puts in her penny-worth on behalf of the accused, the judge generously agrees to let him go.

The interesting thing is that this play was written nearly a 100 years *before* the she-ass, for example, was pardoned on account of her honesty and previous good behaviour by a French provincial court. Laughter, it's been said, is the best detergent for nonsense. Not in France, it seems. But perhaps these trials were *not* altogether nonsense. What was going on?

I shall come to my own interpretation in a while. But first, what help can we get from the professional historians? The answer, so far as I can find it, is: almost none. This is all the more extraordinary because it is not as if the historical evidence has been unavailable. The court records of what were indubitably real trials have existed in the archives for some several hundred years. At the time the trials were occurring they were widely discussed. The existence of this material has been known about by modern scholars. Yet in recent times the whole subject has remained virtually untouched. Two or three papers have appeared in learned journals.<sup>18</sup> Now and again a few of the stories have filtered out.<sup>19</sup> But, for the most part, silence. In 1820 the original church-painting of the Falaise pig was whitewashed out of sight;

and it is almost as if the same has been done to the historical record -- as if the authorities have thought it better that we should be protected from the truth.

I do not know the explanation for this reticence, and can only leave it for the historians to answer for themselves. I dare say however that one reason for their embarrassed silence has been the lack, at the level of theory, of anything sensible to say. Take, for example, the long and elegant treatment of the subject by W. W. Hyde (tucked away in the University of Pennsylvania Law Review, 1916.)<sup>20</sup> Hyde clearly knew enough about the facts: but when it came to *explaining* them, he could do no better than to plump for the remarkable suggestion that "the savage in his rage at an animal's misdeed obliterates all distinctions between man and beast, and treats the latter in all respects as the equal of the former."<sup>21</sup>

Recently Esther Cohen has been more constructive.<sup>22</sup> Making a distinction, which says (unfairly, in my view) Evans himself ignores, she points out that it would be wrong to see the trials as being all of a kind. There were in fact two species of trial: on the one hand those where an individual animal was accused of a specific crime, proceeded against in person (as it were) and condemned like an ordinary criminal, and on the other those where whole groups of natural pests were accused of being a public nuisance, tried *in absentia* and dealt with -- perforce -- by more supernatural means.<sup>20</sup> The former, dating back at least to the Dark Ages, were generally conducted by secular courts under the common law and were relatively down-to-earth affairs. The latter, which did not come into their own until the fifteenth century, were instituted by the Church and as time went on became increasingly suffused with theological hot air: they were, Cohen suggests, closely related to the development of witch trials.<sup>21</sup>

Cohen's discussion of the intellectual background to the trials -- particularly her survey of the opinions of contemporary scholars -- is informative and interesting. I have no wish to disparage it, and yet I do not find it satisfying. She concentrates entirely upon what the trials may have meant to the authorities sitting in Paris or Rome and ignores their significance for ordinary people. Yet, as she herself notes, learned opinion is one thing, but popular belief quite another; and it seems obvious that there was never any close congruence between the bookish ideas of those contemporary thinkers -- from Thomas Aquinas to Leibniz -- who mulled over the legal and spiritual dimensions of these trials, and the attitudes of the less-educated people who actually carried out the job of putting animals in dock. Yet, unless we can get down to the level of "folk psychology", we have really explained very little. What we need, in short, is an idea of what the common people made of it: for we can quite sure they made *something* of it, and moreover that whatever that something was *made sense*. The question is, can we make sense of what made sense to them?



Now here two schools of cross-cultural psychology divide. One says "other people are other" and we must be wary of ever believing we can understand them by reference to ourselves. "There is nothing easier," Robert Darnton writes, "than to slip into the comfortable assumption that Europeans [of the past] thought and felt just as we do today -- allowing for the wigs and wooden shoes."<sup>22</sup> I take his point. But equally, I'd suggest, we must be wary of going to the opposite extreme and of assuming that people of mediaeval Europe were so different from ourselves that it is not worth trying to apply any of the standards of rationality we have today. True enough, when we hear of people dressing up a pig in human clothes and hanging it as a human criminal, it does seem to indicate that they were in some kind of conceptual muddle. But to suggest, for example, that the grown-up people involved really could not tell the difference between animals and human beings, cannot be right. Other people may be other, but they are not necessarily stupid.

So here, in full recognition that this kind of speculation can easily be criticised, let me invite you to put yourself in the place of the participants, and see what kind of explanation might make sense. Let us consider for example the trial and subsequent execution of a pig for child-murder -- a case that seems to have been all too common, and of which Evans mentions thirty-four recorded instances. Presumably such a trial would have been discussed all over town. What might the mother of the child have said about it, or the farmer to whom the pig belonged, or the law officers who arrested her and brought her to the gallows?

No doubt their answers, had we got them, would have varied widely. Yet I imagine there would have been consensus on one point at least: the trial of the pig was not a game. It was undertaken for the good of society, and if properly conducted it was intended to bring *social benefits* to the community -- benefits, that is, to human beings. Certainly the trial had *social costs* to human beings. It not only took up a lot of people's time, it actually cost a good deal of hard cash. The accused animal had to be held in gaol and provided like any other prisoner with the "king's bread"; expensive lawyers had to be engaged for weeks on end; the hangman, alias "the master of high works", had to be brought into town, and inevitably he would require new gloves for the occasion. Among the records that have survived there are in fact numerous bills:

To all whom shall read these letters: Let it be known that in order to bring to justice a sow that has devoured a little child, the bailiff has incurred the costs, commissions and expenses hereinafter declared:  
Item, expenses of keeping her in gaol, six sous.

Item, to the master of high works, who came from Paris to Meullant to perform the said execution by command and authority of the said bailiff, fifty four sous.

Item, for a carriage to take her to justice, six sous.

Item, for cords to bind and hale her, two sous eight deniers.

Item, for a new pair of gloves, two deniers.

Sum total sixty-nine sous eight deniers. Certified true and correct, and sealed with our seal. Signed: Simon de Baudemont, lieutenant of the bailiff of Mantes and Meullant, March 15th, 1403.<sup>23</sup>

Two centuries later the cost of prosecuting, hanging and burning a bitch for an act of gross indecency was set at five hundred pounds -- to be recovered in this case from her human accomplice's estate.<sup>24</sup> When people go to this sort of trouble and expense, presumably the community that foots the bill expects to reap some kind of advantage from it.

But what kind of advantage? Actually, three relatively simple answers spring to mind, all worth considering. Let's take them one by one.

First, *the elimination of a social danger*. A pig who has killed once may do so again. Hence by sentencing the pig to death the court made life safer for everybody else. This is precisely the reasoning that is still used today in dealing, for example, with a rabid dog or a man-eating tiger. Yet the comparison serves only to show that this can hardly be a sufficient explanation of the mediaeval trials. It's not just that it would seem unnecessary to have gone to such lengths to establish the animal's culpability, it's that having found her guilty the obvious remedy would have been to knock her quietly on the head. Far from it: the guilty party was made to suffer the public disgrace of being hung up or burned at the stake in the town square. What is more she was sometimes subjected to whippings or other tortures before being executed. At Falaise in 1386 the sow that had torn the face and arms of a young child was sentenced to be "mangled and maimed in the head and forelegs" prior to being hanged. Everything suggests that the intention was not merely to be rid of the animal but to *punish* her for her misdeeds.

Yet why punish an animal? Punishments are commonly given as a means of discouraging any repetition of the crime, either by the original culprit or by others. Capital punishment of course is in a special class, since its deterrent effects must be assumed to act only on others (the original culprit being now beyond deterring). Still, if word got around about what happened to the last pig that ate a human child, might not other pigs have been persuaded to think twice?

Again we have a parallel in modern times. A game-keeper who has shot a magpie, for example, will hang up the dead bird in a prominent position on a fence, in the full expectation that other magpies will see it and take note. But if such was indeed the purpose of executing a pig in the town square, you would think that the officers of justice would -- as the game-keeper does -- have gone to some lengths to make sure that the lesson was directed where it mattered, namely at other potentially delinquent pigs. Not at all: plenty of *people* saw what happened, but so far as I can discover no one ever brought another pig to see the execution. Now, maybe, as some churchmen of the period argued, pigs contain the souls of devils, and devils of course may have their own ways of gathering intelligence. Still, the fact is that if the punishment was meant as a lesson, the obvious target for it would seem to have been the local human populace, not pigs at all.

Then was the purpose after all to keep people rather than animals in line? Until comparatively recently the execution of *human* criminals was done in public with the explicit intention of reminding people what lay in store for future law-breakers. The effect on impressionable human minds was presumably a powerful one. Then why should not the sight of a *pig* on the scaffold for a human crime have had a like effect? Perhaps it might have proved doubly effective, for such a demonstration that *even pigs* must pay the penalty for law-breaking would surely have given any sensible *person* pause.

As an explanation this might indeed have something going for it. The extraordinary rigmarole in court, the anthropomorphic language of the lawyers, even the dressing up of the convicted animal *as if it were* a person: these would all fall into place, because only if the proceedings had the semblance of a human trial could the authorities be sure that people would draw the appropriate moral lesson. If the trials look to us now -- as to Racine -- like pieces of grotesque "theatre", that is not surprising. For theatre in a sense they may have been: "morality plays" designed -- perhaps with the full acknowledgment of everyone involved -- to demonstrate the power of Church and State to root out crime wherever it occurred.

It would make sense, and yet I do not think this is in fact the answer. What impresses me, reading the transcripts, is that in case after case there was an intellectual and emotional commitment to the process that just does not fit with the whole thing being merely a theatrical charade. There is moreover a side that I have not yet revealed, and which provides in some respects the strangest chapter in the story.

I said that we should be wary of dismissing the entire phenomenon of animal trials as the product of an irrational "mediaeval mind". Let me give you now the best reason of all for saying this, which is that similar trials took place centuries earlier in one of most rational societies the world has ever seen -- in ancient Greece. Judicial proceedings against animals

were regularly conducted before the Athenian law-court known as the Prytaneion. They were alluded to by many classical authors, and Plato himself set out the procedure to be followed:

If a draught animal or any other beast kill a person, unless it be in a combat authorised and instituted by the state, the kinsmen of the slain shall prosecute the said homicide for murder, and the overseers of the public lands, as many as may be commissioned by the said kinsmen, shall adjudicate upon the case and send the offender beyond the boundaries of the country the offender. [*De Legionis IX*]<sup>25</sup>

But here is the most surprising fact of all. It was not only animals that were prosecuted by the Greeks, *lifeless objects* were brought to court as well: a doorpost for falling on a man and killing him, a sword used by a murder, a cart which ran over a child. The sentence was again banishment beyond the Athenian boundaries, which for the Greeks was literally “extermination”. Plato again:

If a lifeless thing shall deprive a person of life, provided it may not be a thunderbolt or other missile hurled by a god, but an object which the said person may have run against or by which he may have been struck and slain . . . then the culprit shall be put beyond the boundaries, in the same manner as if it were an animal.

Even in cases where the inanimate object was truly not at fault, no mercy was allowed. Thus the statue erected by the Athenians in honour of the famous athlete Nikon was assailed by his envious rivals and pushed from its pedestal; in falling it crushed one of its assailants. Although the statue had clearly been provoked -- some might even say it was acting in its own defence -- it was brought before a tribunal, convicted of manslaughter and sentenced to be cast into the sea.

Now, whatever we may think about the case of pigs, no one can seriously suppose that the purpose of prosecuting a statue was to prevent it toppling again, or to discourage other statues, or even to provide a moral lesson to Athenians. If such a prosecution had a function, which presumably it did, we must look for it on quite another level. And if that is true here, it is true I suspect for the whole panoply of trials we have been considering. Indeed my hunch is that neither this *nor most of the later trials of animals* had anything to do with what we might call “preventive justice”, with punishment, deterrence or the discouragement of future crime. I

doubt in fact that the *future* conduct of objects, animals or people was in any way the court's concern: its concern was to establish the meaning to society of the culprit's *past* behaviour.

What the Greeks and mediaeval Europeans had in common was a deep fear of lawlessness: not so much fear of laws being contravened, as the much worse fear that the world they lived in might not be a lawful place at all. A statue fell on a man out of the blue, a pig killed a baby while its mother was at Mass, swarms of locusts appeared from nowhere and devastated the crops. At first sight such misfortunes must have seemed to have no rhyme or reason to them. To an extent that we today cannot find easy to conceive, these people of the pre-scientific era lived every day at the edge of explanatory darkness. No wonder if, like Einstein in the twentieth century, they were terrified of the real possibility that "God was playing dice with the universe".

The same anxiety has indeed continued to pervade more modern minds. Ivan Karamazov, having declared that "Everything is permitted", concluded that were his thesis to be generally acknowledged "every living force on which all life depends would dry up at once". Alexander Pope claimed that "order is heaven's first law". And Yeats drew a grim picture of a lawless world:

Turning and turning in the widening gyre  
The falcon cannot hear the falconer;  
Things fall apart; the centre cannot hold;  
Mere anarchy is loosed upon the world.<sup>26</sup>

Yet the natural universe, lawful as it may in fact have always been, was never in all respects self-evidently lawful. And people's need to believe that it was so, their faith in determinism, that everything was *not* permitted, that the centre *did* hold, had to be continually confirmed by the success of their attempts at explanation.

So the law courts, on behalf of society, took matters into their own hands. Just as today, when things are unexplained, we expect the institutions of *science* to put the facts on trial, I'd suggest the whole purpose of the legal actions was to establish cognitive control. In other words, the job of the courts was to domesticate chaos, to impose order on a world of accidents -- and specifically to make sense of certain seemingly inexplicable events by *redefining them as crimes*.

As the courts recognised, a crime would not be a crime unless the party responsible was aware at the time that he or she was acting in contravention of the law. Thus when a pig, say, was found guilty of a murder, the explicit assumption was that the pig knew very well what she was doing. The pig's action therefore was not in any way arbitrary or accidental, and

by the same token the child's death became explicable. The child had died as the consequence of an act of calculated wickedness, and however awful that still was, at least it made some kind of sense. Wickedness had a place within the human scheme of things, inexplicable accidents did not. We still see it today, for example, in the reaction people show when a modern court brings in a verdict of "accidental death" : the relatives of the deceased would often rather believe the death was a deliberate murder than that it was "bad luck".<sup>27</sup>

I read recently another report in a London newspaper:

A jilted woman who attempted suicide by leaping from a 12th floor window but landed on and killed a street salesman has been charged with manslaughter. Prosecutors in Taipei, Taiwan said 21-year-old Ho Yu-Mei was responsible for the death of the food salesman because she failed to make sure that there was no one below when she jumped. Ho had argued that she thought the man would have moved away by the time she hit the ground. She also said she had threatened earlier to sue the salesman because "he interfered" with her freedom to take her own life. If convicted, Ho could be imprisoned for two years.<sup>28</sup>

Who says that the mediaeval obsession with responsibility has gone away?

But it was with dogs as criminals I began, and with dogs as criminals I'll end. A story in *The Times* some years ago told how a dead dog had been thrown by an unknown hand from the roof of a sky-scraper in Johannesburg, had landed on a man and flattened him -- the said man having in consequence departed this life. The headline read -- oh, how un-newsworthy! -- DOG KILLS MAN. I wonder what Plato, Chasseneé or E.P.Evans would have made of that.<sup>29</sup>

## APPENDIX

After this paper was written, I was directed, by Peter Howell, to an ancient account of the trial of a wooden statue (an image of the Virgin Mary) for murder, which took place in North Wales in the tenth century. The case is so remarkable and provides such a clear illustration of the human need to find due cause for an accident, that I give it here in full.<sup>30</sup>

In the sixth year of the reign of Conan (ap Elis ap Anarawd) King of (Gwyneth, or) North Wales (which was about A.D. 946) there was in the Christian Temple at a place called Harden, in the Kingdom of North Wales, a Rood loft, in which was placed an image of the Virgin Mary, with a very large cross, which was in the hands of the image, called Holy Rood; about this time there happened a very hot and dry summer,

so dry, that there was not grass for the cattle; upon which, most of the inhabitants went and prayed to the image, or Holy Rood, that it would cause it to rain, but to no purpose; amongst the rest, the Lady Trawst (whose husband's name was Sytaylht, a Nobleman and Governor of Harden Castle) went to pray to the said Holy Rood, and she praying earnestly and long, the image, or Holy Rood, fell down upon her head and killed her; upon which a great uproar was raised, and it was concluded and resolved upon, to try the said image for the murder of the said Lady Trawst, and a Jury was summoned for this purpose, whose names were as follow, viz.

Hincot of Hancot, Span of Mancot,  
Leech and Leach, and Cumberbeach,  
Peet and Pate, with Corbin of the Gate,  
Milling and Hughet, with Gill and Pughet

who, upon examination of evidences, declare the said Lady Trawst, to be wilfully murdered by the said Holy Rood, and guilty of the murder, and also guilty in not answering the many petitioners; but whereas the said Holy Rood being very old and done, she was ordered to be hanged -- but Span opposed that, saying, they wanted rain, and it would be best to drown her -- but was fiercely opposed by Corbin, who answered, as she was Holy Rood, they had no right to kill her, but he advised to lay her on the sands of the river below Harden Castle, from whence they might see what became of her, which was accordingly done; soon after which, the tide of the sea came and carried the said image to some low land (being an island) near the walls of the city called Caer Leon (supposed Chester), where it was found the next day, drowned and dead; upon which the inhabitants of Caer Leon, buried it at the place where found, and erected a monument of stone over it, with this inscription:

"The Jews their God did crucify,  
The Hardeners their's did drown;  
'Cause with their wants she'd not comply,  
And lies under this cold stone."

[The shaft of the Hawarden Cross, which is supposed to be this very monument, may still be seen, standing in a field known as the Rood-Dee, near the race course, in Chester.]

1. Broadcast on BBC Radio Four, November 1986.
2. E.P. Evans, 1906. *The Criminal Prosecution and Capital Punishment of Animals*, London: Heinemann; reprinted, 1987, with a foreword by Nicholas Humphrey, London: Faber and Faber.
3. No one, I gather, has challenged Evans's facts relating to the trials as such, although he has been caught out in one or two minor historical inaccuracies. J.J.Finkelstein (1981, "The ox that gored," *Trans. Am. Phil. Soc.*, 71, part 2, 47-89) concludes that "a considerable part of the evidence is beyond suspicion". None the less, Finkelstein among others has raised scholarly objections to Evans's "style", and in particular to some of his more sweeping historical and psychological pronouncements.
4. E.P.Evans, 1987 reprint, p. 156.
5. E.P.Evans, *ibid.*, p. 107
6. E.P.Evans, *ibid.*, p. 114.
7. E.P.Evans, *ibid.*, p. 115.
8. E.P.Evans, *ibid.*, p. 117.
9. E.P.Evans, *ibid.*, P. 118.
10. E.P.Evans, *ibid.*, p. 112.
11. E.P.Evans, *ibid.*, Appendix C, p. 260 (my translation).
12. E.P.Evans, *ibid.*, p. 111.
13. E.P.Evans, *ibid.*, p. 48.
14. E.P.Evans, *ibid.*, p. 154.
15. E.P.Evans, *ibid.*, p. 150.
16. Jean Racine, 1928, *The Litigants*, translated by W.R.Dunstan, Oxford: Oxford University Press.
17. Act III, line 124 *passim*.
18. I refer in particular to W.W.Hyde, 1916, "The prosecution of animals and lifeless things in the middle ages and modern times," *Univ. Pennsylvania Law Review*, 64, 696-730; J.J.Finkelstein, *ibid.*; Esther Cohen, 1986, "Law, folklore and animal lore," *Past and Present*, 110, 8-37; see also Jean Vartier, 1970, *Les Procés d'Animaux du Moyen Age à Nos Jours*,



Paris: Hachette.

19. See, for example, Rosalind Hill, 1955, *Both Small and Great Beasts*, Universities' Federation for Animal Welfare, London; Linda Price, 1986, "Punishing man and beast," *Police Review*, August; James Serpell, 1986, *In the Company of Animals*, Oxford: Blackwell. Ted Walker's reading of Evans in 1970 inspired an extraordinary poem, republished in 1973, *Gloves to the Hangman*, London: Jonathan Cape.

20. W.W.Hyde, *ibid.*

21. E.Westermarck, 1906, *The Origin and Development of Moral Ideas*, London: MacMillan.

22. Esther Cohen, *ibid.*

20. In relation to supernatural cures for natural plagues, I would quote the great ecologist Charles Elton: "The affair runs always along a similar course. Voles multiply. Destruction reigns. There is dismay, followed by outcry, and demands to Authority. Authority remembers its experts and appoints some: they ought to know. The experts advise a Cure. The Cure can be almost anything: golden mice, holy water from Mecca, a Government Commission, a culture of bacteria, poison, prayers denunciatory or tactful, a new god, a trap, a Pied Piper. The Cures have only one thing in common: with a little patience they always work. They have never been known entirely to fail. Likewise they have never been known to prevent the next outbreak. For the cycle of abundance and scarcity has a rhythm of its own, and the Cures are applied just when the plague of voles is going to abate through its own loss of momentum." From C. Elton, 1942, *Voles, Mice and Lemmings: Problems in Population Dynamics*, Oxford: Oxford University Press.

21. "Indeed, practice provides the strongest argument for connecting the two phenomena, for they exhibit a correlation of time and space. Both animal and witch trials seem to have become increasingly common in Switzerland and the adjoining French and Italian areas during the fifteenth century, and the coincidence is all the more striking because of the almost total absence of any earlier tradition of secular animal trials in Switzerland. Not surprisingly, Switzerland also witnessed the emergence of a hybrid type of process: the trial of an individual animal by a secular court on charges of supernatural behaviour." Esther Cohen, *ibid.*

22. Robert Darnton, 1985, *The Great Cat Massacre*, p.12, Harmondsworth: Penguin.

23. E.P.Evans, *ibid.*, pp. 142 & 288.

24. E.P.Evans, *ibid.*, p. 296.

25. Plato quoted by E.P.Evans, *ibid.*, p. 173.
26. W.B.Yeats, 1921, “The Second Coming”.
27. Sigmund Freud, remarkably enough, seems to have believed the opposite. When a death occurs, he wrote, “Our habit is to lay stress on the fortuitous causation of the death -- accident, disease, infection, advanced age; in this way we betray an effort to reduce death from a necessity to a chance event.”
28. London *Standard*, 1 April 1986.
29. After this chapter was broadcast as a talk in 1986 and Evans’s book was reprinted in 1987, there was a flurry of new interest in Animal Trials. In particular, Julian Barnes lifted a long section from the Appendix to the 1906 edition of the book for his own use in his novel *A History of the World in 10½ Chapters* (1987, London: Cape) and Leslie Megahey made a feature film about the trial of a pig, *The Hour of the Pig* (1994,BBC Productions).
30. Cited in Joseph Hemingway, 1831, *History of the City of Chester*, Vol I, pp. 360-1, Chester: Fletcher. “It is given by Mr. Willett, in his History of Hawarden Parish, who says it is a correct translation from an old Saxon manuscript.”

