

Introduction

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It is with a sense of satisfaction that we write this introduction to the first scholarly book in Australasia devoted entirely to the legal relationship between human and non-human animals. It is somewhat surprising that a project of this nature has been so long in coming. Animals have played an integral role in shaping Australian and New Zealand society since these countries were first colonised. Today, farmers raise several hundred million animals for slaughter every year, and animal-based industries producing meat, dairy products, eggs and wool form a key part of our economies. It is hardly an overstatement to suggest that post-colonial Australia and New Zealand were built in part on the backs of animals, and that we continue to depend greatly on them for our sustenance and economic success.

Despite the significance of animals in national life, legal consideration of the relationship between humans and animals has historically been a limited one, focused on the facilitation of economic development. To be sure, human interactions *concerning* animals have always been tightly regulated, with laws of long-standing in place to regulate buyers and sellers of animals, and to address the obligations of owners where an animal under their care causes damage or harm to someone else. But until comparatively recently, any study of the legal obligations owed by humans *towards* animals would have been extremely cursory in nature. Animals have for centuries been characterised by the common law as the property of humans and, in accordance with the law governing such property, they could be treated in any way their owners saw fit. Humans could breed them, sell them, kill them – even torture them – without running afoul of any law.

This absolute position no longer represents the status quo. As societies have matured, greater attention has been paid to the human treatment of animals, and this concern has morphed into laws protecting animals from abuse. Once a radical notion, the idea that the imposition of pain and suffering on animals by humans should be constrained is now commonplace across the Western world, reflected in elaborate regulatory regimes ostensibly committed to protecting animals from human mistreatment.

Despite this progress, the law governing the human-animal relationship has rarely been the subject of considered critical scrutiny in Australasia. Much of the discussion to date about the treatment of animals has occurred in the public realm, where consideration of the role of law has been

overshadowed by broader arguments about the morality and politics of particular practices involving animals. It is now common-place to hear debate in the popular media about the ethical acceptability of live sheep export, battery hen cages, sow stalls and other practices exploiting animals. However, there has been very little assessment, or even understanding, of how the law addresses these practices. Books and legal articles examining the status of animals in Australia and New Zealand have, until recently, been few and far between.¹

All of this is beginning to change. Over the past decade, animal law has emerged as a subject of study attracting the attention of an increasing number of lawyers and legal academics. In the United States and United Kingdom, numerous books on animal law have been published and no fewer than five legal journals are devoted exclusively to scrutinising this subject.² While animal law has taken longer to flourish in Australia and New Zealand, momentum is growing. Today academics routinely publish papers examining the animal-human relationship from a legal perspective, law students are able to take animal law courses in a number of universities,³ and there are even a small number of lawyers who practise in this area full time. To the extent that animal law seeks to advance the interests of animals, it assumes a place in a field of growing importance, exemplified by the recent comments of Professor David Weisbrot, President of the Australian Law Reform Commission, who has referred to the human treatment of animals as ‘perhaps the next great social justice movement’.⁴ In 2008, the Commission went so far as to devote an issue of its flagship publication, *Reform*, ‘to exploring the parameters of [the] emerging consciousness about the need to treat non-human animals with dignity and respect’.⁵

This book is intended to make a scholarly contribution to this developing exploration. Lawyers have a vital role to play in advancing the interests of animals through law reform advocacy and litigation. However, in order to be effective in that role they must be well-informed about the issues at stake. For this to happen, it is necessary to begin looking in greater depth at how

1 One notable exception is an early New Zealand work, which focused primarily on the laws governing human relationships concerning animals, but did have a number of sections on laws restricting human treatment of animals. See Morgan, E (1967) *The Law of Animals*, Butterworths, Wellington.

2 The *Animal Law Review* (since 1993), Lewis and Clark University; the *Journal of Animal Law* (since 2006), Michigan State University; the *Association of Lawyers for Animal Welfare Law Journal* (since 2005); the *Journal of Animal Law and Ethics* (since 2006), University of Pennsylvania; and the *Journal of Animal Law and Policy* (since 2008), Stanford University. The first law journal in Australasia focusing on animals and the law, the *Australian Animal Protection Law Journal*, was launched in June 2008. In addition to these publications, there also exists one journal in South America: the *Brazilian Animal Rights Review* (since 2008).

3 For a full list of universities offering animal law courses, see Chapter 17 (Sankoff).

4 Weisbrot, D (2008) ‘Comment’ *Reform* Issue 91 at 2.

5 Ibid.

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the laws in place regulate the treatment of animals. A critical, interdisciplinary understanding of animal law can help make sense of prevailing regulation of the treatment of animals, and provide a strong foundation for those seeking reform.

This book does not address every possible concern involving the treatment of non-human animals. Instead, we have chosen to organise the book around four key themes, an approach which we believe provides a useful way to structure an understanding of this developing area of law. The first part of the book examines certain core concepts in animal law discourse. In the book's first chapter, Peter Sankoff assesses what is really meant by the term 'animal welfare', how it is designed to protect animals from unnecessary suffering and why it falls short of achieving that objective. Katrina Sharman then provides an applied analysis of the animal welfare construct, evaluating the role of law in regulating the treatment of the millions of animals held or processed by the farming community, where 95% of all animal use occurs. Finally, Lesley-Anne Petrie examines legal issues arising from the treatment of companion animals as property.

The second part of the book looks at matters of a more theoretical nature. In the introductory chapter to this part, Steven White draws together the primary philosophical accounts of the moral significance of animals and explores their implications for legal approaches to the treatment of animals. Dr Siobhan O'Sullivan then draws on the principle of 'equal consideration', grounded in political theory, to consider whether animal welfare law should extend the same level of protection to all animals, across the range of settings in which they are used. Deidre Bourke concludes this part with an examination of the way in which the language of 'animal rights' is used to argue for change to the prevailing treatment of animals and, given the extent of confusion about what 'animal rights' means, considers whether it promises to be effective or harmful in the long run.

In Part III, the book shifts more decidedly towards Australasian issues, focusing on pressing concerns in this part of the world. Dr Malcolm Caulfield begins with an examination of one of the most controversial welfare questions: the export of live sheep by sea. Arnja Dale follows up with an analysis of codes of welfare, a prominent Australasian method for regulating the use of animals in a wide range of settings, especially farming, and considers some of the strengths and weaknesses of this regulatory model. Dr Paula Gerber then examines the use of animals in scientific research, focusing on implementation of a key principle underpinning regulation in this area, the '3Rs' principle (reduction, replacement and refinement). Two chapters next address wild animals. The first, by Steven White, broadly assesses how the law addresses the welfare of wild animals, identifying an uneven approach to protection of the interests of wild animals and speculating about possible reasons for this. Dominique Thiriet then focuses on the particular practice of recreational hunting of wild animals,

and how it is regulated by law. This part of the book concludes with a detailed examination by Annabel Markham of Australasian sentencing practices in animal cruelty cases.

The final part looks outward and forward, concentrating on international issues of relevance to Australasia and matters for future consideration. Writing from the United Kingdom, Peter Stevenson first provides a European perspective on animal welfare law-making, and goes on to analyse the role played by World Trade Organization rules in framing domestic animal welfare law. Professor Al Gillespie then provides an overview of the international legal dimensions of animal welfare issues, including certain important treaties of relevance to Australia and New Zealand. The book finishes with three chapters reflecting on ways to move the animal law movement forward. In the first of these, Elizabeth Ellis discusses the importance of framing animal advocacy as contributing to a broader and theoretically richer social justice movement, encompassing progressive change for humans and animals. Andrew Bartlett then discusses the challenges of dealing with animal welfare in a federal system, suggesting the need for a consistent national approach. Peter Sankoff concludes the book by exploring the role played by law schools in furthering legal change for animals, and considering the value of studying animal law to a student's education.

Our aspiration for this book is for it to play a small role in helping to usher in a new era for the animal law movement in Australasia. For the first time, we have a scholarly book written by experts in Australia and New Zealand that focuses not on the American or European framework, but on issues, problems and perspectives specific to this part of the world. Our hope is that this book will help inspire a new generation of Australasian scholars to see animal law as we do: a discipline rich in potential for critical legal inquiry, provoking long-term, meaningful change for animals in this part of the world. We hope this book, as its name implies, will stimulate greater dialogue about the nature of our legal relationship with animals. Questions about the role of law in addressing the treatment of animals need to be brought in from the periphery, where they can be fervently discussed and debated instead of marginalised and ignored. This is a critical goal, for perhaps the greatest obstacle to the better legal treatment of animals is passivity and ongoing acceptance of the status quo; a status quo most easily maintained through silence.