

BOOK REVIEW

ANIMAL LAW IN AUSTRALASIA **BY PETER SANKOFF AND STEVEN WHITE** **(EDS)**

(Sydney: Federation Press, 2009) 418 pages, ISBN: 978-1-86287-719-1

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The blurb for this book opens with the following quotation:

Most Australians and New Zealanders assume that current animal welfare laws provide animals with sufficient protection from human mistreatment, that cruelty is the exception and that, when exposed, the perpetrators are prosecuted. They are wrong on all counts.¹

This sets the scene for a textbook that is both methodical in its presentation of the substantive law concerning animals in Australasia, and polemical in its demonstration of the law's startling deficiencies.

Animal law is the law concerning the relationship between human and non-human animals. Essentially, it regulates human power and dominance over animals, sometimes by enabling and upholding that relationship of subordination and at other times by restricting it in certain narrow circumstances. Because the relationship between humans and non-humans cuts across almost all aspects of human activity, animal law spans a considerable number of substantive areas including property, crime, tort, administrative law and others.

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¹ Peter Sankoff and Steven White (eds), *Animal Law in Australasia* (2009).

This compilation of articles is the first major textbook in this field to be released in Australia and is significant for that reason. The release of this text is both a cause and a symptom of the recent exponential growth in animal law activism, which has manifested itself in the rising number of law schools teaching animal law² and the increasing visibility of advocacy organisations such as Voiceless³ and Lawyers for Animals.⁴ The book is perhaps the most substantial sign to date that animal law has established itself as a legitimate field of scholarship in Australasia, and portends that the field will grow in significance as law students and young lawyers continue to flock to the area in droves.

The contributors are wide-ranging, and include academics in law, science and politics, practising lawyers, in-house counsel for animal protection organisations and a politician. Each article unashamedly comes at the subject from an animal-friendly perspective. There are no contributors from animal industries, nor do any of the contributors oppose the goal of lifting welfare standards. Accordingly, each article is critical of the existing law to varying degrees, at times delivering to the reader a palpable sense of justifiable outrage and injustice. Thankfully, however, the contributors never lose their thorough and scholarly approach by descending into diatribe.

The book is written for a legally literate audience, but is useful as an introduction for those who have little or no familiarity with the subject, as it steps through many of the basic concepts and principles before building up to a more detailed examination. It will also assist those who have studied or practised in the field, because it is so extensive in its coverage of the many different areas that fall under the animal law umbrella. The book canvasses both the theoretical and the practical, the local and the international, and discusses a broad spectrum of animals, whether those used in farming, science, companionship, sport or elsewhere.

There are four parts in the book: Part I: Core Concepts in Animal Law; Part II: Jurisprudential Challenges in Animal Law; Part III: Animal Welfare in Australasia – Specific Challenges for the Region; and Part IV: Looking Abroad and into the Future. Without discussing all 17 chapters, some of the stand-out contributions are examined below.

² These include the ANU, the University of Melbourne, the University of New South Wales, Griffith University and the University of Sydney, among others.

³ See Voiceless, *Voiceless: the fund for animals* (2004) <<http://www.voiceless.org.au>> at 7 May 2009.

⁴ See Lawyers for Animals, *Lawyers for Animals* (2009) <<http://www.lawyersforanimals.org.au>> at 7 May 2009.

Part I provides a basic introduction to animal law principles and issues that are built upon in later stages of the book. The first chapter discusses the concept of 'animal welfare', which underpins the animal protection statutes in Australia and New Zealand. Peter Sankoff shows how the concept of animal welfare imports notions of 'necessary' or 'reasonable' suffering, which are terminological sleights of hand that the law essentially uses to exclude any well-established practice from the law's protection, no matter how cruel.

The second chapter exposes exploitation in industrial farming, which is emblematic of how unprincipled animal welfare laws can be. Katrina Sharman capably exposes the influence of economics on welfare policy that is so stark in the farming context.

Part II takes a more philosophical approach by examining the underlying values that motivate animal laws and by contrasting these with the values that do, or ought to, inspire the animal protection movement. The most powerful article in this Part is Siobhan O'Sullivan's striking discussion of inconsistencies in the law. Her contribution examines the failure of the law to accord non-human animals equal consideration with humans, or even equal consideration with one another. She expertly demonstrates how animals that are the most economically useful and publicly invisible receive the least protection, while the animals with which humans share the most intimate relationships and which are most visible receive the greatest protection, despite an equal capacity for suffering in each case. This underlines the fundamentally illiberal and discriminatory basis of animal laws, and undermines the philosophical bedrock of our polity.

Part III builds on the introductory and theoretical discussion in the earlier Parts by considering case studies in the Australasian region.

Malcolm Caulfield, legal counsel for Animals Australia, critically assesses the legal regime governing one of Australia's most politically controversial and media-saturated animal issues, namely the live export of sheep and cattle by ship. In another chapter, Paula Gerber considers the vexed question of vivisection. In doing so she deliberately avoids the moral and philosophical debates and focuses instead on the implementation of the three Rs (reduction, refinement and replacement), which supposedly underpin and inform the use of animals in research in Australia and New Zealand. Her article concludes that there is a significant gap between the rhetoric of the three Rs and the reality of widespread and seriously cruel experimentation, which neglects the all-important R of 'replacement'. Gerber wisely suggests implementing species bans on research involving primates, horses, cats and dogs in order to

gradually reduce the scientific community's heavy reliance on animal subjects.

Perhaps two of the most compelling and interesting chapters in the book are those concerning wild animals (written by Steven White) and recreational hunting (written by Dominique Thiriet). Wild animals create complex policy conundrums, not least because they do not fit comfortably within the 'property' status assigned to domestic and farm animals. Steven White shows how the intersection between nature conservation and animal welfare legislation results in a downgrading of animal welfare considerations, at the expense of safeguarding wild animals from suffering. Both White's and Thiriet's articles discuss the hierarchy of protection that the law affords to different wild animal species, with introduced wild animals the least protected and most marginalised, primarily for economic reasons and to promote biodiversity.

Lastly, Part IV examines the international context of animal law and offers thoughts about how laws in our region can be improved in the future. The first article in this Part considers European Union legislation, which is widely perceived to be significantly more progressive than Australasian legislation on farm animal welfare. It also considers the impact of international trade liberalisation rules, which can inhibit countries from meaningfully restricting inhumane production methods for animal products.

Elizabeth Ellis contributes a thoughtful piece on the links between the animal protection movement and other social justice causes, and suggests that animal advocates should position their concerns within a broader framework that will allow them to collaborate with other activists.

In the final chapter of the book, Peter Sankoff writes an impassioned defence of animal law as an area of emerging scholarship. He notes the phenomenal growth in animal law courses worldwide and appraises the value of animal law in the overall context of a legal education. He rightly notes that the study of law is the study of power relationships. In no other area is this truth more readily apparent than animal law, where the power differential is so great and the capacity for exploitation so large.

Usually, when one reads a textbook on an area of substantive law, it is possible to appreciate the legitimate policy arguments supporting the existing law and acknowledge the sensible way in which common law and statute have developed upon earlier wisdom and precedent, even if one ultimately believes that the law should be amended to reflect better ideals of justice. By contrast,

this book is unsettling in that it is very difficult to see any justification for many existing animal laws other than brute power and economics. The laws are certainly not principled; they are often not even internally consistent. It is rare for an area of law to be so blatantly deficient in almost every way - from its underlying values, structure, content and enforcement mechanisms to its penalties for breach.

One cannot but see the all-encompassing reach of economics when reading this book. Legal problems that are otherwise inexplicable and inexcusable become clear when they are viewed through the lens of the profit motive. Money and power are constant themes of the book, sometimes made explicit and at other times a thinly concealed undercurrent. Accordingly, animal law is an area ripe for critical scholarship and analysis, and fertile ground for much-needed law reform.

For the sake of the hundreds of millions of animals that suffer incalculably in Australia and New Zealand each year, hopefully this book will serve as a catalyst for positive change. The book is a heavy and often dispiriting read, but its underlying message is an optimistic one. By drawing upon the best principles of justice and compassion that underlie liberal democracy, *Animal Law in Australasia* shines a beacon of light for our legislators and judges to follow if they are brave enough to withstand the sheer power of the opposing force.

