

Humane Education: A compassionate ethic for animals Symposium
Animal Law: How, or will it help to bring about a compassionate society?

Conference Paper

6 October 2007

A. Introduction

I would like to open by congratulating Gail and Carole on putting together this symposium, and to thank them for inviting me to make a contribution.

I'll talk today about animal law as a distinct area of teaching and research in a tertiary setting.

In the first part of my presentation I'll outline the emergence of animal law in two jurisdictions, the United States and Australia.

I'll consider the United States because that is where the growth of animal law as a distinct discipline has been most marked.

I'll then attempt to provide an answer to the question 'what is animal law?', using the course I ran on animal law earlier this year within Griffith Law School as a case study. Two distinctive approaches to the teaching of animal law can be identified, and they have implications for the extent to which students are able to reflect on a compassionate ethic for animals.

Next, I'll provide some justifications for why the teaching of animal law is important.

I'll finish by suggesting that while I believe the emergence of animal law as a distinct discipline within Australia is potentially significant in building a more compassionate society, the contrasting experience of Europe and the United States shows that there is no direct link between the two, at least as measured by significant legal change.

B. The Emergence of ‘Animal Law’

I thought it would be useful to begin by contrasting the emergence of animal law as a distinctive discipline within law schools in the US and Australia, because the experience in each has been quite different.¹

1. United States

The growth in the teaching of animal law in the US has been quite staggering.²

From a low base in the early 1990s, the number of courses has steeply increased since, to the point where it is now taught in upwards of 80 law schools, slightly less than half of all US law schools.³

Accompanying this has been the development of linked animal law activities for students, including national animal law moots, essay competitions, internships and so on.

The teaching of animal law in the US has been accompanied by the emergence of a vibrant and growing research culture.

There are now three specialist animal law journals published out of the US,⁴ with a fourth, from Stanford University, to commence shortly.⁵

There are now several animal law textbooks published in the US.⁶

Leading US legal academics have contributed to the literature on animal law issues, even if not actually teaching animal law courses themselves.⁷

¹ For a brief, but already dated, overview see Steven White, ‘Animals and the Law: A New Legal Frontier?’ (2005) 29 *Melbourne University Law Review* 289, 298-300.

² For a detailed account of the evolution of animal law as a scholarly discipline in the United States see David Favre, ‘The Gathering Momentum’ (2005) 1 *Journal of Animal Law* 1.

³ Animal Law Defense Fund, ‘Resources: Animal Law Courses’ <<http://www.aldf.org/resources/details.php?id=297>> at 1 October 2007.

⁴ *Animal Law* (published by the National Center for Animal Law, Lewis & Clark Law School), *Journal of Animal Law* (published by Michigan State University College of Law) and *Journal of Animal Law and Ethics* (published by University of Pennsylvania).

⁵ *Journal of Animal Law and Policy* (to be published online from 2008, <<http://sjalp.stanford.edu/index.html>>).

⁶ See, eg, Sonia S Waisman et al, *Animal Law: Cases and Materials* (3rd ed, 2006).

Despite this growth, there are reasons for questioning the extent to which animal law has been fully accepted into the US legal teaching fraternity.

David Favre, leading US animal lawyer, points out that the overwhelming number of courses are taught by adjunct staff, usually busy practising lawyers, rather than tenured staff.⁸

This has a knock on effect, since it means that the depth of scholarship pool is not as great as it would be with more tenured staff.

He also points out that it is still virtually impossible to obtain tenure on the basis solely of animal law research and teaching.

2. *Australia*

The first animal law course in Australia was offered to postgraduate law students at the University of New South Wales in 2005.

Since then courses have been conducted at UNSW, Southern Cross University in northern NSW and Griffith.

Next year courses will be offered at UNSW, Griffith, and Wollongong University, with courses on the agenda for 2009 at Sydney University, Monash University, Bond University and Flinders University.

So while it is still very early days for animal law in Australia, there is a genuine momentum developing within the community of Australian law schools.

In meeting with those who have offered or are proposing to offer animal law courses widely differing experiences are reported in negotiating inclusion of animal law in the law school curriculum.

⁷ See, eg, Cass R Sunstein and Martha C Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (2004) (including individual contributions from each).

⁸ David Favre, 'The Gathering Momentum' (2005) 1 *Journal of Animal Law* 1.

In some cases, including my own, senior staff within the Law School have been very supportive of inclusion of such a course.

In other cases, proponents have been confronted with a range of hurdles. Senior staff have not comprehended, or actually trivialised, animal law as a legal discipline. Or resource constraints have meant that proponents have been required to teach in allocated courses, usually core courses, at the expense of new elective courses.

In some cases proponents have overcome resistance by being prepared to run a course on the strict proviso that the course is an 'immediate success', usually measured through the blunt measure of the number of students enrolling, and to a lesser extent on student feedback through course evaluations.

I'm optimistic this institutional resistance will decline over time. Three factors will be critical in this occurring.

First, as the number of courses gradually increases, a self-sustaining legitimising effect is produced.

Second, students will increasingly demand that a course be offered within their law school. At the moment, students outside NSW and Qld have to travel beyond their state jurisdiction in order to undertake a course. A small number of students are prepared to do this, but for most it will be a major disincentive.

The evidence so far is that significant numbers of students want to study animal law.

A broader emphasis on humane education in schools and colleges, a key theme explored by other speakers at this symposium, is likely to further stimulate demand.

Third, legal research and scholarship in the area within Australia is growing.

Articles in the area are now being published in leading Australian law journals, and from 2008 books with an Australasian focus will be available.

This is important for a couple of reasons. First, it legitimises animal law as a field of scholarly endeavour. Second, it provides easily accessible teaching materials, with an Australian orientation, for those contemplating offering animal law.

So, overall, the teaching of animal law in Australia is a very new development in the legal academy. There has been resistance on the part of some law schools to proposed new courses, but despite this the number of courses being offered is growing, even if from a very low base.

C. What is Animal Law?

Although risking over-simplification, it is possible to identify two main ways in which animal law has been conceptualised and taught in universities.

And I should say at the outset that a colleague of mine, Peter Sankoff, from the University of Auckland, is undertaking an international survey of animal law courses, and I'm indebted to him for some of my observations here.

The first main way in which animal law has been conceptualised and taught in universities is the traditional black letter law or survey approach.

On this approach, the focus is on legislation and cases.

The position of animals is considered according to traditional doctrinal areas, so the course will feature topics such as:

- animals and negligence law (eg who bears liability for animals which cause accidents)
- animals and property law (eg animals as personal property, keeping of pets in apartments);
- animals and contract law (eg rules around buying and selling animals);
- animals and criminal law (eg theft of animals); and

- animals and succession/estate law (eg setting up a trust in favour of an animal charity).

There will also, of course, be consideration of animal welfare statutes.

A strict black letter law course provides little opportunity for reflection by students on the ethics of human and animal interaction, as manifested in law. Insights from other disciplines, such as politics, philosophy or ethics, are largely absent.

The second characteristic way of conceptualising animal law is to take an interdisciplinary or law-in-context approach.

On this approach the legal status and regulation of the treatment of animals is central, rather than being regarded as a by-product of established categories of law. The legal status of animals is placed in a broader context, usually in an ethical or political context, but also an economic and scientific context. Insights from other disciplines are used to explain, critique and re-conceptualise law.

This is the approach which I tried to take in the animal law course I convened here at Griffith in February of this year.⁹

I set out two overall aims for the course.

The major aim of the course was to provide students with an opportunity to explore and critique:

- (a) the ways in which animals are conceptualised in law, including the philosophical, scientific and economic assumptions underpinning the law relating to animals; and
- (b) the effects of the legal system on the interests of animals.

The course also aimed to provide an opportunity for students to reflect on:

⁹ The course was offered as a summer intensive elective course by Griffith Law School (Nathan campus) Griffith University, running between 23 January and 8 February 2007.

- (a) whether the law relating to animals should be reformed;
- (b) if so, the nature of any such reform; and
- (c) the role lawyers can play in achieving reform.

Topics ranged across:

- an historical account of the legal status of animals;
- what counts as an animal within law;
- the regulation of the treatment of animals in a variety of settings, including companion animals, farmed animals, animals used in research and animals used in entertainment;
- the politics of animal law reform; and
- animal regulation in an international context (taught by my colleague Associate Professor Deborah Cao, School of Languages and Linguistics, Griffith University).

I drew on a very wide range of materials apart from strictly legal materials for use in the course, especially the work of ethicists and political science theorists, as a way for students to contextualise and critique prevailing law.

Students were required to present a seminar during the course, as part of a group, and write an essay after the conclusion of the course.

The seminar provided students with an opportunity for active engagement, to benefit from peer learning and to be creative, with the presentation format a matter for students.

The course was developed in a way which was consistent with the university's Griffith Graduate project.¹⁰

The aim of this project is to ensure that students graduate with certain attributes. The key attributes in the context of the animal law course were the ability to make critical

¹⁰ Griffith University, 'The Griffith Graduate Statement'
<http://www.griffith.edu.au/centre/gihe/griffith_graduate/skills.htm> at 1 October 2007.

evaluations, work in teams, be creative and innovative, behave ethically in a range of environments, and to be responsible and effective citizens.

D. Why is Animal Law Important?

Our relationship with animals is central to our lives, sometimes in obvious ways, and often in ways we are scarcely aware of.

Many Australians as family members regard companion animals.¹¹

Animals and animal products are central to the diets of most people.

Animals are used in an incredible range of products, from plywood adhesives to fertilizer to cosmetics to lubricants to musical instruments; to clothes; the list goes on and on.¹²

Law is a formal manifestation of the way in which our relationship with animals is governed. The way in which the law regulates the treatment of animals reflects how society regards animals. Significantly, law is also constitutive of, or helps to create, our understanding of the place of animals in our world. In this sense law can play a vital educational role.

For these reasons, I think animal law has a very strong claim to be part of the curriculum in all law schools, available, at the very least, to all law students, but also to students and graduates in other disciplines.

The real test of the importance of animal law, though, will be whether it contributes to a society which is more compassionate in its treatment of animals.

E. Will teaching of Animal Law Lead to a More Compassionate Society?

The question of whether the teaching of animal law will lead to a reduction in animal suffering, and a more compassionate ethic, is a difficult one to answer.

¹¹ Adrian Franklin, *Animal Nation: The True Story of Animals and Australia* (2006), ch 8.

¹² Steven M Wise, 'Animal Rights, One Step at a Time', ch 1 in Cass R Sunstein and Martha C Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (2004), 20.

The value of an interdisciplinary animal law course is that it provides an opportunity for students to understand prevailing legal regulation, and, as importantly, to assess and critique that regulation and the values which it may reflect.

Students are able to see areas where the law is quite ineffective in protecting animals or reducing their suffering, whether because of inadequate standards, irrationality and inconsistency, lack of enforcement, and so on.

On this point, I can say that I have never had a response to a law course like that which I received for animal law, reflected through informal feedback and direct feedback through course and teaching evaluations.

One of the most common responses from students during and after the course was that they were completely unaware of the way in which law selectively protects the interests of animals, depending on whether the animal is a companion animal, research animal, farmed animal and so on.

Many students indicated that the way they think about animals had changed as a result of the course. For some this change was quite profound.

A response such as this is potentially significant.

Law graduates will go on to work within the legal profession, but also in the public and private sector as non-practising lawyers.

Some of them will be very influential, going on to become leaders of society as members of parliament or the judiciary, senior policy-makers within government departments, and so on.

Experience from the US shows that as the number of animal law graduates increases, the legal profession itself becomes better educated about law and its effect on the interests of animals.

Specialist legal panels within the profession are established, sustainable legal practices in animal law begin to grow, there is more litigation testing the limits of animal law, and so on.

Practising lawyers with an interest in the area may be able to act pro bono in some matters, assisting animal advocate organisations and individuals in litigation.

As is becoming increasingly common in Australia, lawyers may themselves set up advocacy groups or play a more active role than has previously been the case within existing animal advocacy groups.

Lawyers can be articulate advocates, whether appearing in court, through submissions to parliamentary inquiries, engaging in public debate through the media, and so on.

And, of course, as advocates for change in a broad range of settings, they take on a role that extends beyond their traditional one of addressing animal suffering through cruelty prosecutions, as important as that is.

I don't claim that the emergence of animal law is the direct cause of this increased activity on the part of lawyers.

In fact I think there is a need to be cautious the claims which can be made for animal law.

First, I'm not aware of systematic research that has addressed the effect that an animal law course has on student compassion towards animals.

In a different context, the teaching of legal ethics, there is recent Australian research which suggests that law school has a limited effect on student values, with pre-existing values more highly influential.¹³ This research reinforces the importance of values education in primary and secondary schools.

¹³ Adrian Evans Josephine Palermo, 'Zero Impact: Are Lawyers' Values Affected by Law School?' (2005) 8 *Legal Ethics* 240.

I can see a very worthwhile longitudinal study in a specifically animal law context. Does a course like animal law tend to attract students already imbued with a compassionate ethic? Does participation in the course further deepen that compassionate ethic? Does participation have any effect on students taking the course for reasons other than a pre-existing interest in the area or a particular concern for animals?

A second reason to be cautious about the effect of animal law is that despite its emergence, there has so far been limited legal change in the ways animals are treated under law.

Again, of course, it is very early days in Australia.

It is interesting, in this context, to compare developments in the United States with those in the European Union.

While, as I have already shown, the number of animal law courses in the US has burgeoned over the last 10-15 years, the number of animal law courses offered across Europe can be counted on one hand.

Despite this, it is in Europe that the more significant legal reforms are occurring, not the United States.

These reforms include recognition of animals in the Constitution of some countries, bans on some intensive farming practices (veal crates, battery cages and sow stalls), and legal recognition of animals as sentient beings, with policy makers required to pay full regard to the welfare requirements of animals.¹⁴

Developments like these are not occurring at the same rate in the United States, where reform, especially in the farming sector, has been limited (and consumer driven).

¹⁴ For a brief summary of some of these developments, and accompanying references, see Steven White, 'Regulation of Animal Welfare in Australia and the Emergent Commonwealth: Entrenching the Traditional Approach of the States and Territories or Laying the Ground for Reform?' (2007) 35 *Federal Law Review* (forthcoming).

F. Conclusion

In conclusion, it is still too early to gauge the affects of the emergence of animal law as a distinct discipline on stimulating a compassionate ethic in law students and reducing the suffering of animals in Australia.

At the very least, though, animal law can sensitise lawyers to the need for a more compassionate ethic and contribute to an environment of increased legal activism and public debate.