

Foreword

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It is a great honour, and a genuine pleasure, to be asked by Peter Sankoff, Steven White and Celeste Black to write the Foreword for the second edition of their ground-breaking book, *Animal Law in Australasia*.

Almost exactly 40 years ago, my American law school made a big splash by hiring a full-time professor of environmental law, at a time when few law schools internationally even offered a course by that name. This raised some eyebrows at the time, and I remember overhearing discussions in the corridors, which ran along the lines of 'Cool idea, I guess ... but there's only one elective a year in Environmental Law, so what is this person going to do with the rest of his time?'

Such a conversation would never occur today, of course. For starters, colleagues don't talk in the corridors anymore, they email, blog and Facebook each other. More to the point, every decent law school in the world would have at least one full-time professor of environmental law, and probably a bunch of them. They would no longer be offering only a single generalist elective in this field, but probably a half-dozen or more, with specialist courses on international and regional environmental law; environmental planning and protection; climate change; sustainable development; comparative environmental law; water law; land and maritime national parks; and new technologies, risk management and environmental law. And almost every good law school will offer a coursework Masters degree in this field, and undertake to supervise PhD candidates doing advanced research.

All of that remarkable growth and development had to start somewhere - with grassroots activists highlighting the problems and building organisations, with journalists beginning to write about the issues and raising public awareness, with pro bono lawyers willing to defend those activists and pursue strategic litigation and lobbying for law reform, with scholars beginning to create a critical literature and to develop and teach university courses. And the sophistication of public discourse in this area has moved accordingly (admittedly with some terrifyingly awful exceptions), with an almost universal appreciation of the issues, the concepts and the stakes, even if there may be disagreement from time to time on the details or the balance.

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In my view, animal law and animal rights in Australia and New Zealand are currently poised to take off in exactly the same way. As Martin Luther King Jr once said, and US President Barack Obama is fond of repeating, 'The arc of the moral universe is long, but it bends toward justice'.

Where the mention of 'animal law' would once receive quizzical looks, or the anticipation of some sort of joke about lawyers, it is now increasingly well understood as a legitimate field for activism and inquiry.

When I was quoted in the media a few years ago suggesting that animal law would be 'the next great social justice movement', this initially attracted the ire of some conservative columnists who suggested that human rights were far more important – although those same columnists spend most of their time railing against bills of rights and the imaginary 'human rights industry'. And just a short time later, the reflexive criticism has all but vanished and it brings a smile when I hear friends and neighbours say much the same thing about the need to change our behaviour, our consumer preferences, our industrial practices, and our laws.

Indeed, I came very close at that time to describing the animal rights movement as a 'human rights movement', but decided that it might be a little too confronting for some at that stage. Even without getting into the philosophical and physiological arguments made so well by pioneers like Steven Wise and Jeffrey Masson about the sentience, sociability and awareness of animals, any movement that liberates human beings from continuing to perpetrate barbaric acts of cruelty must qualify for status as a human rights movement.

In just a few short years:

- consumers have completely changed the face of food marketing – where free range eggs and organic meats were once only found in specialty shops, they now make up a large and growing section of every suburban supermarket, and even most corner stores;
- the discussion of vegetarianism, veganism and animal welfare has moved from the fringes to the mainstream, led not only by the true believers but by leading authors (such as Jonathan Safran Foer), politicians (such as former US President Bill Clinton), athletes (such as Australian Test cricketer and fast bowler Peter Siddle), musicians (such as Missy Higgins) and everyone's favourite miracle brain surgeon, Dr Charlie Teo;
- advocacy groups with a sharper edge, such as Voiceless, Animals Australia and SAFE, have become as well as known as the RSPCA, and leading animal rights campaigners like the Sherman family and Lyn White have become public figures in their own right – just as Bob Brown and other leading environmentalists in Australia and New Zealand were publicly perceived to have moved from the

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radical fringes to the mainstream, whilst actually maintaining the constancy of their views and actions;

- the legal profession has geared up quite magnificently in defence of animals, with large panels of barristers in and around Australia and New Zealand offering to donate their services on a pro bono (voluntary) basis;
- the news media have completely changed the amount and tenor of their coverage of animal law and animal welfare issues, from ‘gosh, aren’t cute animals really cute’, to hard-hitting exposés of malpractice and animal cruelty in abattoirs, fisheries and live exports, and highlighting the inadequacy of current laws and regulatory and enforcement regimes;
- the first animal rights-based political action campaigns have hit the mainstream, focusing on the palpable evils of factory farming and the live animal export trade; and
- there has been an explosion of academic activity in Australia and New Zealand, and internationally, with a huge increase in the number of university courses, journals, conferences and scholarly activity devoted to animal law and related matters.

With regard to the last point, where animal law was until recently perceived as being somewhere between an oddity and an indulgence, staff and students now demand its presence and engage deeply in the debates. About 120 (of the 201) accredited law schools in the United States teach animal law, including such elite and influential institutions as Harvard, Stanford, UCLA, Georgetown and Duke, and the Student Animal Legal Defense Fund (SALDF) has chapters in 132 law schools. Seven Canadian law schools teach animal law, and each of them also hosts a SALDF chapter.

The spread of the animal law course has been greatly facilitated in North America by the presence of an excellent, comprehensive textbook prepared by Bruce Wagman, Sonia Waisman and Pamela Frasch, entitled *Animal Law: Cases and Materials*, now in its fourth edition. This makes it relatively easy and risk-free for an academic interested in developing this field at his or her law school to make the leap, knowing that there is a reliable textbook on which to base a course and cover the essentials, but leaving room for individuals to update or customise the materials as they see fit.

In Australia and New Zealand, this tipping point was reached exactly four years ago with the publication by Federation Press on 4 February 2009 of Peter Sankoff and Steven White’s landmark work, *Animal Law in Australasia*, an outstanding collection of essays on key aspects of animal law in our region. As reflected in the book’s subtitle, *A New Dialogue*, the editors and authors expressly set out to redefine and transform this discipline in modern terms, as well as to capture and deal with the main issues. It is a testament to the editors and authors that the book reads as a coherent work

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in a consistent and eminently readable style, far removed from so many dreaded 'collections' of disparate works and clashing styles, which leaves readers puzzling over the gaps and overlaps.

Animal Law in Australasia has been an enormously influential work. The book has greatly facilitated the teaching of animal law at a high level in universities (usually in, but not limited to, law schools). And the book has had a great and lasting impact in spurring scholarship and academic and general discussion of the issues and controversies.

For mine, this is a more interesting book and a bigger accomplishment than its American counterpart, building upon the thorough coverage of the predecessor volume, but also breaking free of some of the traditional (and initially inevitable) law school pigeonholing of every economic, social, ethical and political issue into torts, contracts, criminal law and so on. (Sometimes, as popular culture tells us, it's the Constitution, it's Mabo, it's justice, it's the law, it's the vibe – no, it's definitely the vibe.) Perhaps that is only saying that while I really like tea, I absolutely love coffee – but the approach adopted in *Animal Law in Australasia* must validate scholars aiming for originality as well as comprehensiveness and accuracy in puzzling through the law.

This second edition is appropriately sub-titled *Continuing the Dialogue*. Perhaps *Extending the Dialogue* would be even more appropriate, as the editors (now joined by Celeste Black) have not rested on their laurels, nor diminished their ambitions. The second edition retains five chapter headings from the original volume, but these are thoroughly updated and revised in light of the intervening four years of discussion and debate. In this category are the excellent scene-setting chapters by such recognised experts in the field as Peter Sankoff on the difficulty of the law's 'animal protection' paradigm; Steven White on the basic theoretical approaches to animal law; Katrina Sharman on the law regulating the treatment of farm animals; Annabel Markham on sentencing for animal cruelty offences; and Arnja Dale and Steven White on Animal Welfare Codes.

Importantly, this second edition features 11 new chapters, focusing on new and emerging issues in the area of animal law, pointing us in the direction that the laws governing the human animal relationship should progress, if real justice is to be achieved. These new chapters include fascinating treatments of the law surrounding companion animals (Tony Bognadoski) and their mythologised 'evil twins', or 'dangerous breeds' of companion animals (David Tong and Vernon Tava); problems with the way animal welfare law is enforced (Jed Goodfellow); the regulation of 'animals in entertainment' – that is, those used in rodeos, circuses, zoos and film (Jackson Walkden-Brown); the treatment of animals in the wild, including those subject to being hunted (Dominique Thiriet); the oversight of animal-based research (Dr Andrew Knight); the little known adverse impact of the WTO on setting meaningful animal welfare standards (Amokura Kawharu); the uneven regulation of the

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welfare of fish, including aquaculture and the 'wild caught' sector (Celeste Black) – a critically important but often neglected, or at least segregated, area of animal welfare law; and the international, or perhaps transnational, dimensions of animal cruelty, considering such continuing outrages as whale hunting and live animal exports (Ruth Hatten).

As a book devoted to advancing the cause as well as merely describing the problems, there are also two new chapters squarely aimed at the structural challenges involved in achieving real reforms. Sue Kedgley, a former Greens Party MP in New Zealand describes the potent political and economic forces arrayed against real reform of animal protection law. Finally, Elizabeth Ellis confirms that the enemy is sometimes us, examining the flimsy rationalisations and bargains that humans make with themselves to justify their own failure to ensure the humane treatment of other species.

In launching the first edition in Sydney in 2009, my great friend Michael Kirby announced that he found the book so powerful, so confronting, and so persuasive, that he immediately gave up eating all meat. This second edition is again a very powerful, masterful and important book about our law and our civilisation, and the editors and authors deserve our greatest respect. I can't promise that you will become a strict vegan after reading it, but I definitely can guarantee that you will never look at your dinner plate the same way, and you will not stop thinking about these issues or discussing them with family, friends and colleagues. And I'm sure you will agree with me that animal welfare is 'the next great social justice movement'.

Finally, my congratulations go as well to Federation Press, the publishers of this excellent volume. Federation took a gamble some years ago, when it had barely opened its doors, in publishing a huge cases and materials book entitled *Criminal Laws* – much better known colloquially as 'The Four Davids' (of which I am proudly one) – which challenged the way criminal law and process had been conceived and taught in Australian law schools for over a century. As it turned out, it was a good bet, and the book's then-novel approach quickly came to represent contemporary conventional wisdom. Federation Press has done it again.

4 February 2013