

Chapter 1

The Protection Paradigm: Making the World a Better Place for Animals?

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In Australia and New Zealand, as in most of the common law world, the commission of an intentional act of cruelty by a person against an animal has long been regarded as a penal offence, punishable in the criminal courts.¹ For well over a century, both jurisdictions have accepted that the power and privilege of using animals to our own ends is not unrestrained,² and that humans owe certain duties towards animals living within our sphere of influence. Defined most commonly by the term ‘animal protection’,³ this concept prohibits humans from causing unnecessary pain, suffering or distress to the animals that they come into contact with or care for.

It has not always been this way. If time machines existed and it were possible to journey back to the 17th century, a traveller visiting that era would bear witness to a world founded on a mad form of ‘Descartian’ logic; a world where animals were treated as ‘automatons’,⁴ whose squeals, squeaks and cries in response to various stimuli were regarded as nothing more than the sounds of improperly functioning machines. In this world there was

* The author wishes to thank Steven White for his helpful comments and David Tong for his research assistance on the first version of this article. Thanks are owed to Rachel Godley for her assistance on this revised version.

1 In New Zealand, see the *Animal Welfare Act 1999*. Each Australian State and Territory has similar legislation – for a representative example, see *Animal Welfare Act 2002* (WA).

2 In New Zealand see *Animals Protection Act 1880*; in Australia see, for example, *Prevention of Cruelty to Animals Act 1920* (WA).

3 I have chosen to use the terms ‘animal protection’ and ‘animal welfare’ more or less interchangeably, even though one could argue that there are slight differences between the two. For the purposes of this chapter the differences are not significant, as both terms treat animals as objects and punish unnecessary harms in the manner discussed here. It is this prohibition of unnecessary or unreasonable harm against animals that I refer to as the animal protection construct.

4 Descartes, R (1985) *Discourse on the Method* Part V (1637) in Cottingham, J, Stoothoff, R and Murdoch, D [translation] *The Philosophical Writings of Descartes*, vol 1, Cambridge University Press, Cambridge, p 139.

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