

# AUSTRALIAN ANIMAL PROTECTION LAW JOURNAL

JOHN MANCY



# ANIMAL PROTECTION LAW AND WILD LAW



John Mancy

# What are animals?

Scientifically, 'all living things'.

In general parlance (and anthropocentrically), probably only those we can see – wild animals, pet animals, domesticated animals, birds, fish. Overwhelmingly, vertebrates.











# SPECIES

Of the million or more animal species in the world, more than 98% are invertebrates, including all the micro-organisms









# HABITAT



# DEFINITIONS

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- ANIMAL LAW:

Legal and regulatory regimes applying to animals depending on whether we eat, wear, vivisect, eradicate or entertain ourselves with them.

# ENTERTAINMENT



# HUNTING

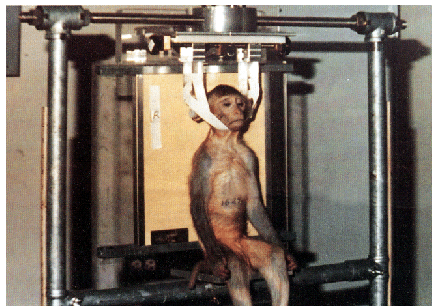




# FOOD



# RESEARCH



# ANIMAL RIGHTS AND ANIMAL PROTECTION

- ‘Moral rights for animals’
- More commonly, a generic term for the Animal Protection movement.

To Animal Protection activists & lawyers, animal rights = ‘legal rights for animals’ by way of ‘specific law-based protections’.

# ANIMAL PROTECTION LAW

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ANIMAL PROTECTION LAW .....

Using the law to attain a better world for all the animals that live in it.



# ANIMAL WELFARE? ANIMAL CRUELTY LAW?

- Part of the difficulty encountered in advancing the cause of animals derives from the central ideas that underpin our legal systems.
- The idea that animals should have any protection is alien to a human-centered legal system that focuses strongly on the property rights of people.

# AUSTRALIAN LAW

- All Australian jurisdictions have statutes whose titles suggest they exist to protect animals from cruelty or to promote their welfare.

(Prevention of Cruelty to Animals Act, in NSW, Vic. And SA; Animal Care and Protection Act in Qld; Animal Welfare Act in WA, Tas, ACT and NT).

# LAW (cont'd)

- None of them is very effective as a result of a combination of artificial definitions and broad statutory exemptions of various practices or classes of animals from their cruelty offence provisions (e.g. some parts of the NSW POCTA apply to animals but not 'stock animals'. In WA's Animal Welfare Act, the term 'animal' excludes fish.
- Such artificial distinctions are based on human sensitivities, as to what is eaten or otherwise exploited, not on the needs nor welfare of the animals excluded.
- These statutes do not protect the vast majority of animals – some half a billion Australian chickens alone killed in 'factory farms' annually.

# STOCK ANIMALS





# STOCK ANIMALS cont'd

- Generally, animals are defined as 'stock animals' or 'farm animals' in order to exclude them from the ambit of the legislation. For example, provisions in the NSW and NT Acts exclude 'stock' from the requirement that all animals receive adequate exercise. This exemption allows animals such as pigs, chickens and cows to remain confined indoors for all of their productive lives.

# STOCK ANIMALS



# THE CODES

- The role of most State Departments responsible for administering local animal protection statutes has been characterised by their participation in formulating codes of practice usually or mostly favouring producer interests over animal welfare. Compliance with these codes constitutes a defence or exemption in most states, to the offence provisions of the statute.

# LEGALIZED CRUELTY

In what may be seen as 'legalized cruelty', Commonwealth Model Codes of Practice (MCOPs) relating to beef cattle, poultry and pigs permit the industrial processing of animals for human consumption.

MCOPs are issued by the Standing Committee on Primary Industries (SCoPI) whose stated objective is 'to develop and promote sustainable, innovative and profitable agriculture, fisheries/aquaculture and food and forestry industries'.



# ‘LEGALIZED CRUELTY’

- An example: Commonwealth Model Code of Practice for the Welfare of Animals – Domestic Poultry (4<sup>th</sup> Ed) (‘MCOP – Poultry’) issued in 2002 by SCoPI’s predecessor body is ‘intended to help people involved in the care and management of poultry to adopt standards of husbandry that are acceptable’

# MCOP POULTRY – ‘Acceptable’ standards of husbandry

- Killing unwanted chicks
- Beak trimming
- Stocking density – eggs: 500 sq cm. A4 sheet = 625 sq cm.
- Stocking density – meat: 1500 birds per hectare
- Artificial manipulation of light
- Use of antibiotics
- Mass harvesting



# WILD LAW

- Wild law (for immediate purposes) challenges the anthropocentric status of humans in their relationship to the environment by arguing that they are just one species that exists interdependently within the earth's ecosystem.
- Wild law is about laws that derive from nature, free from human interference.
- Wild law is not about animal welfare or animal rights. But, as they are part of the ecosystem, wild law recognises animals as worthy of protection.

# NATURE





# THE LAW

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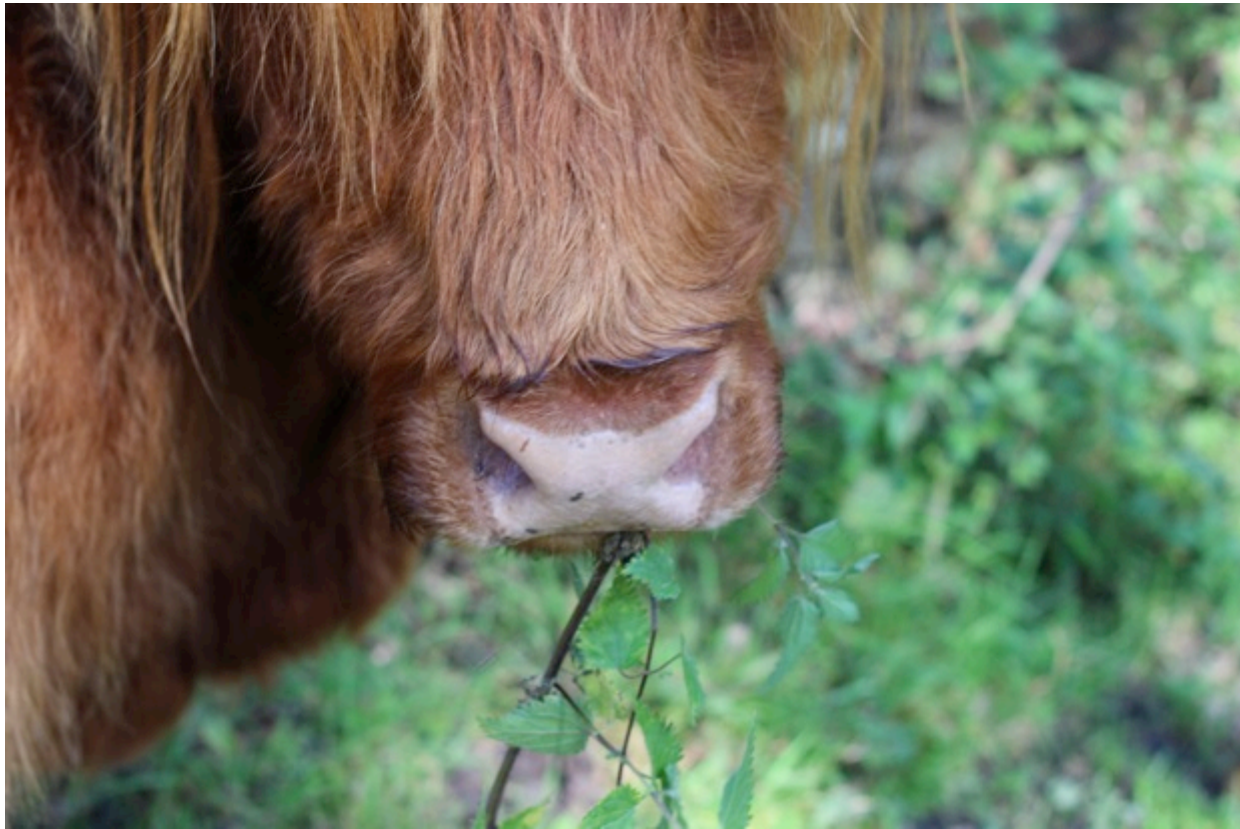
- 1 Can Wild Law help Animal Protection Law?
- 2 Can Animal Protection Law assist the development of Wild Law?

# SENTIENCE

And, as Cormac Cullinan has pointed out:

*“One of the beauties of this approach is that it avoids the difficulties that have bedevilled those who have tried to argue that only certain ‘sentient’ or ‘higher’ forms of life should have rights”.*

# SENTIENCE



*“(A) communion of subjects and not a collection of objects”.*

“ The rights of all beings are derived from the most fundamental source of all, the universe.

Since the universe is, in (Thomas Berry’s) words, ‘a communion of subjects and not a collection of objects’, it follows that all the component members of the universe are subjects capable of holding rights and have as much right to hold rights as humans....”

# **THE POLITICS OF BEING A NON-HUMAN ANIMAL - a 'Lucky Dip' life.**

- Inconsistency in treatment of non-human animals
- The welfare requirements (water, exercise, living space etc) differ significantly depending upon the capacity in which it is made to serve humans



# DOGS

- Companion animals
- Research & Education
- Circuses
- Competitive displays
- Assistance dogs
- Security (guard) dogs

# MUSE



# RABBITS

- As Food
- As Pelts
- Companion animals
- Research & Education
- Zoos
- Film & TV
- Wild - no protection: "pests"

Information taken from Dr Siobhan O'Sullivan's "Animals, Equality and Democracy", Palgrave Macmillan Animal Ethics Series (2011)

# CAN WILD LAW HELP ANIMAL PROTECTION etc

- Wild Law's "communion of subjects" philosophy informs the Animal Rights argument that the Law should cease regarding animals as property.
- As subjects, animals need not pass tests of similarity (to us) or sentience that many animal protection advocates have set for them to be seen as having a "right to be".
- Animals need habitat; animal advocates need to fight for that habit too.

# CAN ANIMAL PROTECTION HELP WILD LAW?

- Raise profile of Earth Jurisprudence / Wild Law by inclusion in Animal Law courses and publications.
- Assist Wild Law in developing a clear and compassionate position on domesticated animals



# WILD LAW – the future

- As Steven White concludes in a forthcoming article ....
- Animal agriculture is one of the leading contributors to the major environmental challenges: climate change, habitat and biodiversity loss through land clearing, pollution etc.
- For this reason alone Wild Law will have a great deal to contribute to the critique of modern industrial farming methods, as well as of open pasture animal farming
- Given the central idea of interconnectedness which emerges from Wild Law, should domesticated animals such as farm animals be considered a part of 'nature' or the 'environment' broadly conceived?
- Is such a broad conception of 'nature' defensible or would it undermine the theoretical coherency of Wild Law?

# PERCEPTIONS DO MATTER

- The idea of rights has an influence far beyond its narrow procedural effect.
- “(A) society in which it is stated, however vaguely, that ‘rivers have legal rights’ would evolve a different legal system than one which did not employ that expressions, even if the two of them had, at the start, the very same ‘legal rules’.”

# IN INDIA, IT IS THE FARMER'S FRIEND

**The Indian Myna  
is an introduced pest**



# & symbols of undying love...

- In India, where the Common Indian Myna originated, it is called the “Farmer’s Friend” because it eats insects that destroy crop plants. The name myna comes from a Hindi word, “maina” meaning a bird of the starling family, Sturnidae, to which mynas belong.
- Mynas in India are also regarded as symbols of undying love, because they often pair for life and *maina* is also sometimes used as a term of endearment for young girls.

# Australian Animal Protection Law Journal

