Animal Law in Australian Universities: Towards 2015

By Steven White *

I Introduction

In 2015 the Australian legal community will be able to celebrate the 10th anniversary of the first stand-alone animal law course offered through an Australian law school. This will be a significant milestone, especially since the number of institutions offering a similar course has grown significantly in a relatively short time.

The developments in Australia lag those in the United States, but are ahead of some other jurisdictions, including the UK, Canada and Europe.

While the recent development of animal law in Australian law schools has been remarkable, it is important not to take this growth for granted. There is a risk that some of the gains may be tenuous. There is a need to not only consolidate the progress made to date, but to think about how the discipline is to continue to develop, to become further entrenched in the legal academy.

This short article provides only an introductory consideration of these issues, and some tentative suggestions for next steps, as part of what it is hoped will be a full, wide-ranging debate about the future of animal law in the legal curriculum as we approach its 10th anniversary in Australia.

In Part II of this article I provide a brief outline of the current state of play in Australia for animal law. Although this has been increasingly well documented in recent times, it is important to establish the status quo position in order to assess the possible future paths for animal law in Australia.

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In Part III, I place the teaching of animal law in the broader context of legal teaching. The recent emergence of animal law, as well as of earlier but still comparatively new disciplines such as human rights law, indigenous law and environmental law, has been accompanied by a thorough critique of the traditional model of legal education.

A conception of animal law which places the ‘non-human animal’ at the centre of legal enquiry, rather than as an ‘add-on’ to established legal doctrine, exemplifies many of the best aspects of changes in the nature of legal education in Australia. It implies inter-disciplinarity, attention to theory, and a focus on ethics (broadly conceived), as well as development of generic legal skills.

If animal law is now established as a worthy ‘new’ legal discipline in Australia, in the final part of the article I briefly identify some of the challenges facing animal law, and some of the potential opportunities for its continued development.

II State of Play

The development of animal law in Australia may be familiar to lawyers closely interested in the area, but it is worth setting out for others.¹

Since 2005, animal law has evolved from having almost no presence in the legal curriculum to the point where by 2013 elective courses in animal law will have been offered in at least eleven Australian law schools.² This represents just under 30% of Australia’s law schools,³ which is a significant and growing proportion. Animal law may also be part of a variety of other courses. For example, research project courses, where students are able to pursue topics of their choice, or legal

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courses where the use or treatment of animals may be addressed in the context of a broader consideration of the nature of rights, legal personhood or ethics. On the other hand, very few courses have been offered on a rolling annual or even biennial basis, and some courses (such as the University of Melbourne) have been offered as postgraduate courses. There is a small but growing community of PhD candidates focussing, at least to some extent, on animal law issues, although it is difficult to document numbers.

The growth of animal law courses has been accompanied by a range of other very important developments, including:

- an increasingly well-organised legal profession, with the establishment of specialist animal welfare panels and committees, the opening of an Animal Welfare Community Centre and the inclusion of animal law in pro bono public interest programs;
- the publication of animal law books, at a rate of more than one per year since 2008;
- the commencement of this journal in June 2008;

4 These are obviously distinct from animal law as a stand-alone course offering.
5 Sankoff points out that 'it is one thing to get a new subject on the law school curriculum, and something else altogether to make it a "successful" course. While it is hardly a definitive indicator, one measure of the success of a particular course is the frequency with which it is offered': Peter Sankoff, 'Growth of Animal Law in Education' (2009) 4 Journal of Animal Law 105 at 125.
6 Animal welfare panels include the Barristers Animal Welfare Panel (BAWP) and Brisbane Lawyers Educating and Advocating for Tougher Sentences (BLEATS). The BAWP, established in 2006, comprises 'well in excess of 100 barristers (including 25 silks) from all the State Bars of Australia', offering pro bono or reduced fee representation on matters related to animal welfare, as well as a range of other advocacy activities: BAWP, 'Who We Are' <http://www.bawp.org.au/>. BLEATS, established in 2007, consists of a panel of barristers, solicitors and community members undertaking pro bono prosecutions for RSPCA Qld: BLEATS, 'BLEATS Today' <http://www.bawp.org.au/>.
Committees include the NSW Young Lawyers Animal Law Committee (<http://www.lawsociety.com.au/about/YoungLawyersCommittees/AnimalLaw/index.htm>) and the Law Society of South Australia's Animal Law Committee.
8 See, eg, Northern Rivers Animal Law & Education Project <http://www.nrcel.org.au/content_common/pg-animallaweducationproject.sec0Future%20projects/Events>.
the rise of highly professional think tank organisations which include a focus on animal law, such as Voiceless\textsuperscript{10} and THINKK,\textsuperscript{11} and

the emergence of law firms specialising in animal law.\textsuperscript{12}

It’s reasonable to argue, then, that there has been a striking growth in the teaching of animal law over a very short period of time in Australia, with a burgeoning growth in legal materials to support teaching and an increasingly active legal profession.

\section*{III Animal Law in the Legal Curriculum}

While there is a need to be realistic about what can be expected of the law and lawyers in effecting meaningful change for the treatment of animals,\textsuperscript{13} the developments briefly summarised in Part II are hugely positive, since they are firmly grounded in an understanding that the interests of animals are not legally well-protected. By and large, they reflect an engagement by lawyers with issues that other disciplines and non-legal organisations have long been concerned about. And lawyers do have a contribution to make:

\begin{itemize}
  \item in making clear the ways in which the interests of animals are marginalised through law;
  \item in assisting those who seek to apply or to challenge prevailing law;
  \item in striving to ensure that as far as possible decision-makers are held legally accountable for their decisions affecting animals; and
  \item in lobbying for legislative change to better protect the interests of animals.
\end{itemize}

The growth of animal law in universities is important since it might be expected to lead to a greater pool of lawyers, working in a variety of institutional settings, with an awareness of animal law issues and an informed understanding of their significance. It can help to develop a

\textsuperscript{11} THINKK: The Think Tank for Kangaroos <http://thinkkangaroos.uts.edu.au>.
\textsuperscript{13} For a rumination on the limits of strategic litigation as a means of law reform see Matthew Liebman, "Who the Judge Ate for Breakfast: On the Limits of Creativity in Animal Law and the Redeeming Power of Powerlessness" (2011) 18 Animal Law 133.

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significant proportion of lawyers who have a sound understanding of the legal treatment of animals and who are able to critically reflect on the nature of the law as it affects animals.

Beyond this, though, given the value-laden nature of animals, ethics and the law, animal law can contribute to the broader educational goal of self-understanding on the part of students about their own ethical belief systems.\(^{14}\)

The extent to which these outcomes will be achieved is highly dependent on the way in which teaching is conducted. The nature of legal teaching generally has been the subject of sustained critique and reshaping over the past two decades. In 1987 the landmark *Pearce Report*\(^ {15}\) identified a prevailing narrow focus in legal education; a preoccupation, across the curriculum, with teaching legal rules and principles, in order to churn out graduates primed to immediately engage in legal practice.\(^ {16}\) Keyes and Johnstone suggest that the so-called traditional model of legal education has five dominant characteristics:\(^ {17}\)

- a teacher-focussed approach, where the expert teacher transmits special knowledge to students conceived as empty vessels, and who are largely passive;
- a focus on transmission of content knowledge, especially legal rules drawn from cases (of particular relevance for animal lawyers is the suggestion that ‘[[legal rules are taught in year or semester long subjects, based on nineteenth century categorisations of law and without any consideration of their theoretical, historical, political, or economic foundations’])\(^ {18}\);
- a conviction that law is an autonomous system, with little to learn from other disciplines (again, particularly relevant for animal lawyers is the conviction that ‘lawyers have little, if


\(^{18}\) Ibid 540.
anything, to learn from other disciplines and interdisciplinary studies are regarded as having limited value, at best);¹⁹
• a close relationship between the legal profession and the academy, with the former driving the content of teaching in the latter; and
• an individualised, isolating approach for both teachers and students, reflected in, for example, a focus on individualised assessment.

Keyes and Johnstone are critical of all these characteristics as being inconsistent with broader education literature on good teaching practice. While not suggesting the traditional model is descriptive of present practice, they do suggest it is useful as a benchmark to assess changes in legal education over the past two decades. A clear-eyed understanding of this traditional model of legal education helps explain, at least in part, why it may have taken so long for animal law to enter the legal curriculum in Australia, especially in the form that animal law appears to be taught in Australia (a point considered further below).

Importantly, Keyes and Johnstone acknowledge that since the 1980s there have been changes in curriculum, teaching approaches and assessment strategies across the sector.²⁰ For example, many law schools now give greater attention to teaching generic and legal skills, theory and ethics. There is more emphasis on facilitating active student learning. There is a greater interest in legal education and research on the part of legal academics.

Despite this, change has been uneven, sometimes temporary, and law schools have struggled to completely overcome or transcend the traditional model of legal education. This is partly due to countervailing factors such as the vastly increased number of law schools and law students, a lack of funding for law schools despite the comparatively high fees imposed on law students, and the market pressures associated with the commodification of higher education. Together these factors have led to demands from students for greater flexibility in teaching arrangements, and increased workloads for teachers.²¹ This has led to less time being available for reflecting on, and consciously improving, teaching practice.

¹⁹ ibid 541.
²⁰ ibid 538.
²¹ ibid 548-549.
What should legal educators be striving to achieve in reshaping legal education? Some key facets include:

- less focus on preparing students for private practice, with its emphasis on acquisition of knowledge expertise in a range of narrow areas. This focus continues to be forced on law schools because of the content issues that must be addressed for graduates to meet the admission requirements of legal practitioner boards.

- greater attention on integrating theory, inter-disciplinarity, generic skills and ethics into the legal curriculum.

- an approach which shifts away from the transmission model, to one which is student-focused, helping students to construct their own knowledge through engagement with learning materials.\(^22\)

The emergence of animal law in Australia is entirely consistent with the positive agenda for legal education articulated by Keyes and Johnstone. I have not been privy to the course outlines, teaching materials and approaches for each animal law course taught in Australia to date. However, through a combination of reviewing course descriptions, participation in workshop discussions, and informal communication with colleagues, it is possible to reasonably conclude that animal law teaching has clearly transcended the traditional model of legal education. As far as I can determine, the dominant approach to teaching animal law to date has been one that places the law in the context of broader social, cultural and especially ethical considerations, addressing issues of theory and adopting an interdisciplinary approach. Such an approach is predicated on an understanding that law is not an autonomous system, and that much can be learned from other disciplines (e.g. animal welfare science, political science and ethics), especially in identifying the assumptions that underpin legislation, codes of practice and so on in this area. There is no sense that the content of animal law courses is being driven by the demands of the practising legal profession.\(^23\)

\(^{22}\) Ibid 557-564.

\(^{23}\) In his more systematic study of animal law courses offered around the world, Sankoff, above n 5 at 137, wrote that '[t]he most difficult aspect of the survey lay in my attempt to discover what the teaching of animal law actually encompasses'. Despite this, Sankoff draws a rough distinction between two categories of animal law courses - those which 'attempt to provide students with a survey of the major laws affecting animals' and those which 'focus less on specific laws and the way they deal with animals, and more on the theoretical dimensions of the law related to animals':
If this is an accurate picture of animal law teaching in Australia, why is it that it consistently transcends traditional models of legal education? A number of factors suggest themselves. First, as a new area of the curriculum, animal law course proposals may be subject to greater scrutiny, by heads of school, deans and curriculum approval committees. As suggested above, the shifting nature of Australian legal education and the erosion of the traditional legal model, may have helped create the right conditions for the inclusion of animal law in the curriculum.

Second, animal law is an elective course not bound by the requirements of legal practitioner boards that have long constrained compulsory courses in the legal curriculum. Teaching animal law is not primarily about preparing students for private practice, although it may be highly relevant for the fortunate few who are able to practise in the area.

Third, for various reasons, there is relatively little case law, especially higher court decisions, in the area of animal law. This means it would be difficult to build a survey course based on legal rules gleaned from court decisions.

Finally, animal law courses in Australia have been initiated by law teachers who may be loosely described as animal advocates. Such teachers are likely to bring a genuine enthusiasm to their teaching of the area, and a very high level of commitment. Animal law is not being offered just to fill a perceived hole in the curriculum, as can be the case with some commercially-oriented electives.

**IV Challenges for the Future**

What I've sought to suggest so far is that animal law has grown remarkably quickly over the past eight years, and that courses in the area have been committed to best-practice teaching principles. There has been a flourishing of animal law scholarship. These are very important factors in establishing the legitimacy of animal law in the eyes of senior law school staff, setting up the right conditions for continued adoption.

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*ibid. So long as the qualification 'theoretical' is broadly construed, my hypothesis would be that most Australian animal law courses fall into the latter category.*

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However, animal law is not yet entrenched as a standard, essential course in the suite of electives offered by most Australian law schools. In those law schools in which it has been offered, its continued presence is currently dependent on a relatively small number of committed academics. Already there has been some fluctuation in the availability of courses offered at different institutions, with few courses consistently offered on an annual basis. Perhaps, some willing academics have yet to convince their law schools that a course should be offered.

While there is reason to be optimistic that a combination of committed teachers, high student demand and increasing awareness by law schools and the legal profession of the significance of animal welfare is likely to see the continued presence of animal law courses in the legal curriculum, this should not be taken for granted.

A number of measures could be taken to ensure animal law continues to make an increasingly important contribution to the legal curriculum.

One important measure is to continue building a strong research culture in the area. This is occurring through the emergence of specialist animal law journals and books, and publication of animal law-related articles in generalist journals. However, on all the evidence, the number of masters and PhD students researching animal law questions remains very small, and there needs to be an increase. Building a research base in the discipline will contribute to the next generation of animal law teachers. In order to achieve the goals of a stronger research culture, one avenue might be for researchers and their law schools to collaborate, creating a cross-institutional centre for animal law. Such a centre could provide an attractive option for higher research degree students, as well as providing the concentration of expertise necessary for grant applications to sustain ongoing research.

Another positive development would be to broaden the scope of courses offered. So far, animal law courses in Australian law schools have essentially been of an introductory nature. It is, of course, possible to envisage a wider variety of courses being offered. These might include clinical/student placement courses, specialist courses (eg addressing wild animals and the law) and courses that address a range of related issues, including animal law (eg a course examining the law of nature conservation, climate change and endangered animals).
Inspiration for the possibilities here is provided by the Center for Animal Law Studies (CALS), at Lewis & Clark Law School in Portland, Oregon.\textsuperscript{24} For some years it has offered a wide range of animal law courses, including an introductory course, a specific advocacy course which explores legislation, lobbying and litigation, an advanced animal law seminar, an international wildlife course, a course focussed on theory, specialist courses on particular types of animal (e.g. farm or companion) and an animal law clinic. In 2012, it will be commencing an LLM in Animal Law.\textsuperscript{25} As well, the Autonomous University of Barcelona,\textsuperscript{26} a well-respected research university, has recently established a Master in Animal Law and Policy.\textsuperscript{27}

The difficult question, of course, is how to offer a wider range of courses given the teaching and time constraints faced by academics, and the smaller student population base of Australia. One route would be to draft in adjunct course teachers, including from the profession. This occurs to some extent already, consistent with the approach in other legal disciplines, and could be much further developed in animal law. The major constraint may be the still limited pool of potential teachers, although this pool should grow as more students graduate from animal law courses and enter the profession.

Another possibility would be to take advantage of online teaching and other blended learning strategies to open up access to animal law-related courses across a number of institutions. If sufficient demand could be demonstrated, this type of approach could even provide the basis for a Masters’ degree offering in animal law, with students undertaking a combination of home institution and third-party institution courses in order to complete the qualification. This would allow for a sharing of resources (in particular the intellectual resource of teaching), while broadening the range of courses potentially available to students.

A final issue to raise here is the effect on students of completing a course in animal law. Many teachers of animal law can attest to the strong response of some students to the issues raised by animal law, both in terms of engagement in learning during the course and in course

\textsuperscript{24} Center for Animal Law Studies <http://law.clark.edu/centers/animal_law_studies>.
\textsuperscript{25} CALS, ‘Animal Law LLM’ <http://law.clark.edu/centers/animal_law_studies/curriculum/LLM>.
\textsuperscript{26} Universitat Autonoma de Barcelona.

\textbf{(2012) 7 AAPLJ 79}
evaluations. However, to date, as far I'm aware, there has been no systematic research into the effect of animal law education on attitudes to animals. A longitudinal study to measure attitudes on the part of law students (pre- and post-course) would be valuable in this regard, especially if more than one institution was to take part, both to increase the student sample size and to allow for comparisons between courses taught in different ways.

V Conclusion

Reflecting on a global survey of animal law courses, Peter Sankoff wrote in 2008:

*Hopefully, five to ten years from now, neither full-time nor adjunct members of academic staff will face impediments in getting a course up and running in their own institution. Although there is still a long way to go in terms of using the law to attain a better world for the animals that live in it, the continued development of the subject in law schools is doing an excellent job of putting in place a framework that will give future lawyers the tools to take up this vital challenge.*

I share this generally optimistic assessment of the future of animal law, and especially of the role it has to play in improving the lives of animals. However, as we approach the 10th anniversary of animal law in Australia, the time is right to be thinking about the future direction of the discipline and of the ways in which it might be further developed.

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28 There has been some research on student attitudes in response to veterinary and animal science courses: see, eg, Susan J Hazel, Tania D Signal & Nicola Taylor, 'Can Teaching Veterinary and Animal Science Students about Animal Welfare Affect Their Attitude towards Animals and Human-Related Empathy?' (2011) 38 Journal of Veterinary Medical Education 74.

29 Sankoff, above n5, 142.