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Joanna Kyriakakis
Monash University

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EMBEDDING ANIMAL LAW INTO LAW SCHOOL CURRICULA: THE POSSIBILITIES OF STRATEGIC UNIT DESIGN

JOANNA KYRIAKAKIS*

I INTRODUCTION

Animal law has grown at a remarkable rate in legal education in recent decades. Animal law is the study of laws ‘in which the nature – legal, social or biological – of non-human animals is an important factor’.¹ At its simplest, it concerns the regulation of relationships between human and non-human animals.² It equips students with an understanding of legal philosophies, principles, cases, statutes, voluntary codes, and regulations that either directly or indirectly affect the standing, rights and welfare of animals. While the growth of animal law in law schools is most pronounced in the United States, Australia appears to be following in its stead.³ Since the first animal law unit was offered by the University of New South Wales in 2005, there are now 15 Australian law schools with animal law appearing on their elective lists.⁴ Among these is Monash University, where I delivered the inaugural animal law class to an enthusiastic and engaged group of 95

* Senior Lecturer, Monash University Faculty of Law and Deputy Director, Castan Centre for Human Rights Law. Email: joanna.kyriakakis@monash.edu.

¹ Sonia Waisman, Pamela Frasch and Bruce Wagman, *Animal Law Cases and Materials* (Carolina Academic Press, 5th ed, 2014) xxxi.

² Deborah Cao, *Animal Law in Australia and New Zealand* (Lawbook Co, 2010) 3.

³ See, eg, Peter Sankoff, ‘Charting the Growth of Animal Law in Education’ (2008) 4 *Animal Law Journal* 105. For a brief history of the rapid uptake of animal law in American universities, see: Joyce Tischler, ‘A Brief History of Animal Law, Part II (1985 – 2011)’ (2012) 5 *Journal of Animal Law and Policy* 27, 36-41.

⁴ These are: Macquarie University, Southern Cross University, University of New South Wales, University of Sydney, University of Wollongong, University of Technology Sydney, Australian National University, La Trobe University, University of Melbourne, Monash University, Bond University, Griffith University, Flinders University, University of Adelaide, and University of Tasmania. This list is taken from: Voiceless the Animal Protection Institute, *Study Animal Law* <<https://www.voiceless.org.au/animal-law/study-animal-law>>. It bears noting that animal law can also appear as a topic taught in other law subjects – such as in property, administrative or tort law – and can in some instances be taught in non-law contexts. An example of the latter is a subject ‘Animals and the Law’ taught at the University of Adelaide in the School of Animal and Veterinary Sciences. It is beyond the scope of this article to canvass the extent and possibilities of teaching animal law in such cross-disciplinary settings.

undergraduate law students in 2015. In addition to the increasing appearance of animal law in law school curricula, there are also growing opportunities in Australia for students to develop their legal skills in applied contexts within the field, for example through student moots dedicated to animal law issues⁵ and the creation of animal law clinics and community legal centres.⁶ These are mutually reinforcing developments that strengthen the educational opportunities for students of animal law and that validate animal law as a serious field of legal education and practice.

From the perspective of the local animal protection movement, the presence of animal law as a regular subject at Australian law schools is a laudable goal. The subject's embeddedness in law school curricula can have flow-on effects that benefit the broader social movement.⁷ Among other things, providing more law students with the opportunity to study animal law produces future lawyers, legislators, policy makers, and judges attuned to the social conditions of animals and to the role of law in constructing, perpetuating, mediating and changing those conditions. The routine teaching of animal law at a law school can foster an institutional environment that supports an associated research culture focussed on issues pertaining to animal protection, particularly where the subject is taught by tenured academics. Greater research in animal law is, in turn, crucial to deepening and broadening the knowledge base within the discipline.

Given the esteem in which law schools are often held within the general community and their unique role in developing concepts of justice, the presence of animal law in prestigious law schools may also assist in positioning the animal protection movement within popular and legal discourses as a legitimate contemporary social justice movement. Favre, for example, notes the significance of the engagement of Harvard Law School in generating momentum in the animal law movement.⁸ Many animal protection organisations are alert to this relationship between animal law education and the goals of animal protection. In Australia, Voiceless the Animal Protection Institute is committed to growing animal law at Australian universities by, among other things, supporting the development of model animal

⁵ The first and so far only moot dedicated to animal law in Australia is the Australia New Zealand Interschool Moot on Animal Law, which has run annually since 2014.

⁶ In Australia, these include the Animal Law Institute (established in 2015); the Animal Law Clinic, a joint initiative of Lawyers for Animals and the Fitzroy Legal Service; and the Barristers Animal Welfare Panel (established in 2006).

⁷ Peter Sankoff, 'Animal Law: A Subject in Search of Scholarship' in Peter Sankoff and Steven White (eds), *Animal Law in Australasia: A New Dialogue* (The Federation Press, 2009) 389, 390-392. Such reasoning underscored the decision by US television personality Bob Barker to donate a significant endowment gift to Harvard Law School for teaching, research and student opportunities in animal rights law: Taimie L Bryant, 'The Bob Barker Gifts to Support Animal Rights Law' (2010) 60 *Journal of Legal Education* 237, 237-244.

⁸ David Favre, 'The Gathering Momentum' (2005) 1 *Journal of Animal Law* 1, 2-3.

law curriculum materials that can be used by educators as a shared educational resource.⁹

The value of animal law has also been proclaimed from the perspective of providing a quality legal education. For example, Sankoff argues that animal law courses are likely to advance a number of common core objectives of legal education. These include prompting students to reflect upon the nature of legal interests and how they are justified and operate, how extra-legal factors influence the purpose and operation of law, as well as by compelling deeply felt student engagement with the social significance of law.¹⁰ To demonstrate such claims, one need only look to some recent events that provide rich case studies in the field of animal law. The live export and greyhound racing industries were recently the subject of significant public controversy in Australia when details of animal suffering in those industries were revealed through investigative journalism exposés.¹¹ In both instances, legislators responded to the sustained public concern those reports generated through inquiries and regulations aimed at reducing the harms suffered by animals in both industries.¹² But simultaneously laws have been pursued that would increase penalties for trespasses in animal industry contexts that directly link to the public exposure of what occurs there.¹³

Both case studies highlight how closely and directly law, politics, public concern and economic interests bear upon the material conditions of animals. Discussing the virtues of public international law to legal education, Klabbers points to characteristics of that subject that make it a particularly useful heuristic device and thus valuable to

⁹ One of Voiceless' core areas of focus is legal education: Voiceless the Animal Protection Institute, *Animal Law* <<https://www.voiceless.org.au/animal-law>>. In 2015, the author and Professor Christine Parker were the recipients of a Voiceless small grant for work related to building the network of animal law teachers in Australia. They continue to support the development of a model curriculum for animal law.

¹⁰ Sankoff, above n 7, 394-399.

¹¹ Australian Broadcasting Commission, 'A Bloody Business', *Four Corners*, broadcast 30 May 2011: Transcript, Episode and Additional Materials available at <<http://ab.co/1vv7SqQ>> (on animal violence in the live export industries); Australian Broadcasting Commission, 'Making a Killing', *Four Corners*, broadcast 16 February 2015: Transcript and Episode available at <<http://www.abc.net.au/4corners/stories/2015/02/16/4178920.htm>> (on animal violence in the greyhound racing industry).

¹² For a discussion and materials on the greyhound racing industry scandal and legal response, see: Law Radio Podcast, 'A Dog Is Forever. Unless it is a Racing Greyhound' 26 August 2016 <<https://lawradio.net/2016/08/26/a-dog-is-forever-unless-it-is-a-racing-greyhound/>>.

¹³ For recent revelations about industry-government tactics to crack down on animal rights groups and their ability to expose animal industry practices, see Paul Farrell, 'Barnaby Joyce and NSW Ministers Target Charity Status of Animal Rights Groups', *The Guardian* (Australia) 8 December 2016 <<https://www.theguardian.com/australia-news/2016/dec/08/barnaby-joyce-and-nsw-ministers-target-charity-status-of-animal-rights-groups>>. For a discussion of the moral problem of so-called ag-gag laws, see Larissa Wilson, 'Ag-Gag Laws: A Shift in the Wrong Direction for Animal Welfare on Farms' (2014) 44 *Golden Gate University Law Review* 311, 311 – 335.

producing adaptable lawyers who can thrive in an increasingly globalised legal marketplace. These characteristics are the field's wide substantive scope, comprising all or nearly all human activities, and the way in which it involves a unique mix of public and private institutions.¹⁴ Notably, these attributes are shared by animal law, which similarly intersects with almost every disciplinary area of law and engages both the public and private law regulatory matrix. Within this collection, Walkden-Brown plots the merits of animal law to law school curricula against the distinct discourses of legal education that exist, and can compete, in law schools. His preliminary conclusions are that the subject does appear to be a good vehicle for achieving a diverse range of educational goals and to implement different approaches to the nature and purpose of legal education.¹⁵ He also identifies a strategic benefit to an educator's self-awareness as to the ways in which her animal law unit corresponds with, and reflects, a particular legal education discourse in terms of marketing the subject to her Faculty, University or student body, as the case may be.¹⁶

Indeed, despite the growth of animal law in law schools around the world, some educators may still face institutional resistance to animal law.¹⁷ This contribution explores how the goal of embedding animal law as a regular feature of law school curricula might be approached through strategic thinking in the design of animal law subjects that takes into account the particular research strengths, educational goals, or identity of the educator's law school. There is nothing particularly novel about the idea of tailoring content, delivery methods and learning objectives of a subject to suit the goals of a teacher and/or the culture of her institution. Arguably, something along these lines is undertaken by any teacher when crafting a new subject, whether consciously or intuitively.¹⁸ Having said this, animal law may have a greater level of pliability relative to most other law subjects. Animal law straddles different areas of doctrinal law and jurisprudence. Its relative newness in Australian legal education provides a level of freedom from entrenched expectations regarding scope and content, and it is also unfettered by practical admission requirements.

My modest contribution aims to prompt creativity regarding curriculum variants for a generalist animal law unit that aligns the subject with a law school's existing teaching and research strengths and market identity, which may facilitate institutional support. To do so, the paper is structured as follows. Part II briefly identifies the phenomenon of institutional resistance to animal law as a prompt to strategic thinking regarding the alignment of an animal law unit with the goals and identity of an educator's institution. Part III suggests a

¹⁴ Jan Klabbers, 'Legal Education in the Balance: Accommodating Flexibility' (2006) 56 *Journal of Legal Education* 196, 198-199.

¹⁵ Jackson Walkden-Brown, 'Digesting Discourse: How Animal Law Facilitates High Quality Legal Education' (2017) 11 *Australian Animal Protection Law Journal* 60-71.

¹⁶ *Ibid* 78.

¹⁷ See Part II below.

¹⁸ Sankoff, above n 7, 395.

selection of ‘framings’ of an animal law unit, proposing the content that might be included, skills development that may be achieved and relevant reading materials that might be used.¹⁹ While the focus is particularly upon framing the subject in doctrinal terms, some comments are also made as to the potential of animal law to be a vehicle for different educational goals related to assessment styles and skills development. Part IV concludes with some of the benefits and risks of this kind of course tailoring strategy.

II THE POLITICS OF TEACHING ANIMAL LAW

In 2006, Peter Sankoff conducted a survey of animal law teachers from around the world on the nature of their animal law units, how often they were offered and by whom, and how their subject had been received by various audiences.²⁰ The motivation for his project was in part political: to create a record of the phenomenal growth of the subject in law school curricula and to demonstrate how animal law is viable as a regular law school offering.²¹ A subject of his survey was the challenges academics had faced when they sought to teach animal law. The motivation behind this aspect of his research was Sankoff’s own experiences of the battles that continue to exist to convince some course administrators that animal law is a legitimate subject engaging sophisticated and complex legal concepts.²²

Sankoff’s survey revealed that many, though by no means all, legal educators had experienced some institutional impediments to securing a regular animal law offering.²³ The challenges identified included: poor student demand due to undesirable class scheduling by course administrators; the resources of tenured academics being demanded in other subjects; and a range of general institutional resistances. Of the latter, reports ranged from comments or jokes from colleagues tending to undermine the legitimacy of the subject, to firmer collective opposition to the subject being taught at all. Reviewing the survey responses, Sankoff concludes that many of the challenges described by participants were underpinned by the low valuation of animal law that is still held by some course administrators and the perception that animal law is not a legitimate subject for a serious law school.²⁴ As a result, he argues that animal law teachers need to be vigilant to such

¹⁹ The availability of resource materials is a common requirement of new courses. In the United States, the development of a scholarly case book to support the teaching of animal law has been linked to the growth of the subject across the country: Tischler, above n 3, 54.

²⁰ Sankoff, above n 3, 110-113 (describing research methodology) and 143-144 (the survey questions).

²¹ Ibid 109-110.

²² Ibid 108-110.

²³ Sankoff reports that 25% of the surveyed teachers of those universities that have offered animal law courses as part of their regular curriculum reported some form of impediment to teaching animal law. In addition, 11 animal law courses had begun but subsequently been terminated over the ten year period prior to the survey: Ibid 132. On the impediments identified, see 132-135.

²⁴ Ibid 135.

attitudes and to counter-act those through strategies that aim to increase the field's acceptance. One such strategy has been to highlight the phenomenal progress of animal law within legal education so far:²⁵

In order to surmount these obstacles, it is critical to recognize that the progress being made in developing this teaching and research area is one of the strongest possible arguments in favour of treating it as a "serious" discipline. Those of us who wish to develop animal law as a core subject interest have a strong motive to publicize and make use of the gains made by our colleagues. Trying to get a "novel" course onto the curriculum at conservative faculties - especially where the subject is perceived as being on the fringes of legal study - is a much more challenging task than establishing a course that is already taught at reputed law schools like Harvard, Duke and NYU.

The challenge to gain a foothold in legal education today is likely to be greater in law schools outside of the United States, where animal law has yet to find the same level of acceptance.²⁶ For example, whilst 15 law schools in Australia identify animal law as an elective offering, only a portion of those are routinely, rather than irregularly, offered.²⁷ A similar challenge existed in the United States in the early years of animal law in education, which in turn has been likened to the circumstances that faced environmental lawyers.

In the case of the latter, there was at times a resort to stealth in order to enter the law school curriculum as outsiders.²⁸ In the United States, however, the discussion is now shifting to the question of how to grow the influence of animal law in education 'on the outside world where concrete advancements for animal protection can be made'.²⁹ Senatori and Frasch, for example, warn educators not to 'rest on their laurels' but to continue to re-design animal law courses in such a way as to maximise the engagement of a diverse student body and to grow partnerships with specialists from related disciplines.³⁰

III FRAMING AN ANIMAL LAW UNIT

For some of the reasons identified above, it remains useful to think about the ways in which animal law pedagogy can be strengthened, its influence and appeal broadened, and how we might facilitate its embeddedness in legal education, such as is now true of environmental law. For some educators, thinking strategically about how their animal law subject might be framed and delivered so as to align it with the research and teaching identity or directionality of the educator's

²⁵ Ibid 109.

²⁶ Ibid.

²⁷ For example, whilst both University of Melbourne and Sydney University are described as offering animal law, in neither case has the subject been offered in recent years. Likewise, Animal Law was first offered at Monash University in 2015, despite being listed as an elective offering since 2012.

²⁸ See, eg, Megan Senatori and Pamela Frasch, 'The Future of Animal Law: Moving beyond Preaching to the Choir' (2010) 60 *Journal of Legal Education* 209, 212.

²⁹ Ibid 210.

³⁰ Ibid.

institution may be one way to gain a foothold. For example, a teacher might consider how the teaching of animal law could align with an existing faculty research network or centre, thus creating linkages and opportunities that could enrich both the unit and the learning opportunities for the students, as well as feeding into the work of the research group. A teacher might consider how the subject could align with her law school's self-identify or *brand* or with any existing or emerging educational discourses and goals – for example to be a leading clinical legal educator or social justice faculty or to move towards problem based skills development in classes. Apart from potentially rendering an animal law course more appealing to course administrators, this strategy could also increase a diversified student audience by tapping into a student market that may otherwise not realise the relevance of animal studies to their existing interests and goals. With this in mind, in this part I suggest some ways in which an animal law unit might be viewed, each of which emphasises different qualities and features of the area as a field of thought and of practice.

In his 2008 paper, Sankoff identified significant variations in the content and delivery of animal law across universities, though three broad kinds of courses emerged. These are litigation courses that concentrate on how to use the courts to help animals and have a strong emphasis on practical skills related to litigation; legal courses that attempt to survey and teach the major laws that affect animals; and jurisprudential courses that focus on the theoretical dimensions of the law related to animals.³¹ The suggestions set out below can be conceived of as sub-categories that overlap to greater or lesser degrees with these three broad kinds of animal law courses.

A Legal Philosophy

A number of commentators on legal education have advocated that an essential requirement of law schools must be a focus upon legal theory. The reason is that legal theory develops a student's ability to think systematically, and can facilitate the kind of switching across issues and possibly even jurisdictions that lawyering will increasingly require in a globalised legal environment.³² This is because students of jurisprudence are trained in how to identify underlying moral principles and how these are distinct from, but related to, legal concepts, as well as being taught to look at the deep lying assumptions and values that underpin various principles and practices of law. This training equips students to think creatively about how foundational ideas can be manipulated in distinct legal contexts.³³

There is no doubt that animal law can be delivered with a singular or primary focus on theory. Indeed, Sankoff's survey reveals that nearly half of the animal law units offered around the world fall into this

³¹ Sankoff, above n 3, 137-140.

³² See, eg, Klabbers, above n 14, 197-198.

³³ *Ibid.*

category.³⁴ These are courses that don't necessarily address in any detail specific legislation related to animals, for example, how criminal, tort, administrative, family, property, contract or constitutional law interplay with the interests of animals. Rather the focus is upon 'the difficult moral and legal questions that surround the legal personhood of nonhuman animals and whether we should be able to use and abuse them as we do'.³⁵ Most animal law courses involve at least some engagement with legal philosophy, usually in terms of introducing students to the two main schools of animal ethics: utilitarianism and rights based approaches. There are, however, many other philosophical approaches to the moral concerns that underpin public policy and law that an animal law course could engage with.

In my first course of animal law, I dedicated a week and a half to animal ethics and legal philosophy, after which time the class was regularly invited to reflect back on the ways in which those philosophies interacted with the laws and regulatory approaches we were studying.

Even so, I wasn't able in that time to explore lesser known approaches to animal ethics and how they might bear on the development of law, such as feminist ethics of care, earth jurisprudence, or recent political philosophy that explores ideas of animal citizenship. Despite this, student feedback indicated that this aspect of the course was among the most significant for some of the cohort, with some students reporting that the subject was their first exposure to legal philosophy and to concerted thinking about the relationship between morality, value-systems and law.³⁶ The course thus alerted some of the students to transformative ways to think about their law studies. Usefully, there is now an abundance of materials and dedicated texts that can serve as prescribed reading material in an animal ethics course, including the compilations comprising Beauchamp and Frey's *Oxford Handbook of Animal Ethics*³⁷ and Sunstein and Nussbaum's *Animal Rights: Current Debates and New Directions*.³⁸

B Commercial and Regulatory Studies

Regulatory studies relates to the study of processes or sets of processes by which norms are established and investigates how such norms serve to govern human behaviours. It looks at how norms are created through a variety of social interactions, both within and beyond the formal sources of law, and demonstrates how norm creating and enforcing processes occur 'through plural systems of authority' and

³⁴ Sankoff, above n 3, 138-139.

³⁵ Ibid 139.

³⁶ Feedback from students was obtained both via student comments provided pursuant to open ended questions within the official University 'Student Evaluation of Teaching and Units' (SETU) survey which were completed by 46% of the student cohort, as well as through direct student feedback throughout the semester.

³⁷ Tom Beauchamp and R Frey (eds), *Oxford Handbook of Animal Ethics* (Oxford University Press, 2011).

³⁸ Cass Sunstein and Martha Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford University Press, 2004).

engage ‘a complex of interests and actions’ across both public and private organisations.³⁹ A regulatory (versus strictly legal) approach to the control of social behaviours is often characteristic of fields of activity occurring at the interface of political and economic interests; where the state and the private economic sphere collide.

Animal law is an excellent vehicle through which to expose students, in a tangible way, to the dynamics of commercial regulation.⁴⁰ The most significant group of animals in terms of welfare concerns today are those whose lives occur within the agricultural industry; a group that statistically outnumbers all other categories of animals whose lives intersect with ours.⁴¹ Such animals, and how our interactions with them are controlled, exist at that intersection of public interest and commercial concerns. The processes of norm creation and compliance assurance in the area commonly involve ‘enforced self-regulation or ‘meta-regulation’. This is where the government defers substantive regulatory responsibility to those subject to the norms in question (regulatees) and retains a limited role overseeing the regulatees’ performance of regulating itself.⁴² Much of the ‘law’ impacting upon the material condition of these animals arises through a social process approach of cooperative regulator-industry problem solving.⁴³ Compliance processes are diverse and engage different sources of authority, via licencing schemes, non-government standards, labelling and disclosure, and other market based mechanisms.

The curriculum for an animal law unit framed in terms of its relationship to regulatory studies could allocate up to four weeks exploring basic concepts and principles of regulatory studies, followed by the close study and analysis of norm creation and compliance processes specific to animal law. Such a unit would not be far removed from standard legal courses in animal law, given the prevalence of regulatory approaches within the field. Likewise, many of the contemporary law reform debates within the field revolve around the strengths and limitations of meta-regulatory approaches to improved animal welfare outcomes. To give just one example, codes of practice play a crucial role in the Australian regulatory framework related to animals, with compliance with such codes tending to serve either a

³⁹ Colin Scott, ‘Analysing Regulatory Space: Fragmented Resources and Institutional Design’ (2001) *Public Law* 329, 331.

⁴⁰ For an excellent regulatory analysis of norm creation and compliance regimes in the field of animal law, see Jed Goodfellow, ‘Animal Welfare Law Enforcement: To Punish or Persuade?’ in Peter Sankoff, Steven White and Celeste Black (eds), *Animal Law in Australasia: A Continuing Dialogue* (Federation Press, 2nd ed, 2013) 183-208.

⁴¹ More than half a billion animals are raised in Australia each year for food and food production. In 2012-13, the use of farm animals for meat contributed more than \$14 billion to the national economy, while production of animal-derived products (like wool, milk and eggs) contributed about \$6.7 billion: Katrina Sharman, ‘Farm Animals and Welfare Law: An Unhappy Union’ in Peter Sankoff, Steven White and Celeste Black (eds), *Animal Law in Australasia: Continuing the Dialogue* (Federation Press, 2nd ed, 2013) 61, 61-62.

⁴² Goodfellow, above n 40, 194.

⁴³ *Ibid* 191-198.

defence to cruelty offences or exempting the relevant conduct from the scope of anti-cruelty laws entirely.⁴⁴

However, industry plays a crucial role in the development of such codes,⁴⁵ raising questions such as those noted above. As a result, and in light of (among other things) the animal law literature regarding a conflict of interest in farm animal welfare regulation making,⁴⁶ the Australian Productivity Commission has recently proposed a slate of regulatory options at a national and state and territory level aimed towards ensuring ‘separation between agriculture policy matters and farm animal welfare monitoring and enforcement functions’.⁴⁷ These kinds of policy debates can be investigated by students through the regulatory studies lens.

C *Social Justice and Human Rights*

Animal law can also be approached from the perspective of the broader quest for social justice. It can be linked to other movements that preceded it and that likewise sought to address injustices created through the dynamics of power and the exclusion or marginalisation of certain vulnerable groups from our ethical and legal communities. For this reason, the subject could be framed in a way that highlights its linkages to earlier social justice movements, such as women’s rights or environmentalism, and the ways in which social movements can translate into legal changes that would once have been considered radical. It can also be used to explore the often unspoken limitations of particular contemporary mainstream social movements. For example, human rights law rests upon claims regarding the inherent dignity of human beings, a foundational idea that often remains un-interrogated.⁴⁸ Animal law raises questions about why it is that human-ness is a necessary quality for rights. An example is the Melbourne University ‘Human Rights and Animal Ethics Research Network’, which frames animal studies in this way.⁴⁹ Approached through such a lens, an animal law unit might be marketed as a complement to a human rights or social justice focus of a law school. Students can be invited to engage in a

⁴⁴ *Animal Welfare Act 1992* (ACT) s 20; *Prevention of Cruelty to Animals Act 1979* (NSW) ss 24 and 34A; *Animal Welfare Act 1999* (NT) s 79(1)(a); *Animal Care and Protection Act 2001* (Qld) s 40(1); *Animal Welfare Act 1985* (SA) ss 42A, 43; *Animal Welfare Act 1993* (Tas) s 4; *Prevention of Cruelty to Animals Act 1986* (Vic) ss 6, 7, 11; *Animal Welfare Act 2002* (WA) s 25.

⁴⁵ Alan Pearson, Kathleen Plowman and John Topfer, ‘Animals and the Law in Australia: A Livestock Industry Perspective’ (2007) 91 *Australian Law Reform Commission - Reform Journal* 25, 26-27.

⁴⁶ Australian Government Productivity Commission, *Regulation of Australian Agriculture* Final Report (Report No 79, 2016) 38 – 39.

⁴⁷ *Ibid* 38 (Recommendation 5.2). See, generally, Ch 5: ‘Regulation of Farm Animal Welfare’.

⁴⁸ Samantha Besson, ‘Justifications’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (Oxford University Press, 2nd ed, 2013) 34-52.

⁴⁹ Faculty of Arts, *Human Rights and Animal Ethics Research Network*, University of Melbourne <<http://humananimal.arts.unimelb.edu.au/>>.

deeper analysis of foundational ideas within related social justice movements, including the idea of personhood as a basis for rights and the relationship of that concept to moral theories, empirical realities and world views. Students can also be invited to consider how legal frameworks that were devised in response to quite distinct social justice goals might overlap with, and be utilised to achieve, animal welfare outcomes, with environmental law being a prime example.⁵⁰

D *Transnational Law*

There is a movement toward law school curricula that emphasize transnational law.⁵¹ This is truer in the United States, but there are stirrings of the same movement to a lesser extent within some Australian law schools.⁵² Transnational law is interested in the way norms are today generated not only within states or between states, but also through other informal interactions on the supra-national level.⁵³ A curriculum that emphasizes transnational lawyering seeks to prepare law students not only to be able to understand how such norms evolve and what they are, but also to have the skills to shift throughout their careers between different areas of law impacted by global developments and possibly even to work across different national and international jurisdictions.⁵⁴

There is the potential to teach animal law placing singular or significant emphasis upon issues of transnational law. There are a range of issues that arise at the intersection of animal law with transnational law. These include: the out-sourcing of animal cruelty to other jurisdictions; the way in which world trade organisation rules impact upon domestic welfare regulation; international laws relating to the use of the sea and protection of endangered species; patenting of animals; comparative developments in animal welfare protections and animal rights; the prospects and possible impacts of a treaty on animal welfare; and the live export trade. Animal law practitioners have, in fact, advocated that the future development of the field should involve more and better attention to how animal exploitation industries are globalizing and the resistances to those industries, as well as grow ties with international NGOs and stakeholders in other national

⁵⁰ On the ways in which environmental law can influence and inform the animal law movement, see Randall S Abate (ed), *What Can Animal Law Learn From Environmental Law?* (Environmental Law Institute, 2016).

⁵¹ See, eg, W Michael Reisman, 'Designing Law Curricula for a Transnational Industrial and Science-Based Civilization' (1996) 46 *Journal of Legal Education* 322; Peter L Strauss, 'Transsystemia – Are We Approaching a New Langdellian Moment? Is McGill Leading the Way?' (2006) 56 *Journal of Legal Education* 161.

⁵² For example, Monash Law has recently introduced a unit called 'The Global Lawyer' which focusses upon developing the knowledge and skills that global lawyering will require.

⁵³ Sébastien Lebel Grenier, 'What is Transnational Legal Education' (2006) 56 *Journal of Legal Education* 190.

⁵⁴ *Ibid*; Klabbers, above n 14.

jurisdictions.⁵⁵ Usefully, there are again a number of texts that now exist that could serve as a prescribed reader or the source of materials for students in a transnational animal law unit, such as Fitzgerald's *International Issues in Animal Law: the Impact of Environmental and Economic Law upon Animal Interests and Advocacy*.⁵⁶

E *Advanced Lawyering and Clinical Legal Education*

Within this volume, both Sankoff and Walkden-Brown identify animal law as an ideal vehicle through which to develop advanced lawyering skills in students.⁵⁷ In this sense, animal law can be particularly valuable to a Faculty that wishes to develop 'capstone' units that allow students to recognise and consider the application of principles across the spectrum of core substantive subjects they have studied.⁵⁸ Animal law offers this potential as it is both wide in scope, crossing over almost all of the core law subjects, and it involves a mixture of both public and private law institutions. Students could be invited to apply their knowledge of laws and principles developed in previous subjects like family, property, torts, administrative, civil procedure, constitutional, environmental, and criminal law, through case studies and scenarios that arise in real world animal law practice. This approach to an animal law unit can not only serve to develop in students the crucial skill of issue spotting and problem solving, but given the shift of emphasis from new content to the application of previous learning, class time can emphasize the development of specific lawyering skills, such as negotiations, advocacy, memos of advice, drafting pleadings and so forth. Animal law can also be linked to animal law mooting opportunities.⁵⁹ Significantly, the Australian New Zealand Intersarsity Moot on Animal Law was established in 2014.⁶⁰ The existence of this program now provides an additional incentive for law schools that self-identify as providing experiential learning opportunities to students, to offer animal law as a pathway to link students to this new competition. The pedagogical value of incorporating mooting opportunities into law school curriculum are considerable, including enhancing a range of practical lawyering skills

⁵⁵ 'Animal Law in Court and Congress: A Roundtable with Practitioners' (2010) 60 *Journal of Legal Education* 285, 289. For an outline of how the animal law movement has already begun to internationalise, see: Tischler, above n 3, 43-47.

⁵⁶ Peter Fitzgerald, *International Issues in Animal Law: The Impact of Environmental and Economic Law upon Animal Interests and Advocacy* (Carolina Academic Press, 2012).

⁵⁷ Peter Sankoff, 'Learning by Doing: the Benefits of Experiential Learning in Animals and the Law' (2017) 11 *Australian Animal Protection Law Journal* 15-32; Walkden-Brown, above n 15.

⁵⁸ Kathy Hessler, 'The Role of the Animal Law Clinic' (2010) 60 *Journal of Legal Education* 263, 270.

⁵⁹ Dianne Sullivan, Holly Vietzke and Michael Coyne, 'Animal Rights Advocacy Programs: Champions for Animal Rights' (2009) 3 *Journal of Animal Law and Ethics* 173, 180-181.

⁶⁰ The Animal Law Institute, 'The Australia New Zealand Intersarsity Moot on Animal Law' (2015) <<http://www.ali.org.au/animal-2015/>>.

in students, developing professional legal ethics, and as a mechanism for deep doctrine learning.⁶¹

This approach to teaching animal law also links to the potential for a law school focussing on clinical legal education to incorporate animal law into those practices. This could involve an animal law advocacy unit that facilitates the partnering of students with institutions and lawyers working in animal protection litigation or involved in developing model legislation or public policy on animal protection,⁶² or linking substantive teaching to university legal clinics that incorporate some degree of animal law practice. In the United States, for example, the Lewis & Clark Law School operates an animal law clinic that enables their students to conduct research, represent clients and work on projects in the area of animal law. Students undertake a wide range of clinical activities including transactional work, conducting field work, strategic planning, litigation preparation and observing legal proceedings, to name a few.⁶³

Animal law clinics add significant value to a law school both in terms of the learning opportunities they provide to students but also in providing a means of contributing to social justice outcomes in the wider community, the latter of which is a core value in many law school mission statements.⁶⁴ Hessler identifies a number of benefits of university animal law clinics in these terms. Beyond those benefits common to any kind of law clinic, animal law clinics additionally provide a service to the community that is currently lacking, as well as promoting in students skills in ‘ethical advocacy’ (lawyering where the client’s interests may not be clear) and in looking beyond the law to find practical and meaningful solutions.⁶⁵

F *Mainstreaming Animal Law*

A different approach to the incorporation of animal law into legal education may be through ‘mainstreaming’. Mainstreaming in legal education refers to the incorporation of a particular set of ideas or principles into the wider range of traditional law subjects with which those ideas or principles inter-relate, so that they can be debated in those larger conversations regarding doctrinal development and can inform thinking about the meaning of law.⁶⁶ This was a strategy debated within feminist legal scholarship as a means of injecting into legal education feminist critiques and insights about the law.⁶⁷ Applied to animal law this might involve the incorporation of case studies that highlight the ways in which law connects with the social condition of animals in

⁶¹ Paula Gerber and Melissa Castan, ‘Practice Meets Theory: Using Moots as a Tool to Teach Human Rights Law’ (2012) 62 *Journal of Legal Education* 298, 298 – 310.

⁶² See, eg, Sullivan et al, above n 59, 178-179.

⁶³ Hessler, above n 58, 276.

⁶⁴ Ibid 282.

⁶⁵ Ibid 267-270 and 275.

⁶⁶ Carrie Menkel-Meadow, ‘Mainstreaming Feminist Legal Theory’ (1992) 23 *Pacific Law Journal* 1493, 1514.

⁶⁷ Ibid 1493-1542.

subjects such as administrative law, contract, family law or tort, to name a few. It might also involve the incorporation of the various branches of animal ethics into more generalist legal philosophy courses. This type of approach involves a more whole of faculty commitment to the issues and concerns that arise in animal law or at least the engagement of a wider range of tenured academics. Similar ideas have been discussed in terms of mainstreaming sustainability issues into education through the injection of sustainability related case studies and ecological viewpoints into an educator's teaching practices.⁶⁸

The categories and examples listed above are by no means exhaustive. Other possibilities may include viewing animal law through the insights of criminology and studies of patterns of violence⁶⁹ or through the lens of law and economics.⁷⁰ The point is simply that significant scope for variation exists and thinking through the ways in which this variability might enable an animal law unit to be catered towards the institutional setting in which it will be delivered may have some benefits.

IV IMPLICATIONS OF STRATEGIC 'FRAMING'

Throughout this paper, I have suggested that a benefit of strategic thinking about how an educator frames their teaching of animal law may be the implications for marketing a new course to try to influence course administrators and facilitate the increased acceptance and embeddedness of animal law in Australian legal education. But beyond such motives, there are other potential benefits that may flow from this kind of creative thinking around animal law curriculum design.

In reflecting on the creative moments in the history of environmental law that helped grow the momentum of the field, Rodgers identifies the value of 'paradigm-shifters': those who helped to re-define the field of endeavour by providing alternative scaffoldings within which ideas could be developed.⁷¹ In academia, this was reflected by the bringing of a variety of perspectives to bear on the field

⁶⁸ For example, the Monash Sustainability Institute (MSI) (now the Monash Sustainable Development Institute) has implemented an 'Education for Sustainability' program that works with Monash University educators to 'integrate sustainability into the units they teach in novel and interesting ways': MSI, *Education for Sustainability* (12 August 2015) Monash University <<http://www.monash.edu/sustainability/programs-initiatives/education-sustainability>>.

⁶⁹ For examples of the teaching of animal law through the perspective of criminology, see Animals & Society Institute, *Human Animal Studies: Courses in Criminology and the Law* <<http://www.animalsandsociety.org/human-animal-studies/courses/has-courses-in-criminology-and-law/>>. On the potential of the field's engagement with the problem of the non-human animal, see: Piers Beirne, 'Criminology and Animal Studies: A Sociological View' (2002) 10 (4) *Society & Animals: Journal of Human-Animal Studies* 381, 81-386.

⁷⁰ One example of the interaction between animals and principles of law and economics is the so-called 'tragedy of the commons': Jim Leitzel, *Concepts in Law and Economics: A Guide for the Curious* (Oxford University Press, 2015) 76.

⁷¹ William Rodgers, 'The Most Creative Moments in the History of Environmental Law: The Whos' (1999) 39 *Washburn Law Journal* 1, 22-23.

of environmental law, including ‘command-and-control regulation, environmental ethics, economic analysis, public choice theory, and evolutionary approaches.’⁷² In the area of animal law education, it has been suggested that the plan for future growth should include the ways in which the movement could widen the range of animal law course offerings.⁷³ The innovations suggested in this paper essentially invite thinking around scholarly variants of animal law subjects, or the different scaffoldings of ideas, which might serve to enrich not only what is available to students but to prompt broader and deeper academic discourse in the field more generally.

Another possible benefit may lie in the ways scholarly variants of animal law subjects might assist in bringing the subject to the attention of a wider range of students who may not otherwise realise how animal law intersects with their existing learning interests and goals.⁷⁴ By linking animal law subjects with course ‘tracks’ that students might be engaging in, such as regulatory law, law and economics, or international and comparative law, the ability for a diverse range of students to participate in the study of animal law may be increased.⁷⁵ Similarly, this approach may be expanded beyond a law school to encompass potential cross-disciplinary studies available to students from a range of faculties. The value of growing inter-disciplinary thinking and cross-disciplinary professional links within animal law has been linked to growing the influence of the field.⁷⁶ There is also the simple fact that it is impossible to do everything well, so that narrowing the focus and goals of an animal law course may enrich the learning outcomes that can be achieved.

This is not to say that the strategy suggested here is without risk. For example, there is the possibility that the focus of an animal law subject may be so removed from the concern of improving the conditions of animals that it simply reinforces or confirms existing models of exploitation.⁷⁷ This would be a concern for those educators who adopt radicalism as their directing philosophy, which considers the goal of social and political change to be crucial to the purpose of legal education.⁷⁸ There may also be grounds for concern where an educator feels compelled to adopt an approach to the teaching of animal law entirely as a response to institutional pressures and despite her own teaching philosophies and goals. Such circumstances may give rise to legitimate concerns regarding academic freedom given the way in

⁷² Ibid 23.

⁷³ Tischler, above n 3, 41.

⁷⁴ On the need to broaden the student audience and techniques to do so, see Senatori and Frasc, above n 28.

⁷⁵ Bryant, above n 7, 250.

⁷⁶ Senatori and Frasc, above n 28, 217-220 and 230-231; Sullivan et al, above n 59, 191-192; ‘Animal Law in Court and Congress’, above n 55, 289-90

⁷⁷ Bryant, above n 7, 238.

⁷⁸ Walkden-Brown, above n 15, 76-77.

which this interferes with, and undermines, the autonomy of academics, a long standing value within the academy.⁷⁹

V CONCLUSION

In the United States, Lewis & Clark Law School have developed an LLM course in animal law comprised of a diverse variety of animal law subjects.⁸⁰ The prospects of such an arrangement is likely to be some way off for most Australian law schools, where securing the opportunity to regularly teach a singular animal law subject can in itself still be a challenge. Nonetheless, it remains true that there are many ways in which the issues, principles and practices with which animal law is concerned can be approached in the tertiary education context. Exploiting existing research and teaching strengths, and the self-identity and goals of one's institution, may be strategically valuable not only in terms of securing institutional support but also in maximising opportunities for student learning and for the cross pollination of research and teaching practices. Diversity in the paradigms through which we approach animal law in academia may also assist in deepening the discipline and in promoting and extending the influence of animal law into the future.

⁷⁹ For a critical treatment of some of the purported tensions between academic freedom and institutional direction on teaching in law schools, see Nick James, "How Dare you Tell me How to Teach!": Resistance to Educationalism within Law Schools' (2013) 36 *University of New South Wales Law Journal* 779, in particular 804-807.

⁸⁰ *Center for Animal Law Studies: Animal Law LLM*, Lewis & Clark Law School <https://law.lclark.edu/centers/animal_law_studies/animal_law_llm/>. A few other US law schools also offer more than one animal law course: Sankoff, above n 3, 115.