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ANIMAL LAW SYLLABUS DESIGN: A NEW ZEALAND PERSPECTIVE

M.B. RODRIGUEZ FERRERE*

I INTRODUCTION

Since 2013, I have offered a course at the University of Otago's Faculty of Law entitled 'Animals and the Law'. Given New Zealand's reliance upon agriculture,¹ and the fact it can lay claim to 'leading the way' with regards to animal welfare,² it is perhaps surprising that it is currently the only course focusing on Animal Law offered at any of New Zealand's six law schools. I am not, however, a trailblazer. Until he left for the University of Alberta in 2010, Professor Peter Sankoff offered such a course at the University of Auckland, and Dr Ian Robertson has offered a course intermittently at the University of Auckland and University of Canterbury. Despite those precedents, however, I designed my course from 'scratch'. In this short paper, I will describe the structure of the course and explain my reasoning for the content I have included in the course. There is value in sharing syllabus materials and outlining one approach to a subject with many different entry points, and it is my hope that such an account may assist other Australasian legal academics if and when they decide to create their own courses on this important and burgeoning subject.

II THEMES AND GOALS

The course I teach is described and advertised as follows:

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¹ Agriculture comprises 6.0 per cent of New Zealand's gross domestic product (December 2015 quarter, <stats.govt.nz>) whereas, for comparison, it comprises 2.3 per cent of Australia's gross domestic product (in 2015), Peter J Blatt, 'Australia's 'five strong pillar economy': agriculture' *The Conversation* (online), 27 April 2015, <<http://theconversation.com/australias-five-strong-pillar-economy-agriculture-40388>>.

² World Animal Protection, 'New Zealand Leads the Way on our Animal Protection Index' (Media Release, 21 January 2015) <<http://www.worldanimalprotection.org.nz/news/new-zealand-leads-way-our-animal-protection-index>>.

Non-human animals play a number of important roles in our lives. They form the backbone of the New Zealand economy. Some of us treat them as companions. Many of us eat them. Accordingly, just as it does with many other aspects of our lives, the law helps to define and regulate our relationships with animals. This [course] outlines and seeks to critically examine the law's role in this area. It examines the philosophical justifications behind the modern legal treatment and regulation of non-human animals generally, then looks at the legal structures that regulate the treatment, control and welfare of animals in New Zealand.

This hopefully makes the goal of my course clear: not simply to describe the regulation of the relationship between humans and non-human animals³ in this jurisdiction, but also to critique that regulation. The critique takes the form of questioning the fundamentals of that regulation, introducing students to alternative paradigms and frameworks, in a way not dissimilar to the critical legal studies movement. Just as the critical legal studies movement critiqued (*inter alia*) the notion of adjudicative neutrality, and argued that 'every judge is a political actor effecting a political agenda',⁴ students in this course are exposed to writers that argue that far from having an animal-centric focus, animal welfare regulation is based upon and designed to facilitate the exploitation of animals by humans. The normative critique is then supplemented by a descriptive analysis of the regulation and its shortfalls. Although for many, this might seem an obvious approach to teaching such a course, it is not the only approach available. Those who take a purely 'welfarist' approach to animal law might accept the *status quo* as legitimate; instead preferring to focus on the structure and application of that regulation. Such courses might critique issues surrounding that regulation – e.g., the lack of enforcement of animal welfare legislation, or the vagueness of duties imposed upon those in charge of animals – whilst accepting the underlying premise of welfare statutes without further consideration. Alternatively, courses on animal law may take the opposite approach, criticising welfarism and instead choosing to focus entirely on, e.g., the legal status of animals as property; considering whether animals ought to have the status of legal persons; analysing whether animals have the capacity to act as rights bearers; and what a change in those paradigms might look like in a practical sense.

In my view, and as this paper will detail, an animal law course works best when it adopts a hybrid of these two opposing approaches. In this way, it borrows a great deal from the critical legal studies pedagogy: '[h]ow can we hope to have our students understand legal rules and processes without looking behind the façade, to see what is really going on when judges [and legislators] construct these pictures?'⁵ To understand the deficiencies present in New Zealand's regulation of

³ Hereon in, although acknowledging the inaccuracy in distinguishing 'human' from 'animal', I shall use the term 'animal' as shorthand for 'non-human animal'.

⁴ Ian Ward, *Introduction to Critical Legal Theory* (Cavendish Publishing, 2nd ed, 2004), 144-145.

⁵ Jerry L Anderson, 'Law School Enters the Matrix: Teaching Critical Legal Studies' (2004) 54 *Journal of Legal Education* 201, 205.

animal welfare, it is necessary to explore both the historic context of the legal relationship between humans and animals, and the assumptions that pervade our modern approach to that regulation. It is only then that the systemic critiques of a regulatory environment that is otherwise internationally lauded⁶ make sense.

III CONTENT AND RESOURCES

In order to build on those themes, I have split the course into two parts. The first explores the legal and moral status of animals generally; the second explores how that status is manifested in the New Zealand legal system, specifically with regards to the regulation of animal welfare.

A Part A: The Moral and Legal Status of Animals

Before looking to the historic context of animal law, providing students with an outline of the different approaches available to tackle the subject is useful. Jerrold Tannenbaum's 2013 paper, 'What is Animal Law?'⁷ provides an excellent précis of the difficulties facing a subject that has no homogenous or universal definition, and argues for the rejection of a rights-centred definition (which possibly equates best to the popular conception of the subject) in favour of a more descriptive approach.⁸ Thomas Kelch's excellent two-part 'A Short History of (Mostly) Western Animal Law'⁹ then provides the necessary historic context presented in five periods: Ancient; Medieval; Renaissance; Recent Modern and Modern. Only when we understand what caused the advent of modern animal cruelty statutes in the nineteenth century can we understand their modern counterparts are simply stratified versions of those early attempts, and why there is thus resistance from both activist and scientific communities to the *status quo*.

The historic context provided by Kelch is a useful starting point to provide students with (often, their first) exposure to alternative paradigms. After providing the historical context to animal law, I choose to begin with an analysis and critique of Peter Singer's 'All Animals Are Equal',¹⁰ for both its persuasiveness and its historical importance. As arguably the most influential paper in this area of study of its time, Singer's piece introduces the concept of speciesism and is valuable for explaining assumptions made in modern animal welfare

⁶ World Animal Protection, 'New Global Index Shows New Zealand a World Leader in Animal Welfare' (25 November 2014) <www.worldanimalprotection.org.nz/news/new-global-index-shows-new-zealand-world-leader-animal-welfare>.

⁷ Jerrold Tannenbaum, 'What is Animal Law?' (2013) 61 *Cleveland State Law Review* 891.

⁸ *Ibid* 933.

⁹ Thomas G Kelch, 'A Short History of (Mostly) Western Animal Law: Part I' (2012) 19 *Animal Law* 23; Thomas G Kelch, 'A Short History of (Mostly) Western Animal Law: Part II' (2012) 19 *Animal Law* 347.

¹⁰ Peter Singer, *Animal Liberation* (Ecco Press, first published 1975, 2009 ed), 1.

legislation. Often, while students will find his argument (and, it must be said, his now anachronistic examples and terminology¹¹) very jarring, they are engaged by questioning some fundamental assumptions in the human-animal relationship. Paired with Singer's piece, Richard Posner's attempted defence of speciesism¹² gives voice to some students' inevitable intuitive rejection of Singer's argument. Posner's piece, whilst ultimately failing to engage with the arguments of Singer and Steven Wise, does well to illustrate the emotional complexity of the issues raised by the concept of speciesism.

After introducing students to the concept of speciesism, the case is made for animal rights, which while not within Singer's utilitarian paradigm, is a natural successor to the cause he helped foment.¹³ Whilst there is a vast array of sources to choose from, including the seminal works of Tom Regan¹⁴ and Wise,¹⁵ Gary Francione's shorter form¹⁶ of the argument encapsulated in his text *Animals, Property, and the Law*¹⁷ outlines in compelling detail the core argument of the abolitionist movement. By using examples that still have contemporary resonance (the article was written in 1995), Francione shows the centrality of the property status of animals as the core problem in anti-cruelty statutes and the welfarist position itself. Most importantly, Francione illustrates the problem of balancing the interests of humans and animals when the former group is endowed with rights, and the latter is not; the outcome is almost predetermined in humans' favour.

Robert Garner's pragmatic response to the abolitionist movement provides an opportunity to students who have felt instinctively uneasy with Singer's argument against speciesism and Francione's argument for animal rights to defend the *status quo*.¹⁸ By accepting the philosophical strength of Singer's thesis, Garner is able to maintain a defence of welfarism and welfare legislation from a practical perspective. His arguments focus on the flexibility of the term 'unnecessary suffering' to evolve and improve welfare conditions, and that the property status of animals is not a direct cause of the quality of animal welfare legislation (or lack thereof).¹⁹ They provide a good response to the philosophically strong but, arguably, practically weak position of the thinkers the students will have examined thus far.

¹¹ Ibid 19. Singer's use of 'severely retarded' for referring to intellectual disability is one such unfortunate example.

¹² Richard A Posner, 'Animal Rights: Legal, Philosophical, and Pragmatic Perspectives' in Cass R Sunstein and Martha C Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford University Press, 2004) 51.

¹³ Tannenbaum, above n 7, 910-911.

¹⁴ Tom Regan, *The Case for Animal Rights* (University of California Press, 2004).

¹⁵ Steven M Wise, *Rattling the Cage: Toward Legal Rights for Animals* (Basic Books, 2009).

¹⁶ Gary L Francione, 'Animal Rights and Legal Welfarism "Unnecessary" Suffering and the "Humane" Treatment of Animals' (1994) 46 *Rutgers Law Review* 721.

¹⁷ Gary L Francione, *Animals, Property, and the Law* (Temple University Press, 1995).

¹⁸ Robert Garner, 'Animal Welfare: A Political Defense' (2006) 1 *Journal of Animal Law and Ethics* 161.

¹⁹ Ibid 170.

The course then focuses on the practical implications of the core tenet of Francione's argument: the property status of animals. The argument proposed by Wendy Adams in this regard is compelling.²⁰ By first describing the classification role that law plays, and the dichotomy the law creates between 'subject' (humans) and 'object' (everything else, including animals), Adams is able to provide an account of the descriptive and prescriptive power such a classification has, as well as its invalidity.²¹ Adams, perhaps unlike the more polemic writers in this field, also provides an outline of how it might be possible to integrate and accommodate (but not assimilate) the interests of animals in an anthropocentric legal system.²²

The effect of animals' status as property and Adams' approach and solutions are then tested in three case studies. Using such case studies shows the practical application of the various competing approaches to the status of animals, and borrows the technique of critical legal studies movement to explain and expose assumptions in seemingly black-letter law.²³ First, students examine the Ontario case of *Nakhuda v. Story Book Farm Primate Sanctuary*,²⁴ which dealt with the ownership of a Japanese snow macaque dubbed the 'Ikea Monkey': so named because of his escape from his owner's custody into a Toronto Ikea store. The case determined who owned the macaque (named 'Darwin'): Ms Nakhuda or the farm sanctuary where the City of Toronto had placed him after his capture by animal services. The case was entirely decided using common law principles of ownership of wild animals: the presumption is wild animals are only capable of ownership when they are in their owner's possession, subject to limited exceptions.²⁵ Ms Nakhuda and Darwin did not meet any of these exceptions, and thus she was no longer the owner of Darwin once he escaped; the sanctuary, who had possession, was now his owner. Whilst doubtless the Court arrived at the just result (Ms Nakhuda kept Darwin in very unsatisfactory conditions), it is the method that it used to get there which is noteworthy: not once did the Court consider the interests of Darwin and which potential owner was best placed to protect those interests. Such was an effect of Darwin being mere property.

In contrast, the New Zealand case of *Sydney v Sydney*²⁶ – a simple decision over the division of relationship property after a separation – shows an alternative approach. The Sydneys had jointly owned a dog, Milo. Rather than determining who would be the owner simply based on the claims of Mr and Mrs Sydney, the Court held that ownership ought to be decided primarily on the basis of what was in Milo's best interests. Since Mr Sydney had a large rural property and Mrs Sydney

²⁰ Wendy Adams, 'Human Subjects and Animal Objects: Animals as "Other" in Law' (2009) 3 *Journal of Animal Law and Ethics* 29.

²¹ *Ibid* 35-41.

²² *Ibid* 41-49.

²³ Anderson, above n 5, 206ff, where the author shows how to inject critical legal studies analysis into property law through the use of a detailed case study.

²⁴ *Nakhuda v. Story Book Farm Primate Sanctuary* (2013) ONSC 5761.

²⁵ *Ibid* [16].

²⁶ *Sydney v Sydney* [2012] NZFC 2685.

had a small urban apartment, the Court held that Milo would better enjoy the custody of Mr Sydney. Although such an approach was not mandated by the relevant legislation, it did provide the Court with wide discretion on how to approach the matter, and thus this case provides a clear and uncontroversial example where the interests of animals can be prioritised over their status in the law as property. Finally, however, the very recent case of *Finlinson v Police*,²⁷ shows the reverse. In that case, an appeal against a sentence for intentional damage was successful on the basis that the sentencing judge had taken into account that the damage was against the victim's beloved pet horse (Mr Finlinson had shot and killed the horse to spite his ex-partner). Since the crime was one against property,²⁸ the sentencing judge should have not considered the interests of the horse or the special emotional connection that the victim had with the horse when determining a sentence. The pedagogical value of such case studies is to show the various ways that the property status of animals has an impact on their interests, but simultaneously allows students to see (and critique) how that impact is often determined on a case-by-case basis: the courts in both *Sydney* and *Finlinson* might have arrived at very different results had different judges presided.

Finally, this part of the course looks at two instances where human rights are in direct conflict with the interests or rights of animals, in order to consider what happens when the rights of marginalised communities are weighed against the (even further) marginalised interests of animals. First, students look at New Zealand's 2010 ban on *shechita*, more commonly known as 'kosher slaughter', when an exception to normal standards for animal slaughter under New Zealand law that required pre-stunning of cattle and poultry was unilaterally revoked by the relevant Government minister. Joel Silver – a Melbourne barrister – provides an excellent detailed account of *shechita*, its treatment in the law, and its conflict with animal interests,²⁹ and students are asked for their views on whether the consciousness of animals prior to slaughter under *shechita* is reconcilable with the consequences for the Jewish community – and its members' rights to religious practice – of such a ban.

The second example is whether the state has a place in regulating those cultural practices of indigenous peoples which conflict with animal welfare standards. Students look at Dominique Thiriet's analysis³⁰ of practices within Australian Indigenous communities – and the prospects of reconciling those practices with modern standards – as well as the interesting approach of Queensland in its *Animal Care and*

²⁷ *Finlinson v Police* [2016] NZHC 224.

²⁸ *Crimes Act 1961* (NZ), s 269(1): 'Every one is liable to imprisonment for a term not exceeding 10 years who intentionally or recklessly destroys or damages any property if he or she knows or ought to know that danger to life is likely to result.'

²⁹ Joel Silver, *Understanding Freedom of Religion in a Religious Industry: Kosher Slaughter (Shechita) and Animal Welfare* (2011) 42 *Victoria University of Wellington Law Review*, 671.

³⁰ Dominique Thiriet, 'Tradition and Change – Avenues for Improving Animal Welfare in Indigenous Hunting' (2004) *James Cook University Law Review* 159.

Protection Act 2001. That jurisdiction has changed the approach (referenced by Thiriet) from exempting recognised cultural practices from the Act's purview,³¹ to a far more limited exemption (only where such practices cause as little pain as is reasonable).³² Students are asked whether this is either an appropriate compromise, veiled cultural imperialism, or still insufficient regard for the interests of Australia's native fauna.

B Part B: The Regulation of Human-Animal Relationships in New Zealand

The second part of the course looks at New Zealand's regulation of the human-animal relationship. Since it governs most of those various relationships, the *Animal Welfare Act 1999* ('AWA') features prominently in that analysis. After looking at the history and general design of the AWA, students look at its key components. In general, the AWA operates by separating the regulation of 'care of animals' from 'conduct toward animals'. Regarding 'care of animals', those who are in charge of animals have a general obligation to ensure those animals' 'physical, health and behavioural needs' are met,³³ defined by the AWA as what is known elsewhere as the 'Five Freedoms'.³⁴ The regulation of 'surgical procedures' (including what they are, and who may perform them) and the transport of animals is also covered in this part of the AWA.³⁵ Part 2 of the AWA regulates the offending which was hitherto known as cruelty towards animals, and is now known as wilful or reckless ill-treatment of animals. Ill-treatment is defined both in general terms regarding the effect of an action on an animal³⁶ but also includes a range of *per se* offences (e.g. tongue piercing and animal baiting/fighting).

Part 2 also regulates the hunting and trapping of wild animals. Each part has a degree of case law which has elucidated, for instance, the definition of 'in charge' of animal,³⁷ at what point the failure to ensure the five freedoms of an animal becomes ill-treatment³⁸ and the problematic nature of 'unnecessary pain and suffering'.³⁹ In general,

³¹ Ibid 167; *Animal Care and Protection Act 2001* (Qld), s 8, now amended.

³² *Animal Care and Protection Act 2001* (Qld) 41A.

³³ *Animal Welfare Act 1999* (NZ), s 10.

³⁴ *Animal Welfare Act 1999* (NZ), s 4, defined as: proper and sufficient food and water; adequate shelter; the opportunity to display normal patterns of behaviour; physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress; and protection from, and rapid diagnosis of, any significant injury or disease.

³⁵ *Animal Welfare Act 1999* (NZ), ss 15-23.

³⁶ *Animal Welfare Act 1999* (NZ), ss 28-30. 'Ill-treat' is defined in s 2 of the Act as 'causing the animal to suffer, by any act or omission, pain or distress that in its kind or degree, or in its object, or in the circumstances in which it is inflicted, is unreasonable or unnecessary.'

³⁷ *Kunicich v Royal Society for the Prevention of Cruelty to Animals* HC Whangarei, CRI-2008-488-67, 13 October 2009.

³⁸ *Balfour v R* [2013] NZCA 429.

³⁹ *Garrick v Silcock* [1968] NZLR 595 (CA); *Waters v Braithwaite* (1911-13) All ER 677 (KB); *Hawker v Hammett* [1971] NZLR 830 (SC).

however, there is a paucity of consistent case law that helps refine the policy of (and approach to) the AWA. More often than not, I rely on case law that predates the AWA, but this practice is illustrative in itself: despite being hailed as revolutionary, the AWA is still fundamentally similar to its predecessors, and thus that early case law remains (unfortunately) very relevant. Throughout this analysis, students are encouraged to critically assess the performance and structure of the AWA using the approaches learned in the first part of the course. It is through looking at the regulation of the animal-human relationship in practice that students can see how the issues raised by the authors in that part manifest in the legal framework.

After a detailed examination of these core parts of the AWA, students look at its more specialised aspects. This includes, in particular, codes of welfare: delegated legislation that set minimum and specific standards for the physical, health and behavioural needs of animals in particular industries. There are eighteen such codes in operation, covering everything from commercial slaughter and rodeo, to companion cats and llamas.⁴⁰ Codes of welfare are, simultaneously, a positive tool that allows a high degree of specificity in determining welfare standards, and, arguably, one of the AWA's biggest flaws. The National Animal Welfare Advisory Council – the body that usually create such codes (and the regulations enforcing them) before recommending them for acceptance by the relevant minister – may recommend regulations that prescribe standards that 'do not fully meet' the general obligation to ensure the physical, health and behavioural needs of animals referenced above.⁴¹ It is their capacity to undermine the codification of the five freedoms that have made codes of welfare the target of regular criticism⁴² and provide students with a powerful example of the importance of good legislative design.

Other specialised parts of the AWA examined include scientific research, testing and teaching involving animals, enforcement and sentencing. Each part has its own, usually negative, issues that warrant separate and targeted analysis. At the end of this analysis of the AWA, students ought to have a clear understanding and mastery of an entire legislative regime, as well as being able to question the strength of this jurisdiction's claim to being a 'world leader' in animal welfare: progressive legislation in theory is for naught if does not lead to a progressive approach to animal welfare in practice. Students learn to question the worth of broad legislative statements found in the AWA, and the assumption that legislation, by virtue of its status, is always enforced government authorities. Furthermore, possessing the ability to critique welfarism, students are able to question whether such

⁴⁰ A full list is available on the Ministry of Primary Industries' website: <www.mpi.govt.nz/protection-and-response/animal-welfare/codes-of-welfare>.

⁴¹ *Animal Welfare Act 1999* (NZ), s 183A(1)(b).

⁴² See, eg, Peter Sankoff, 'Five Years of the "New" Animal Welfare Regime: Lessons Learned from New Zealand's Decision to Modernize its Animal Welfare Legislation' (2005) 11 *Animal Law* 7; Joanna Tuckwell, 'Animal Welfare Act: Codes of Welfare' [2009] *New Zealand Law Journal* 267.

legislative statements are instead subterfuge for the perpetuation of unjustifiable animal exploitation.⁴³

However, the regulation of the animal-human relationship is not entirely contained within the AWA, and the remainder of the classes are dedicated to New Zealand's regulation of dogs,⁴⁴ this jurisdiction's lack of regulation of some forms of entertainment involving animals⁴⁵ and animals within the wild.⁴⁶ Finally, students are introduced to purely common law approaches to regulating the human-animal relationship, specifically through the law of tort,⁴⁷ and the potential for international law responses to animal rights and welfare.⁴⁸ In this way, I attempt to introduce students first to normative critiques of the human-animal relationship, before detailing the various ways the law regulates that relationship. Approaching the course in this way is not necessary of course: the normative analysis in Part A could always follow, rather than precede, the descriptive quality of Part B, and present alternative approaches to the *status quo*. Or, as noted above at the beginning of this paper, that analysis could be absent from the course altogether. However, it is my experience that students derive a great amount from learning to effectively critique an entire area of the law, and they are best equipped to do if they understand the critiques of the *status quo* before undertaking an analysis of it. Regardless of whether students accept the arguments presented in Part A, they have the ability to question an area of legal regulation, rather than taking it at face value.

IV ASSESSMENT

Topics in which the law has an impact on the animal-human relationship are multifarious, and the course simply does not have capacity to deal with them all. Accordingly, my assessment of students includes a (voluntary) research paper and presentation. This allows those students passionate about a particular area involving animals and the law to undertake a specialised research project that either covers areas not examined in the course or considers an aspect of the course with more depth or application. While I work with each student to develop the parameters of their research project and provide advice on which sources to use in order to commence their research, the project is otherwise self-driven, teaching students skills in both developing an argument and finding the resources to support that argument. Students

⁴³ Anderson, above n 5, 210, with regards to the language of 'property rights'.

⁴⁴ Controlled by the *Dog Control Act 1996* (NZ).

⁴⁵ Most notably thoroughbred horse and greyhound racing, which, although under the purview of the *Animal Welfare Act 1999* (NZ), are predominantly regulated through voluntary industry standards.

⁴⁶ Controlled by various legislation, including the *Wildlife Act 1956* (NZ); *Wild Animal Control Act 1977* (NZ); *Conservation Act 1987* (NZ); and *Marine Mammal Protection Act 1978* (NZ).

⁴⁷ Eger McCartney-Smith, 'Can Nonhuman Animals Find Tort Protection in a Human-Centered Common Law?' (1998) 4 *Animal Law* 173.

⁴⁸ Miah Gibson, 'The Universal Declaration of Animal Welfare' (2011) 16 *Deakin Law Review* 539.

present their research projects at a symposium, which their colleagues in the course (and wider Faculty of Law students and academic staff) attend. Holding such a symposium has the benefit of introducing them to such an event, but also allows other students to learn about topics not covered in the course. Research topics have been as varied as a critique of the 2010 ban on bullfighting in Catalonia, New Zealand's ban on cosmetic testing on animals (introduced in 2015); and an in-depth analysis of caged-egg farming (and the regulation thereof). Students field questions from both their colleagues and from me, allowing them to employ the critical analysis skills learned in the course.

V CONCLUSION

The foregoing discussion details one approach to designing a syllabus for a course in animal law. There are, obviously, many different routes and approaches to animal law. Depending upon the jurisdiction and its regulation of the human-animal relationship, the course may well need to reflect different assumptions and issues. For a jurisdiction like New Zealand, however, I have found that the approach I have taken to this area of law is an effective one. New Zealand, much more so than many other jurisdictions, relies upon its agricultural sector for its economic livelihood.⁴⁹ Simultaneously, we have an animal welfare regime that is regarded as world-leading. It is, in my opinion, thus a perfect candidate for examining the cognitive dissonance that sometimes pervades this area of the law and question whether it is in fact possible to meaningfully protect the welfare of those whose exploitation we depend upon. In teaching this course, my goal was to introduce students to this question, and critique New Zealand's response to it. I hope that this paper, in any small way, encourages others to do so as well.

⁴⁹ See above n 1.