Animal Welfare, food security and future directions

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Despite European Union (EU) initiatives demonstrating a growing concern with the welfare of farm animals in the EU, it is clear that at least in the foreseeable future, livestock production through corporate-dominated intensive practices is set to continue. This is especially so as the world struggles to feed an ever-increasing population.

It's been estimated that by 2050 the world's population will reach 9 - 11 billion, with most population growth occurring in countries lacking the capacity to feed their populations. Moreover, income growth in, particularly, China and India has resulted in increased demand for more meat-based products.

However, Peter Stevenson questions the assumption that increased livestock production is necessary to feed the growing world population. In this Note, I wish to share my reflections on future initiatives in animal welfare that were prompted by Peter's presentation. While the subject matter of the article is wide-ranging and sometimes speculative, the overarching message is that formerly separate disciplines are converging to further the welfare of animals.

How we think about animals

A consistent theme in Peter's presentation involved attempts to reconcile recognition of the sentience of animals with animal industry practices. While Art. 13 of the EU Treaty requires the EU generally and Member States specifically to pay full regard to the welfare of animals in formulating policies, significant challenges remain in practically implementing this view.

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2 Discussed by Peter Stevenson (as above, and in an August 2011 talk, as part of the animal Voiceless Lecture Series, at the Australian National University College of Law).

Most people in Western democratic societies accept that animals do not have legally recognised rights that should be protected and enforced over and above human rights or even human interests or preferences. This view is reinforced by a legal system that characterises animals as property to be exploited by their owners. Consistent with these views, most of the animals in Australia are not protected by animal welfare legislation because of the exceptions created by Animal Welfare Acts and Model Codes of Practice.

However, encouraging initiatives within Australia and some other countries suggest that the human-animal relationship is changing and developing in some very important ways. These developments and what they may mean for the future of animals and animal welfare law are introduced below.

Interdisciplinary Nature of Animal Law & Animal Welfare

Once, animal law and animal welfare were seen as the sole concern of animal rights activists. More recently, scientists, politicians, philosophers, lawyers and consumers have increasingly become aware of how animals are treated in society. An interdisciplinary approach to animals and animal welfare yields many benefits. Activists draw attention to social practices that are considered harmful to animals; lawyers explore ways of using legal processes to address those practices, and philosophers, sociologists and anthropologists work to create meaningful platforms to support the practical and legal action.

Wild Law

An example of this interdisciplinary scholarship is the emergence of "wild law" - geologists, environmental advocates, lawyers and philosophers working together to challenge the Aristotelian idea of the scala naturae, or natural scale, in which humans occupy the pinnacle of creation and exploit the environment and animals for human ends.

Wild law challenges this anthropocentric structure, viewing humans as just one species existing interdependently within a larger eco-system. In this larger context, it is argued that human laws should recognise and protect the natural eco-system - a system that is accorded enforceable...
legal rights. Humans would no longer have any right to exploit the environment and animals if doing so would harm the environment. Wild law anticipates the development of "Earth Jurisprudence" in which laws reflect the balance between the rights of humans and the rights of the environment, including animals.9

Environmental Protection and Food Security

A good example of wild law in practice lies in the exploitation of animals to produce food for humans. Intensive farming of animals causes significant environmental degradation through the use of pesticides, overgrazing, water utilisation and land clearing.

In a 2006 report, *Livestock's Long Shadow: Environmental Issues and Options*, the United Nations' Food and Agriculture Organisation ("FAO") said the livestock sector (animals farmed for food) represented one of the most significant contributors to serious environmental problems at every scale, from local to global.7 These problems included contributing to climate change, land degradation, water depletion, and contamination and destruction of biodiversity.

The FAO Report was delivered at a time when one billion people suffer chronic hunger, with the United Nations estimating food production will need to increase by about 70% from 2005–07 average levels to feed the projected world population of 2050.8

Nations are beginning to focus on the issue of food security, i.e. ensuring that a country can produce sufficient food resources to meet its future needs. In 2010, the Prime Minister's Science, Engineering and Innovation Council (PMSEIC) issued a report: *Australia and Food Security in a Changing World*, in which Australia's strengths in its ability to produce food are discussed.7

In relation to animals, the report also identifies challenges to Australia's ability to be food secure and contribute to global food security, including water use and management, soil nutrition and reliance on fertilisers, the need to accelerate advances in crop and livestock breeding.10 In this context research into the relationship between animal welfare, intensive animal farming, environmental and food security is urgently needed.

Science and Animal Welfare

Food security, environmental protection and the use of animals for human needs and desires raises issues of science and the way animals are used for scientific and medical research as well as teaching. What might scientific advances mean for animals and animal welfare?

Increasingly sensitive scientific equipment is clearly demonstrating that, contrary to Descartes' view, animals do feel pain and distress when harmed. This is particularly relevant to the religious slaughter of animals and the justifications for such slaughter practices.

More recent scientific research into the way animals' nervous systems and brains detect and transmit pain signals casts doubt on claims that the religious slaughter of animals is less painful than animals that have been stunned before slaughter. To what extent can ancient religious practices continue to be justified if advances in science show that they cause more pain to animals than secular methods of slaughter?11

Animals have been used throughout history for medical experiments. In the 20th and 21st centuries, animals have been created specifically so that their body parts can be harvested and used to repair defective human body parts. Xenotransplantation is now a common medical procedure, especially involving the use of heart-valves from pigs to replace faulty human heart valves.

However, advances in stem cell therapy may make xenotransplantation redundant. Stem cells can be harvested from umbilical cords or even adult tissues. The cells can be engineered to create the tissues needed

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8 Issues Paper to Inform Development of a National Food Plan, Department of Agriculture, Fisheries and Forestry, June 2011, Canberra Australia at vi.
10 Ibid at 14

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for a patient's needs. Eventually, stem cell technology may enable entire organs to be grown for patients, thus eliminating any need to destroy animals for the purpose of harvesting their organs.\textsuperscript{12}

Using stem cells in the creation of artificial or in-vitro meat is another interesting development. An animal stem cell is harvested and cultured into a form of test tube meat product. Given the extensive damage to the environment and food security caused by intensive animal farming, artificial meat may be a realistic alternative.\textsuperscript{13} Artificially grown meat may also replace the need for animals to be killed for their meat.\textsuperscript{14}

Future possibilities. Meantime, urgent action is needed to harmonise and strengthen animal welfare law in Australia.

A Commonwealth approach to law reform

Australia's legal and regulatory regime is complex and inconsistent, often differing considerably between states and territories. A large part of the problem is that the Australian Constitution does not give express power to the Commonwealth Government to make laws with respect to animals and animal welfare.

However, could the Commonwealth Government rely on the trade or commerce power in s51(i) or the corporations power in s51(xx) of the Constitution to create a Commonwealth Animal Welfare Act?\textsuperscript{15}

Within the poultry industry, two corporations Baiada and Inghams Enterprises supply about 80% of Australia's chicken meat, while the beef industry is dominated by four producers: Swift Australia, Cargill Australia, Tey's Brothers and Nippon Meats, corporations that supply almost 50% of meat products. In these circumstances, the control of meat production by corporations may be a legitimate area of Commonwealth regulation under the corporations power in s51(xx). This is an important area for future research.

A Commonwealth Animal Welfare Act could also establish a well-resourced Australian Animal Welfare Authority that would be responsible for the national implementation and enforcement of a consistent animal welfare law throughout Australia.

Presently, there is no agreement concerning the philosophical or ethical foundations of animal welfare. This hinders the creation of a Commonwealth Animal Welfare Act, which requires a coherent philosophical foundation to support it.

In 2005, the National Animal Welfare Bill was examined by the Senate Rural Affairs and Regional Transport Committee. Despite many public submissions in support of the bill, the committee did not approve it. Instead, the committee recommended the continuing use of the Australian Animal Welfare Strategy as the principal mechanism for improving animal welfare,\textsuperscript{16} and the Bill lapsed.

Until such time as a philosophical consensus on animal welfare is achieved, the creative use of existing legal regimes has the potential to drive reform in this area. Internationally, attempts to create 'animal attorneys' have met with mixed results. In Switzerland in 2010, a proposal to ensure animals were specifically represented by lawyers in animal abuse cases was voted down, although in Zurich the position of animal attorney does exist.

Conclusions

Future advances in animal and animal welfare law require the imaginative use of existing knowledge and aspirational ideas. This process will be increasingly interdisciplinary as humans come to understand that caring for animals means caring for humans too. Kant was right in suggesting that not caring for animals can lead to humans causing harm to each other.


\textsuperscript{13} S. McHugh, Real Artificial: Tissue-Cultured Meat, Genetically Modified Farm Animals and Fiction (2010) 18 Configurations 181.


\textsuperscript{15} For example, the lack of direct constitutional power to make laws with respect to trade practices or consumer protection, did not prevent it creating the Competition and Consumer Act 2010 (Cth) (CCA) and the Australian Consumer Law (ACL) by relying on several different heads of power in the Constitution. Both the CCA and the ACL function as national regimes.

However, Kant would possibly agree that the interrelatedness of all species of life forms on the planet demands that humans re-think the fundamental assumptions that shape our understanding of animals and our relationship with them. Many of the issues Peter Stevenson discussed during his presentation are emotive and confronting. He explored industries and practices that generate strong feelings in most people and encouraged those in attendance to inform themselves about the ongoing challenges to animal welfare.

However, in doing so it is important to recall the advice of former High Court Justice Michael Kirby who admonished contributors to the debate about genetic technology:

Ignorance is not bliss. If you want to make an intelligent contribution to this argument you need to learn at least some genetics. Human engineering raises big moral issues. But the one cannot be understood without the other. How you should live depends in part on how the world is. If the power of genetics is to be used wisely, probable fact has to be distinguished from scarifying fantasy.13

Likewise, in the highly emotive area of animal welfare law, it is important to know the way the world is. It is important to distinguish 'probable fact' from 'scarifying fantasy' in the pursuit of reform.

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