ANIMAL RIGHTS LAW

RAFTAEL N FASEL
AND SEAN C BUTLER
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To our students
Acknowledgements

When we first started lecturing Animal Rights Law at the Cambridge Law Faculty in 2017, our work was considerably complicated by the fact that there was no textbook covering this increasingly rich and dynamic field. In the years since, animal rights law has grown in both breadth and depth, and with it the need for a book that covers the key aspects of this new field of law. This textbook hopes to fill that gap. Tracing the structure and broad content of the Cambridge course, the book is the product of numerous years of study and teaching. It would not exist without the help and stimulating ideas of many others from whom we have learned along the way and to whom we would like to express our gratitude.

Before starting the Cambridge course, we approached some of the preeminent Animal Law Lecturers in the US, all of whom generously encouraged us and helped us to get started: Jon Lovvorn, Kristen Stilt, Steve Wise, and David Wolfson.

A few years after we started teaching Animal Rights Law, we realised there was much more to be done. On 26 April 2019, we officially launched the Cambridge Centre for Animal Rights Law to conduct and support teaching and research. Soon after the Centre opened, we were contacted by Timothy Midura, President, Executive Director, and General Counsel of the Brooks Institute for Animal Rights Law & Policy. He offered to fund our Centre so as ‘to put wind in your sails’, to use his words. And the Centre has been sailing on ever since.

Many colleagues supported the textbook when it was but an idea. Michael Bowman, Simon Brooman, Sherry Colb, Joshua Dienstag, Teresa Gimenez Candela, Meg Good, Jed Goodfellow, Michael Hoefflich, Piper Hoffman, Amanda Kennedy, Joanna Kyriakakis, Christine Elizabeth Parker, Nancy Perry and Howard Crystal, Raj Reddy, Sophie Riley, Debbie Rook, Aaron Timoshanko, Steven White, and Steve Wise all responded with encouragement to an informal survey we circulated, and helped us establish that there is great demand for a global textbook on animal rights law.

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To ensure that the content of the pages that follow meets the highest academic standards possible for us, we relied on the expertise of some of the leading thinkers, writers, and teachers in animal rights law who generously commented on chapters of the book: John Adenitire, Charlotte Blattner, Macarena Montes Franceschini, Visa Kurki, Tomasz Pietrzykowski, and Joe Wills. We remain indebted to them for
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Cambridge, July 2022
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Introduction

The legal scholar Roscoe Pound once famously noted: ‘Law must be stable and yet it cannot stand still’ (1923: 1). Pound’s point was that law’s job of securing order is in tension with the changing nature of social realities. As circumstances and people’s values shift, so must the law, lest it become obsolete.

In recent decades, important changes have been underway in many societies concerning how humans perceive other animals. Thanks to a wealth of scientific studies, there is growing understanding of the sentience – the capacity to have feelings such as pain, fear, or joy – that unites humans with animals as diverse as mice, crabs, bears, and gulls. There is also increasing awareness of the many other astounding capacities of animals, ranging from the puzzle-solving minds of octopuses, to empathetic chickens, to crows constructing their own tools. Interest in animals and their needs has furthermore witnessed a boost due to the current salience of pandemics and the risk of zoonotic diseases, as well as the climate crisis that has become a reality affecting not only humans but also non-humans. As humans’ understanding of animals and their relationships with them are changing, the idea has gained a foothold in some countries that animals should have similar rights protections to humans. For instance, in a survey conducted in 2015, 32 per cent of Americans agreed with the statement that ‘animals deserve the exact same rights as people to be free from harm and exploitation’ (Riffkin, 2015) – a 7 per cent increase from 2008.

These changes in public perception and opinion have arrived at the door of law: more and more scholars are arguing that fundamental rights or legal personhood should be granted to some animals; and animal rights lawyers are trying to translate these arguments into practice by petitioning courts and lawmakers for change. For example, in the first half of 2022 alone, several animal rights cases and proposals made international headlines. In January, the Constitutional Court of Ecuador ruled that the Ecuadorian Constitution’s protection of the rights of nature also gives rights to individual animals, such as the chorongo monkey Estrellita on whose behalf a lawsuit was brought. In February, the citizens of the Swiss canton (ie state) of Basel-Stadt went to the ballot box to decide on whether to change the bill of rights of their constitution to include the rights to life and to bodily and mental integrity for non-human primates. And in June, the New York State Court of Appeals – the state’s highest court – had to decide on whether Happy, an elephant kept in the Bronx Zoo, should be considered a legal person with the right to bodily integrity and moved to a sanctuary.

Legal education is trying to catch up with these developments. According to a database from the animal law organisation Global Animal Law (2021), some 200 universities around the world offer Animal Law courses. This is a significant number considering that, in 1988, Pace University in the US was the first law school in the world to start offering an Animal Law course. What is more, there is growing interest in education about questions of right-holdership, legal personhood, and legal dignity for animals. This trend is reflected in the increasing number of courses at universities.