Out of Sight, Out of Mind

I, one day, in going along Coventry Street was struck with horrors and disgust at the shocking scene of cruelty which presented itself to my observation. There was a cart, loaded with greens to a most unmerciful extent, drawn by one horse. The poor animal was in such a state that its skin alone covered its bones, and what was more shocking upon nearer observation I perceived there was no cart saddle to prevent the chain from cutting through the skin of the animal’s back, and, upon still nearer inspection, I saw the blood and matter descending its side. Besides this, the fetlock-joint was dislocated, the skin broken, and, upon every exertion of this wretched creature, the bone was visible to the eye.¹

The words above were spoken in 1809 by Lord Erskine, on the floor of the British Parliament. He went on to describe how he purchased the horse in order to ensure the animal was put out of his misery. Erskine was trying to persuade his Westminster colleagues to enact the modern world’s first animal welfare statute. He was able to address Parliament with great passion on the topic of animal suffering because he, like his contemporaries, was regularly and consistently in direct contact with the types of animals the Bill was designed to protect. In contrast, as we have seen, in the early twenty-first century very few people are in direct contact with the subjects of animal protection statutes, and few of us ever bear witness to their suffering. In this chapter I want to understand whether that lack of visibility has an impact on how we create laws that govern the lives of animals.

In the first instance I examine animal welfare legislation through the lens of animal visibility. I consider how animal welfare laws are constructed in New South Wales. For the sake of manageability, the

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analysis will be limited to four species of animal: hens, rabbits, horses and dogs. Those animals were selected because they are common animals, so they do not constitute special cases. Those animals also live in large numbers in liberal democracies and they have been the subject of legislation for many decades. Moreover, all four animals may occupy more than one of the animal-use categories outlined in Figure 2.1. For example, a rabbit can be an Agricultural Animal, a Companion Animal, a Research Animal and so on. The animals’ ability to occupy more than one category will allow us to track fluctuations in their welfare protection when the same species of animal is engaged in different roles. This in turn will allow us to determine whether there is a relationship between high visibility and strong welfare protection, and vice versa.

Animal protection instruments in New South Wales

For clarity, the analysis in this chapter is further limited to two types of animal use for each category of animal and the four species types under consideration (see Table 4.1). The specific animal uses I look at have also been selected because they are common animal uses that many people are likely to associate with a particular species of animal. I am not interested here in special cases, such as what happens to Great Apes in research laboratories. I am concerned with how the law allows us to treat most animals most of the time. Each animal has been tied to certain uses, as opposed to a generic provision – for example, ‘animals in the zoo’ or ‘animals at a farm’ – because the regulations are often species and context specific. By examining animal uses in relation to a particular species of animal, engaged in a specific activity, this analysis is grounded in the detail of the legislation and is not based on abstract notions or generalisations.

In New South Wales there are three purposeful animal welfare or anti-animal cruelty statutes. I will look at all three. They are:

1. The NSW Animal Research Act 1985 (ARA)
2. The NSW Exhibited Animals Protection Act 1986 (EAPA)

These three Acts also have accompanying Regulations that are designed to be read alongside the Acts and which provide more detail. The Regulations are:

1. The NSW Animals Research Regulation 2005 (ARR)
2. The NSW Exhibited Animals Regulation 2005 (EAPR)