

REASSESSING ANIMALS AND POTENTIAL LEGAL PERSONHOOD: DO ANIMALS HAVE RIGHTS OR DUTIES?

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Under legal theory, a *person* is “any being whom the law regards as capable of rights or duties.”¹ The First Judicial Department of the New York Supreme Court's Appellate Division did not complete a new analysis after the Third Judicial Department relied on an incorrect definition of a “legal person” from Black’s Law Dictionary.² The incorrect definition contributed to an ultimate holding that Tommy, a chimpanzee, did not meet the threshold of legal personhood.³ This article will undertake the analysis of the rights or duties of animals based on the correct definition. Animals exist in a strange legal purgatory, caught between their classification as property and their existence as conscious beings. In certain circumstances, animals are afforded

1. *Person*, BLACK’S LAW DICTIONARY (11th ed. 2019).
2. *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 998 N.Y.S.2d 248, 250–51 (App. Div. 2014).
3. *Id.* at 248.

legal protections or benefits that create exceptions to their property status.⁴ Animals are also subject to certain duties in both human and non-human contexts.⁵ To achieve a legal status that reflects the role of animals in both human society and non-human communities, animals should be given a default legal categorization of legal persons with exceptions, rather than property with exceptions.

This article will provide an overview of animals and their status in the United States legal system. Part I will discuss the case of Tommy and the evaluation of his personhood based on an error in the definition of “person.” Tommy’s case serves as the premise for the evaluation of animal capacity for rights or duties in this article. Part II will explore the specific rights and duties of animals, showing that the argument for qualification of animals as legal persons should be reevaluated. Finally, Part III will advance a proposal for the future of animal classification, attempting to close the gap between their lack of legal protections and their existence as sentient beings.

INTRODUCTION

The United States legal system categorizes animals as property.⁶ A haphazard collection of protections exist for animals across varying areas of law.⁷ However, these protections are clouded by human interests, leaving the well-being of animals as second priority or excluding them altogether. Under their status as property, difficulties arise when animals (and their representatives) challenge their own injuries, injustices, and exploitation at the hands of humans.⁸ Standing, a prerequisite for bringing cases in federal court, is unavailable for animals in most contexts.⁹ While animals can meet the basics of constitutional Article III standing—*injury-in-fact*, *causation*, and *redressability*—they are excluded from statutory standing if federal courts determine that either Congress intended the statute to protect

4. See analysis *infra* Part II.A.1 (describing the history of animal litigation and modern animal law and some exceptions to traditional “property rights” like being trust beneficiaries or as victims to animal cruelty)

5. See analysis *infra* Part II.A.1 (extending victimhood status to animals in cruelty cases which has implications and recognition of injuries, duties, and remedies)

6. See *Mullaly v. People*, 86 N.Y. 365, 365 (N.Y. 1881) (holding a dog is personal property subject to larceny); see also *State v. Fertterer*, 841 P.2d 467, 471 (Mont. 1992) (holding that wild animals are public property of the state).

7. Janet Stidman Eveleth, *What Is Animal Law?*, 40 MD. B.J. 4, 4 (2007).

8. See Lauren Magnotti, *Pawing Open the Courthouse Door: Why Animals’ Interests Should Matter*, 80 ST. JOHN’S L. REV. 455 (2006) (stating that animals have no standing, and their representatives also struggle with standing in representing them).

9. See *e.g.*, *San Juan Audubon Soc’y v. Wildlife Servs.*, 257 F. Supp. 2d 133, 139 (D.D.C. 2003) (holding that the plaintiffs, wildlife preservation groups, did not have sufficient standing).

“persons” or Congress did not intend to allow animals to sue under the statute.¹⁰

When we harm animals, we harm ourselves. As the human population grows, urban development alters animal habitats, destroying biodiversity and increasing the risk of animal encounters that could transmit zoonotic diseases like COVID-19.¹¹ The United States breeds and slaughters billions of land animals every year for food, creating a huge tax on resources like water and arable land.¹² Human activities in the ocean, like overfishing and offshore drilling, injure and kill animals involved in important marine ecosystems that mitigate effects of climate change.¹³ The interests of animals are linked to the interests of humans, and allowing animals to enter courts would benefit both parties.

Beyond their impact on human lives, animals exist in their own communities where they have responsibilities and intrinsic value. Modern science shows that some animals display impressive cognitive abilities from an anthropomorphic standpoint.¹⁴ Many species display highly specialized “ecologically relevant” skills, surpassing humans when considered from a biocentric view.¹⁵ These qualities raise questions about animal classification and whether animals should fall under a legal category that fits their traits better than “property.”

Certain animal advocates are trying to change the classification of animals in our legal system. One group in particular, the Nonhuman Rights Project (NhRP), argues for the highest legal status for animals—personhood.¹⁶ In their efforts to secure legal personhood for animals, NhRP

10. *See* *Naruto v. Slater*, 888 F.3d 418, 418 (9th Cir. 2018) (establishing that a monkey did have Article III standing but lacked statutory standing under the Copyright Act); *see also* *Cetacean Cmty. v. Bush*, 386 F.3d 1169 (9th Cir. 2004) (holding that cetaceans did have Article III standing but lacked statutory standing under various statutes).

11. Felicia Keesing et al., *Impacts of Biodiversity on the Emergence and Transmission of Infectious Diseases*, 468 *NATURE* 647, 647 (2010).

12. Christopher Hyner, *A Leading Cause of Everything: One Industry That Is Destroying Our Planet and Our Ability to Thrive On It*, *GEO. ENV'TL. L. REV.* (Oct. 26, 2015), syndicated on *Env't L. Rev. Syndicate*, <https://harvardelr.com/2015/10/26/elrs-a-leading-cause-of-everything-one-industry-that-is-destroying-our-planet-and-our-ability-to-thrive-on-it/>.

13. Robin Kundis Craig, *Avoiding Jellyfish Seas, or, What Do We Mean by Sustainable Oceans, Anyway*, 31 *UTAH ENV'T L. REV.* 17 (2011).

14. *Anthropomorphic*, *MERRIAM-WEBSTER DICTIONARY* (2021) (defining *anthropomorphic* as “described or thought of as having human form or human attributes” or “ascribing human characteristics to nonhuman things”); *see generally* Juliane Bräuer et al. *Old and New Approaches to Animal Cognition: There Is Not “One Cognition”* 8 *J. INTEL.* 28 (2020) (highlighting the cognitive abilities of apes, birds, dogs, etc.).

15. *Id.*

16. *See e.g.*, Nonhuman Rights Project, <https://www.nonhumanrights.org/> (last visited Nov. 20, 2022) (stating NhRP’s mission statement that “[o]ur groundbreaking work challenges an archaic unjust legal status quo that views and treats all nonhuman animals as “things” with no rights All of human history shows that the only way to truly protect human beings’ fundamental interests is to recognize their rights. It’s no different for nonhuman animals.”).

files cases arguing that animals are legal persons through the theory of habeas corpus.¹⁷ Habeas corpus is a writ that can be used to challenge the detention or imprisonment of a person to determine the legality.¹⁸ One particular case, *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, involved a writ of habeas corpus for a chimpanzee in New York named Tommy who lived in a cage on a used trailer lot.¹⁹ In 2014, the court released its decision, including an analysis of Tommy's potential for legal personhood based on the Black's Law Dictionary definition: "capable of rights and duties."²⁰ Although the court ruled that Tommy was not a person, it used an incorrect definition. Black's Law Dictionary confirmed that a legal person is defined as "capable of rights or duties."²¹

This article argues that animals are legal persons by definition because they meet the prerequisite as entities who are capable of rights or duties. Part I provides the backdrop for this analysis, outlining the case of Tommy the chimpanzee, and the correction of Black's Law Dictionary. Part II evaluates whether animals meet the standard for legal personhood. First, Part II (A) focuses on the history of animals in litigation, their conflicting roles extending beyond "property" in certain legal areas, and other entities granted legal personhood. Next, Part II (B) explores the duties of animals in different contexts: parenthood, community involvement, and individuality. Finally, Part III proposes a strategy moving forward and addresses concerns that elevating animals to a new legal status poses a threat to humans.

I. BACKGROUND

Do animals meet the qualifications of legal persons? This question arose in a landmark case: *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*.²² The subject of this case, Tommy, was a chimpanzee living alone and caged in a shed along a New York state highway.²³ Tommy lived in the Laverys' possession after enduring a life of alleged abuse while he was used in films during the 1980s.²⁴ NhRP applied for a writ of habeas corpus for Tommy, asking for acknowledgement of Tommy as a legal person with a right to

17. *Id.*

18. *Habeas Corpus*, BLACK'S LAW DICTIONARY (11th Ed. 2019).

19. *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 998 N.Y.S.2d 248, 248 (App. Div. 2014).

20. *Id.* at 250–51.

21. BLACK'S LAW DICTIONARY, *supra* note 1.

22. *People ex rel. Nonhuman Rights Project, Inc. v. Lavery (Lavery I)*, 998 N.Y.S.2d 248, 248 (App. Div. 2014).

23. *Client, Tommy (Chimpanzee), The NhRP's First Client*, NONHUMAN RIGHTS PROJECT <https://www.nonhumanrights.org/client-tommy/> (last visited Mar. 6, 2022).

24. *Id.*

bodily liberty.²⁵ As part of the decision, the court held that animals did not have legal personhood because they did not have “rights and duties.”²⁶ The court stated that “case law has always recognized the correlative rights and duties that attach to legal personhood,” citing multiple cases from varying states where courts held that legal personhood is rooted in the “rights and duties” of a human being or an entity.²⁷

In 2017, Kevin Schneider, the Executive Director of NhRP, reached out to Bryan Garner, the editor-in-chief of Black’s Law Dictionary, after the NhRP team noticed an error in part of the definition of a “person.”²⁸ The definition for “person” in Black’s Law Dictionary is lengthy, including various descriptions for different levels of personhood, such as a “private person,” “artificial person,” or “person of incidence.”²⁹ One section of the definition specifically states that a person can be an “entity (such as a corporation) that is recognized by law as having most of the rights and duties of a human being.”³⁰ Black’s Law Dictionary supports this point with an excerpt from *Jurisprudence* about the requirements for personhood under legal theory.³¹ This particular section is where the NhRP found a mistake. *Jurisprudence* states: “a person is any being whom the law regards as capable of rights *or* duties. Any being that is so capable is a person, whether a human being or not”³² In 2014, the year that *Lavery I* was decided, this section of *Jurisprudence* was incorrectly transcribed in Black’s Law Dictionary as “capable of rights *and* duties” (emphasis added).³³

After receiving notification from NhRP about the error, Garner updated the definition.³⁴ This definitional standard significantly lowered the attributes necessary to achieve legal personhood and removed duties as a precondition for rights. NhRP submitted a letter to the New York Supreme Court, Appellate Division, First Judicial Department regarding the change.³⁵ By the time the error was corrected, NhRP had completed the appellate argument for Tommy, and the case was pending before the court.³⁶ Despite the

25. *Lavery I*, 998 N.Y.S.2d at 248.

26. *Id.*

27. *Id.* at 251.

28. Letter from Kevin Schneider to Bryan Garner (Apr. 6, 2017), in *Legal Persons Capable of “Rights or Duties,” Not “Rights and Duties,”* NONHUMAN RIGHTS BLOG, <https://www.nonhumanrights.org/content/uploads/Letter-to-Blacks-re-Def.-of-Person-4.6.17-ks.pdf>.

29. BLACK’S LAW DICTIONARY, *supra* note 1.

30. *Id.* (citing John Salmond, *Jurisprudence* 318 (Glanville L. Williams ed., 10th ed. 1947)).

31. *Id.*

32. JOHN SALMOND, *JURISPRUDENCE* 318 (Glanville L. Williams ed., 10th ed., 1947).

33. Elizabeth Stein, *Legal Persons Capable of “Rights or Duties,” Not “Rights and Duties,”* NONHUMAN RIGHTS BLOG (Apr. 6, 2017), <https://www.nonhumanrights.org/blog/rights-or-duties/>.

34. *Id.*

35. *Id.*

36. *Id.*

corrected definition for personhood, the court refused to reanalyze Tommy's case using the standard of "rights or duties."³⁷

NhRP exclusively works to achieve legal personhood for animals through habeas corpus.³⁸ So far, they have been unable to establish legal personhood for animals through this method.³⁹ In 2022, the New York Court of Appeals denied NhRP's writ of habeas corpus for Happy, an Asian elephant and captive resident of the Bronx Zoo for the last forty years.⁴⁰ NhRP filed another case while Happy's decision was pending, asserting a habeas claim for three elephants at a zoo in Fresno, California.⁴¹ While legal personhood can feel like the holy grail for advocates, habeas corpus may not be the best way to achieve a new status for animals. Tommy could have been spared from cruel conditions under a litigative theory based on animal welfare rather than becoming a martyr for the animal rights movement. Instead, speculators believe Tommy either lives in solitary confinement at DeYoung Family Zoo or he is dead.⁴² This article will focus on the technical definition of legal personhood and whether animals meet the criteria, but the ideal approach to free animals from their property status remains to be determined.

II. ANALYSIS

Animals, as property, do not have the traditional "rights" recognized by the United States legal system. However, certain aspects of their legal status suggest a recognition of traits in animals reflecting some inherent qualities that require legal protections. While recent history largely excludes animals from court, medieval law subjected animals to trial. Modern animal law provides restricted legal protections, allowing animals to function as beneficiaries or victims in certain circumstances. Other non-human entities are afforded legal personhood and limited rights, showing that the legal system retains the ability to extend the rights of non-humans.

37. *Id.*

38. *See* Nonhuman Rts. Project, Inc. v. Breheny, 134 N.Y.S.3d 188 (N.Y. App. Div. 1st Dept. 2020) (holding that an elephant is not a person entitled to a writ of habeas corpus); Nonhuman Rts. Project, Inc. v. R.W. Commerford & Sons, Inc., 192 Conn. App. 36, 36 (2019).

39. *R.W. Commerford*, 192 Conn. App. at 36.

40. Ed Shanahan, *Happy the Elephant Isn't Legally a Person*, *Top New York Court Rules*, N.Y. TIMES (June 14, 2022), <https://www.nytimes.com/2022/06/14/nyregion/happy-elephant-animal-rights.html> ("But in a lengthy dissent, Judge Rowan D. Wilson said the court had a duty 'to recognize Happy's right to petition for her liberty not just because she is a wild animal who is not meant to be caged and displayed, but because the rights we confer on others define who we are as a society.'").

41. *Id.*

42. Chris Churchill, *Churchill: Where is Tommy the Chimp?*, TIMES UNION (Apr. 13, 2021, 9:41 AM), <https://www.timesunion.com/news/article/Churchill-Where-is-Tommy-the-Chimp-16095376.php>.

The duties of animals are more easily recognized. Some animals are punished for their participation in human society: willing or not. Other animals serve as tools for humans with disabilities. In their own communities, animals bear duties and responsibilities similar to those of humans. Animals are individuals and family members—integral to elaborate ecosystems and advanced in their own biologically unique ways.

A. Do animals have rights?

1. History of Animal Litigation and Modern Animal Law

In current animal law cases, judges reference historical treatment of animals in the legal system to justify their resistance to extending protections.⁴³ Despite this evasive maneuvering to avoid addressing the legal status of animals, the history of human laws indicates that animals have always been involved. Due to the human-centered nature of the concept of law, animals exist in a legal periphery.

While the idea of animals in the court room may seem like a novel concept, this was once a reality in medieval Europe. Legal trials involving animals occurred from the thirteenth to the twentieth century across many European countries, including: France, Switzerland, Germany, and Italy.⁴⁴ The animals were represented by lawyers, with one prestigious French jurist, Bartholomew Chassenée, building his reputation after serving as counsel for a group of rats put on trial in the religious courts of Autun after they “feloniously” ate the province’s barley supply.⁴⁵

In most situations, animal defendants were found guilty.⁴⁶ Occasional exceptions occurred, including a female donkey acquitted for her good character in a bestiality trial while her owner was executed.⁴⁷ In another case, a sow was sentenced to death in the killing of a young boy, but her piglets were acquitted because there was no proof of their participation.⁴⁸ The animal trials of the Middle Ages were generally divided into two categories: capital punishments decided by secular tribunals and trials carried out by religious courts.⁴⁹ Capital punishments were used for domestic animals like pigs,

43. See *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 998 N.Y.S.2d 248 (App. Div. 3d Dept. 2014) (holding that a chimpanzee is not entitled to the rights and protections afforded to a “person” by the writ of habeas corpus).

44. Sonya Vatomsky, *When Societies Put Animals on Trial*, JSTOR DAILY (Sept. 13, 2017), <https://daily.jstor.org/when-societies-put-animals-on-trial/>.

45. Katie Sykes, *Human Drama, Animal Trials: What the Medieval Animal Trials Can Teach Us about Justice for Animals*, 17 ANIMAL L. 273, 283 (2011).

46. *Id.*

47. *Id.* at 281.

48. *Id.*

49. *Id.* at 280.

cows, and horses after they killed humans or endured bestiality.⁵⁰ Religious trials were held for rats, mice, and other pests to “exorcise” and “excommunicate” them to prevent further decimation of crops.⁵¹ Animal trials of the Middle Ages can be linked to factors like: insecurity from epidemics, economic depression, and social conflicts; the establishment of court procedure in solving disputes; the familiar ritual of public execution; and personification of animals in extreme situations.⁵² Although medieval animal trials seem absurd in hindsight, they can provide insight into human interests interfering with animal protections, limitations of human conceptions of justice, and the role of legal rituals regarding animals.⁵³

Informal versions of public animal executions persisted past the Medieval Ages. In the early 1900s, circus elephants in the United States were executed before crowds if they were found to be “dangerous” or “unruly.”⁵⁴ Although she did not face a trial, a circus elephant named Topsy was publicly executed on Coney Island in 1903 after killing three men.⁵⁵ Topsy could have been privately euthanized, but instead she was fed carrots laced with cyanide, forced onto a stage with a noose around her neck—and electrocuted.⁵⁶ Similar elephant executions occurred from the 1880s through the 1920s, in the United States, with a total of 36 killings on record.⁵⁷ The phenomenon of public elephant executions may not directly correlate to the medieval animal trials of Europe. However, the retributive nature of these executions indicates an extension of the treatment of human criminal behavior during this time period.⁵⁸ Elephants were attributed with human characteristics to justify their killings, described as: quarrelsome, wicked, spiteful, and malicious in a trial of public opinion via newspaper articles.⁵⁹ The executions were considered justified because the trainers and the public “saw these elephants as all too human—criminalized and exoticized, but human.”⁶⁰

The spectacle of public animal trials and executions eventually ended, but issues revolving around the legal status and representation of animals remain. Today, the law incorporates non-human animals in subtler ways. Animals maintain certain privileges not afforded to other “property.” One

50. *Id.*

51. *Id.*

52. Peter Dinzelbacher, *Animal Trials: A Multidisciplinary Approach* 32 J. INTERDISC. HIST. 405, 421 (2002).

53. Sykes, *supra* note 45, at 301.

54. Amy Louise Wood, “Killing the Elephant”: *Murderous Beasts and the Thrill of Retribution, 1885-1930*, 11 J. GILDED AGE & PROGRESSIVE ERA 405, 405 (2012).

55. *Id.* at 405–06.

56. *Id.* at 406 (explaining that the cyanide did not take effect before Topsy was electrocuted with 6,600 volts of electricity).

57. *Id.* at 407.

58. *Id.* at 408.

59. *Id.* at 412.

60. *Id.* at 408.

example is the role of animals as trust beneficiaries.⁶¹ Many pet owners classify their pets as family members or children.⁶² As the emotional bond between humans and their pets became more common with changing social values, animals like dogs and cats appeared in estate-planning tools as beneficiaries.⁶³ “It [is] estimated that between twelve and twenty-seven percent of pet owners include their pets in their estate planning.”⁶⁴ Pet trusts are a type of noncharitable purpose trust because pets are unable to enforce their interest in the property.⁶⁵ When using a pet trust, owners provide for their pets after death by designating a certain amount of their property towards the care of their pet.⁶⁶ The Uniform Trust Code allows for the appointment of a third party, such as a trust protector or guardian, to enforce the terms of the trust in the interest of the animal.⁶⁷ Pet trusts may not seem to provide rights or interests to animals because they cannot access their own trust property. However, pet trusts mirror trusts created to benefit minors that must be enforced by their guardians because children do not have the capacity to request trust property for themselves.⁶⁸

Another area of law where legal animal protections extend beyond their status as property is criminal law. Some jurisdictions are beginning to recognize that state animal cruelty statutes place animals in the status of victims. *State v. Nix*, an Oregon animal neglect case, held that animal cruelty statutes “protect[] individual animals suffering from neglect,” and therefore “the legislature regarded those animals as the ‘victims’ of the offense.”⁶⁹ Victimhood carries implications and recognition of injuries, duties, and remedies. Recently, animal lawyers and scholars have even proposed restorative justice approaches for animal victims.⁷⁰ Restorative justice provides “emphasis on the role and experience of victims in the criminal justice process.”⁷¹ The restorative justice approach is an alternative to the punitive U.S. criminal justice system, which focuses largely on retribution.⁷²

61. Breahn Vokolek, *America Gets What It Wants: Pet Trusts and a Future for Its Companion Animals*, 76 UMKC L. REV. 1109 (2008).

62. *Id.*

63. *Id.*

64. *Id.* at 1128.

65. *Id.* at 1121, 1127–28.

66. *Id.* at 1121.

67. Wendy S. Goffe, *Oddball Trusts and the Lawyers Who Love Them or Trusts for Politicians and Other Animals*, 46 REAL PROP., TR. & EST. L.J., 543, 580 (2012).

68. Schyler P. Simmons, *What Is the Next Step for Companion Pets in the Legal System? The Answer May Lie with the Historical Development of the Legal Rights for Minors*, 1 TEX. A&M L. REV. 253, 278 (2013).

69. *State v. Nix*, 355 Or. 777, 798 (9th Cir. 2014).

70. Brittany Hill, *Restoring Justice for Animal Victims*, 17 ANIMAL & NAT. RESOURCE L. REV. 217, 217 (2021).

71. *Id.* at 219.

72. *Id.* at 218.

Since animals are the identified victims, restorative justice would create an animal-centered approach to addressing injuries—perhaps one of the first areas of animal-involved law that would not be primarily focused on human interests.

Some advocates are working to expand avenues for animal protections by using their victimhood under state cruelty laws. In *Justice v. Vercher*, a quarter horse, Justice, sued Gwendolyn Vercher after she was convicted of animal neglect under a criminal statute in Oregon.⁷³ Vercher left Justice without shelter or food for months, leading to his extreme emaciation and prolapsed genitals after severe frostbite.⁷⁴ Animal Legal Defense Fund (ALDF) sued Vercher on behalf of Justice under a legal theory of negligence per se, which arises when a defendant violates a statute and is negligent as a matter of law.⁷⁵ ALDF requested funds for Justice to pay the veterinary bills that will continue to follow him for the rest of his life due to Vercher's neglect.⁷⁶ While the trial court and the Oregon Court of Appeals dismissed Justice's case, ALDF continues to appeal on Justice's behalf.⁷⁷ If they succeed, the case will be a landmark for animal law in the United States. Justice would be a successful animal plaintiff, bringing his own interests and injuries into court in pursuit of a remedy that will solely serve him.⁷⁸

On a national level, the Model Penal Code—a codification of the substantive criminal law of the United States—categorizes animal cruelty under “Offenses Against Public Order and Decency” rather than “Offenses Against Property.”⁷⁹ The Model Penal Code's categorization of animal cruelty further blurs the “property” status of animals by placing offenses against non-humans outside the property section. Because animals can be categorized as victims under state animal cruelty laws, there is an implication that they exist beyond the boundaries of a property classification. Victimhood status does not equal personhood status for animals, but it establishes a place for non-human animals in the crime victims' movement.⁸⁰ Human crime victims have been able to “remedy the problems that are inherent in a system in which crime victims are not a party.”⁸¹ Crime victims

73. Sherry F. Colb, *Should Animals Be Allowed to Sue?*, *Verdict Legal Commentary and Analysis From Justia*, JUSTIA (Jan. 29, 2020), <https://verdict.justia.com/2020/01/29/should-animals-be-allowed-to-sue>.

74. Brief of Plaintiff-Appellant at 2, *Justice v. Vercher*, No. 18CV17601 (9th Cir. July 8, 2019).

75. *Id.* at 8.

76. *Id.* at 23.

77. Michelle C. Pardo, *Oregon Court of Appeals Rules Animals Are Not Entitled to Legal Personhood*, LEXOLOGY (Sept. 2, 2022), <https://www.lexology.com/library/detail.aspx?g=4b150e0d-fa56-489b-8d01-979a780fead5>.

78. Colb, *supra* note **Error! Bookmark not defined.**

79. Model Penal Code § 250.11 (AM. L. INST. 2022).

80. Andrew N. Ireland Moore, *Defining Animals as Crime Victims*, 1 J. ANIMAL L. 91, 93 (2005).

81. *Id.*

are not adequately represented by the state or the defendant.⁸² Human victims pushed for consideration of their interests and many states created crime victim amendments to rectify this gap.⁸³ Acknowledgement of animal victimhood places advocates in a position to pursue further legal protections, an avenue not afforded to legal “property” in other situations.⁸⁴

The pursuit of victim rights for animals is exemplified in Desmond’s Law. Desmond’s Law was enacted after the body of a dog, Desmond, was found in a trash bag in the woods of Madison, Connecticut in March 2012.⁸⁵ Desmond was severely beaten and locked in a bathroom during his life, and was eventually killed when his owner twisted his collar until he died.⁸⁶ In 2016, Connecticut enacted Desmond’s Law to provide a voice to animal cruelty victims through court-appointed legal advocates to represent the interests of animal victims and overall justice.⁸⁷ The lawyers, law students, and fellows that participate in the Courtroom Animal Advocate Program (CAAP) provide a neutral resource to the court, contribute novel legal analyses, develop creative remedies, and ultimately protect animal victims.⁸⁸ CAAP firmly establishes animals as crime victims with distinguishable interests that deserve representation.⁸⁹

2. Other Entities Granted Legal Personhood

While the United States legal system resists the reclassification of animals, other non-human entities are granted legal personhood. Limited personhood exists for certain non-human entities like corporations or ships.⁹⁰ This “personhood” does not necessarily acknowledge sentience or human qualities in these inanimate objects. The personhood granted to non-human entities simply serves as a mechanism to allow lawyers to bring issues before the court.

The first acknowledgement of corporations as legal persons occurred in an 1886 Supreme Court case regarding taxation of a railroad company, *Santa Clara County v. Southern Pacific Railroad Company*.⁹¹ Before the argument,

82. *Id.*

83. *Id.*

84. *Id.* at 97.

85. Jessica Rubin, *Desmond's Law: Early Impressions of Connecticut's Court Advocate Program for Animal Cruelty Cases*, 134 HARV. L. REV. F. 263, 263 (2021).

86. *Id.*

87. *Id.* at 264.

88. *Id.* at 267–70.

89. *Id.*

90. See, e.g., Nina Totenberg, *When Did Companies Become People? Excavating the Legal Evolution* NPR (July 28, 2014), <https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution/> (explaining personal rights accorded to corporations).

91. *Santa Clara County v. Southern Pacific R. Co.*, 118 U.S. 394, 397 (1886).

Chief Justice Morrison Waite stated that “[t]he court does not wish to hear argument” regarding the application of personhood to corporations under the Fourteenth Amendment, because “[w]e are all of the opinion that it does.”⁹² While this is recorded as part of the Court’s discussion rather than the actual decision, future cases treated this as binding precedent.⁹³ Today, corporate personhood is accepted as part of United States law, though it is still widely debated and criticized.⁹⁴

Non-human personhood even affords corporations some constitutional rights equal to those of ordinary human citizens. *Citizens United v. Federal Election Commission* confirmed that business corporations have the same political free speech rights as humans to spend money on election advertisements.⁹⁵ Another case, *Burwell v. Hobby Lobby Stores*, allowed companies exemption from a federal law that required birth control coverage in employee health plans based on the religious liberty under the First Amendment.⁹⁶ A recent controversial case, *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission*, confirmed the same First Amendment religious liberty rights for corporations by validating a bakery’s decision to discriminate against customers based on sexual orientation.⁹⁷

Kent Greenfield, a law professor at Boston College and a proponent of corporate personhood, promotes a “nuanced test” for the application of rights to corporations.⁹⁸ In *Corporations Are People Too*, he states: “when it comes to the Constitution, corporations are people some of the time. And sometimes they are not.”⁹⁹ By this logic, similar extensions can be provided for animals. If the law is capable of nuance when personhood is extended to corporations, the law should be capable of nuance regarding animal personhood.

Another controversial entity granted limited personhood is the human fetus. While *Roe v. Wade* established that a fetus is not a “person” for the Fourteenth Amendment purposes,¹⁰⁰ many “fetal homicide statutes” protecting mothers and unborn fetuses from the acts of third parties

92. *Id.*

93. Adam Winkler, ‘Corporations Are People’ is Built on an Incredible 19th-Century Lie, *The Atlantic* (Mar. 5, 2018), <https://www.theatlantic.com/business/archive/2018/03/corporations-people-adam-winkler/554852/>

94. See Teneille R. Brown, *In-Corp-O-Real: A Psychological Critique of Corporate Personhood and Citizens United*, 12 FLA. ST. U. BUS. REV. 1, 3–4 (2013).

95. Adam Winkler, *Corporate Personhood and Constitutional Rights for Corporations*, 54 NEW ENG. L. REV. 23, 23 (2019).

96. *Id.*

97. *Id.*

98. *Id.* at 24.

99. *Id.* (quoting KENT GREENFIELD, *CORPORATIONS ARE PEOPLE TOO (AND THEY SHOULD ACT LIKE IT)* (2018))

100. Juliana Vines Crist, *The Myth of Fetal Personhood: Reconciling Roe and Fetal Homicide Laws*, 60 CASE W. RES. L. REV. 851, 854 (2010).

acknowledge viable fetuses as “persons.”¹⁰¹ In 2022, the Supreme Court revisited *Roe* in *Dobbs v. Jackson Women's Health Organization*, although the Court’s opinion circled the topic of fetal personhood and focused instead on the right to an abortion as a constitutional concept.¹⁰² Such debates are also increasing with the rise of new reproductive technologies and decisions regarding frozen embryos created for in vitro fertilization. In *Davis v. Davis*, a divorced couple disagreed about the disposition of seven “frozen embryos” stored at a Knoxville fertility clinic and sought a decision regarding custody of the embryos.¹⁰³ The *Davis* court held that pre-embryos are “not, strictly speaking, either ‘persons’ or ‘property,’ but occupy an interim category that entitles them to special respect because of their potential for human life.”¹⁰⁴

Reproductive rights and fetal homicide statutes coexist in the United States legal system because laws are capable of complex rules and exceptions. “The fetus is not a person in the natural sense, and no legislature has the power to declare otherwise. Instead, the fetus is a juridical person, designated as such so that a state may assert its own interests in life and achieve certain social goods.”¹⁰⁵ Similarly, to reproductive rights and fetus personhood, a reclassification of animals as legal persons would not “sound the death knell” for other areas of animal law or the current roles of animals within our society.¹⁰⁶

While this article is focused on the United States legal system, other nations recognize certain animal rights and enshrine animal protections in their constitutions. India’s constitution contains provisions that vest in animals a right against cruel treatment and a right to liberty.¹⁰⁷ In 2021, the Delhi High Court ruled that community dogs (“stray” dogs) have the right to food and citizens retain the right to feed them.¹⁰⁸ In 2013, India’s Supreme Court declared that Article 21 of India’s Constitution, which guarantees a “right to life,” could be applied to non-human animals.¹⁰⁹ The same year, India’s Ministry of Environment and Forests classified cetaceans as “non-

101. *Id.* at 852.

102. “Our opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth.” *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2261 (2022).

103. *Davis v. Davis*, 842 S.W.2d 588, 589 (Tenn. 1992).

104. *Id.* at 596.

105. Crist, *supra* note 100, at 887.

106. *Id.* at 854.

107. Vageshwari Deswal, *Do animals have rights?*, TIMES OF INDIA (Aug. 21, 2020, 11:28 PM), <https://timesofindia.indiatimes.com/blogs/legally-speaking/do-animals-have-rights/>.

108. Sofi Ashan, *Stray dogs have the right to food and citizens right to feed them: Delhi HC*, INDIAN EXPRESS (July 1, 2021, 7:10 PM), <https://indianexpress.com/article/cities/delhi/stray-dogs-have-a-right-to-food-and-citizens-right-to-feed-them-delhi-hc-7383865/>.

109. Sanket Khandelwal, *Environmental Personhood: Recent Developments and the Road Ahead*, (Apr. 24, 2020, 2:58 AM), <https://www.jurist.org/commentary/2020/04/sanket-khandelwal-environment-person/>.

human persons.”¹¹⁰ New Zealand Parliament passed the Animal Welfare Amendment Act in 2015 with an express intent to protect animals based on their sentience and the inherent moral value that accompanies sentience.¹¹¹ A recent bill introduced a new article for Spain’s Civil Code that would acknowledge animals as living beings with sentience, and move them away from their status as objects.¹¹² In the United Kingdom, Parliament passed Animal Welfare (Sentience) Act of 2022, which formally recognizes animals as sentient beings and establishes an Animal Sentience Committee comprised of experts devoted to ensuring that government policies consider animal sentience.¹¹³ Several other countries protect animal interests in their constitutional texts, including: Switzerland, Brazil, Slovenia, Germany, Luxembourg, Austria, and Egypt.¹¹⁴

Each country follows their own legal system and abides by specifically tailored constitutions or codes. Despite the differences between the legal systems of each nation, the recognition of animal sentience and certain animal rights by a few countries can serve as an example for the rest. While recognizing animal sentience does not provide personhood for animals under the law, such recognition elevates animals above their historical position as “property” or “objects,” and mandates a recognition of animal interests when legal issues are decided. Officially recognizing animal sentience and value did not cause industries in these countries to collapse or invoke a “flood of litigation,” as many U.S. courts and animal rights critics fear in the face of animal personhood or extensive animal protections.¹¹⁵ In our increasingly globalized world, humans and non-humans would benefit from a uniform approach to the treatment of animals that continues to reflect developing moral values.

110. *Id.*

111. Colin William Anderson, *Recognizing Animal Sentience Within the Law*, 28 DCBA BRIEF 8 (2016).

112. Mayte Rius, *¿Quién se queda la mascota en caso de divorcio? ¿Y de embargo? El Congreso cambia las normas*, LA VANGUARDIA (Apr. 21, 2021, 8:12 AM), <https://www.lavanguardia.com/vivo/mascotas/20210420/6984347/mascota-divorcio-embargo-legal.html>.

113. PRESS RELEASE, U.K. DEP’T ENV’T, FOOD & RURAL AFF., ANIMALS TO BE FORMALLY RECOGNIZED AS SENTIENT BEINGS IN DOMESTIC LAW (May 13, 2021); Animal Welfare (Sentience) Act 2022, LEGISLATION.GOV.UK, <https://www.legislation.gov.uk/ukpga/2022/22/enacted#:~:text=An%20Act%20to%20make%20provision,of%20animals%20as%20sentient%20beings> (last visited Nov. 26, 2022).

114. Jessica Eisen, *Animals in the Constitutional State*, 15 INT’L J. CONST. L. 909, 911 (2017).

115. Richard L. Cupp, Jr., *Litigating Nonhuman Animal Legal Personhood*, 50 TEX. TECH L. REV. 573, 596 (2018).

3. The Role of Communication and Consent

Consent is offered as a reason to deny legal representation of animals. Skeptics argue that because animals cannot speak to us or consent to “legal duties and rights of the governed,” they are unable to possess legal personhood.¹¹⁶ Consent is not considered in many other areas where animals function in human society. Animals are routinely killed for food, used for various services, or forced into captivity without consent or communication—indicating their unwillingness to participate in these human-made systems. Moreover, even if some type of consensual relationship is required for an attorney or agent to consider an animal’s best interests, there are other examples in the legal system of representation without explicit consent.

Children are afforded rights under the legal system despite their inabilities to effectively communicate or comprehend their own interests or positions in society.¹¹⁷ Similar to animals, minors lack procedural capacity to sue.¹¹⁸ To protect the vulnerable class of minors, parents act as natural guardians for children, or the court will appoint a guardian in the case that parents are unable to provide proper care.¹¹⁹ The parent-child standard in the legal system could serve as a template for a guardian-animal standard.¹²⁰ In the case of animals without definitive owners, a legally-appointed advocate could sue on behalf of an animal to safeguard their interests.¹²¹ Moreover, this guardianship is possible as an extension of limited circumstantial rights similarly afforded to other non-human entities, avoiding concerns that courts would lower minors to a lesser status because of the heightened protection for animals.¹²² One area of animal law, pet custody, is rapidly developing to reflect the principles regarding the analysis of optimal environments and guardians for animals. Some states, like Alaska and New York, require courts to consider the “best interests” of a companion animal when they award custody during divorce proceedings.¹²³

As technology progresses, our ability to understand the needs and interests of animals grows. Animals may not be able to communicate in the courtroom, but animal psychologists and behavioral experts can determine

116. Richard L. Cupp, Jr., *Focusing on Human Responsibility Rather Than Legal Personhood for Nonhuman Animals*, 33 PACE ENV'T L. REV. 517, 528 (2016).

117. Simmons, *supra* note 68, at 279.

118. *Id.*

119. *Id.* at 280.

120. *Id.* at 283.

121. *Id.*

122. *Id.*

123. Nick Reisman, *Who gets Fido in the divorce? New law could help solve bone of contention*, SPECTRUM NEWS (Oct. 26, 2021), <https://spectrumlocalnews.com/me/maine/ny-state-of-politics/2021/10/26/who-gets-fido-in-the-divorce->.

the animal's social, psychological, and environmental needs. Along with the framework provided by guardianship, "best interests" for animals can be determined through the expertise of scientists and veterinarians that can study and ascertain the needs of both species as a whole and individual animals.

B. Do animals have duties?

To analyze potential duties of animals, one could evaluate their role in human civilization. Like humans, animals are frequently held accountable for their actions. Capital punishment (usually without due process) is the solution for animals that attack humans or other animals,¹²⁴ or escape confinement.¹²⁵ In some cases, animals are put to death when humans are arguably at fault. In 2016, the Cincinnati Zoo animal response team infamously shot a critically endangered western lowland gorilla named Harambe after a child fell into the gorilla enclosure.¹²⁶ Many states operate under Dangerous Dog statutes, allowing for the classification of individual dogs (or even entire breeds) as "dangerous" after an incident that threatens other animals or humans.¹²⁷ Classifications as a "dangerous" dog may result in mandatory fees, registration, and safety precautions like: muzzling, tattoos, microchips, and confinement.¹²⁸ Certain provisions order euthanasia for repeat offenses or specific dangerous behavior.¹²⁹

Other animals serve as trained "employees" under the presumption of consent, performing jobs that unquestionably invoke important duties to human society. Service animals are trained to work and perform tasks for individuals with disabilities, serving in a role that can be lifesaving.¹³⁰ Dogs and horses serve as members of the police force—tracking criminal activity, aiding crowd control, and charging into dangerous situations at the urging of their human counterparts. Poland recently introduced a plan to provide pensions for dogs and horses in state employment, acknowledging that their

124. See generally, Cheryl Abbate, *The Search for Liability in the Defensive Killing of Nonhuman Animals*, 41 SOCIAL THEORY AND PRACTICE 106 (2015) (discussing the killing of animals in self-defense).

125. Christopher M. Lucca, *Keeping Lions, Tigers, and Bears (Oh My) in Check: The State of Exotic Pet Regulation in the Wake of the Zanesville, Ohio Massacre*, 24 V. ENV'T L. J. 125, 128–29 (2013).

126. Allyson R. Coyne, *Orcas, and Tigers, and Painted Dogs, Oh My: The Need for Targeted Zoo Safety and Security Regulation*, 2 UNIV. ILL. L. REV. 801, 827 (2019).

127. Charlotte Walden, *State Dangerous Dog Laws*, ANIMAL LEGAL & HIST. CTR., MICH. STATE UNIV. COLL. OF L., <https://www.animallaw.info/topic/state-dangerous-dog-laws> (last visited Mar. 5, 2022).

128. *Id.*

129. *Id.*

130. *Service Animals*, ADA NAT'L NETWORK, <https://adata.org/factsheet/service-animals> (last visited Mar. 5, 2022).

service deserves equal recognition.¹³¹ Even underwater, animals cannot escape human servitude and human-imposed duties. Since 1959, the United States Navy Marine Mammal Program has trained various marine animals to sense naval threats, recover objects, mark locations of undersea mines, and attach recovery lines to Navy equipment on the ocean floor.¹³² While the Navy trained many species—sharks, rays, sea turtles, whales, and even marine birds—California sea lions and bottlenose dolphins are the animals the program currently uses.¹³³

However, imposing an anthropomorphic lens on animals perpetuates the viewpoint that intrinsic value only exists for humans or animals that mimic human traits. While the baseline for “personhood” is human-centric, the sphere of personhood itself is amorphous.¹³⁴

1. Animals as Parents

Parenthood is recognized as one of the most important duties in human society. The importance of procreation and parenting is recognized and constitutionally protected. Privacy rights developed as part of constitutional jurisprudence allow U.S. citizens the freedom to decide whether to procreate and how they will raise their children.¹³⁵ These same fundamental rights are not afforded to animals. In the farming industry, female cows are routinely artificially inseminated; their calves are taken away immediately after birth, causing psychological distress.¹³⁶ Laying hens are also forcibly impregnated.¹³⁷ If not eaten as part of the nation’s egg supply, female chicks are raised as laying hens, and male chicks are immediately killed upon hatching through brutal methods like maceration.¹³⁸ Animal researchers have

131. Monika Scislowska & Rafal Niedzielski, *Poland plans pensions for dogs, horses in state employment*, AP NEWS (Mar. 27, 2021), <https://apnews.com/article/horses-police-poland-legislation-dogs-b45b58d91a75aa18d02cc5c1ebc82406>.

132. *U.S. Navy Marine Mammal Program*, NAVAL INFO. WARFARE CTR. PAC., <https://www.niwpacific.navy.mil/marine-mammal-program/> (last visited Nov. 21, 2022).

133. *Id.*

134. BRUCE A. WAGMAN, ET AL., *ANIMAL LAW: CASES AND MATERIALS* 60 (6th ed. 2019).

135. *See* *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925) (holding the Fourteenth Amendment protects the liberty of parents and guardians to direct their children’s education); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (holding the right to procreation is a fundamental right that cannot be infringed by forced sterilization); *Stanley v. Illinois*, 405 U.S. 645, 645 (1972) (holding unwed fathers are entitled to custody of their children unless declared unfit based on the fundamental right to raise their children); *Troxel v. Granville*, 530 U.S. 57, 75 (2000) (holding parents have a fundamental liberty interest in rearing their child and deciding upon visitation rights).

136. Mary Bates, *The Emotional Lives of Dairy Cows*, WIRED (June 30, 2014, 12:12 PM), <https://www.wired.com/2014/06/the-emotional-lives-of-dairy-cows/>.

137. Tove K. Danovich, *Why the US egg industry is still killing 300 million chicks a year*, VOX (Apr. 12, 2021, 2:30 PM), <https://www.vox.com/future-perfect/22374193/eggs-chickens-animal-welfare-culling>.

138. *Id.*

a history of removing primate mothers from their young for the sake of experiments.¹³⁹ “Cub petting” operations remove lion and tiger cubs from their mothers to serve as part of the industry.¹⁴⁰ The examples of human interference in animal parenthood are numerous. But given the chance to exist without human influence, animals perform their parental duties exceptionally—some to an extent that human parents arguably could not achieve.

During the litigation of *Lavery*, Jane Goodall submitted an affidavit with NhRP’s brief about the duties of chimpanzees.¹⁴¹ As a dedicated advocate performing long-term research on wild primates, Goodall authored numerous publications and delivered many lectures on the behavior, ecology, welfare, and conservation of chimpanzees, baboons, and other monkeys.¹⁴² Goodall details the burdensome duties imposed by motherhood during a chimpanzee’s life.¹⁴³ Mothers must breastfeed infants for three years, which requires carrying the baby until they are old enough to cling to the mother’s back.¹⁴⁴ Female chimpanzees also construct nests large enough for themselves and their offspring.¹⁴⁵ Even when an infant chimpanzee develops into a child, the mother may need to acclimate them to groups of other fully grown offspring.¹⁴⁶ Maternal responsibility includes protecting infants injured by other chimpanzees.¹⁴⁷ In some instances, a chimpanzee mother may return to a fully-grown offspring to help them.¹⁴⁸

Goodall explains that the fatherhood role in chimpanzee communities is more general, as the adult males act in a paternal manner towards all infants in their group rather than specifically providing for their biological children.¹⁴⁹ Adult male chimpanzees protect their communities from outside threats, such as hunters.¹⁵⁰

139. *Harlow’s Classic Studies Revealed the Importance of Maternal Contact*, ASS’N PSYCH. SCI. (June 20, 2018), <https://www.psychologicalscience.org/publications/observer/obsonline/harlows-classic-studies-revealed-the-importance-of-maternal-contact.html#:~:text=Using%20methods%20of%20isolation%20and,separate%20cages%20away%20from%20peers>.

140. See Ann Wilson & Clive J.C. Phillips, *Identification and Evaluation of African Lion (Panthera Leo) Cub Welfare in Wildlife-Interaction Tourism*, 11 ANIMALS 2748, 2755–56 (2021) (exploring the impacts of the cub petting industry on lion cubs in South Africa specifically and discussing the cub petting in many countries as part of animal-based tourism driven by global capitalism).

141. Jane Goodall, Aff. ¶ 1 for Petitioner Nonhuman Rights Project, Inc., People ex rel. Nonhuman Rts. Project, Inc. v. Lavery, 998 N.Y.S.2d 248, 248 (N.Y. App. Div. 3d Dept. 2014).

142. *Id.*

143. *Id.* ¶ 15.

144. *Id.*

145. *Id.*

146. *Id.* ¶ 16.

147. *Id.* ¶ 17.

148. *Id.* ¶ 18.

149. *Id.* ¶ 19.

150. *Id.* ¶ 19.

Older siblings often display the same protective instincts towards their maternal brothers and sisters.¹⁵¹ Goodall describes a nine-year-old female chimpanzee that climbed down a tree to scoop up her three-year-old brother when they encountered a venomous snake.¹⁵² Another young female chimpanzee protected her brother from walking through tall grass infested with ticks.¹⁵³ Older siblings will even adopt infants if their mother dies, despite the social disadvantages placed on the adopter through accepting their dead mother's strenuous duties.¹⁵⁴ Goodall recounts the story of a five-year-old male who carried his one-and-a-half-year-old sister for several months until she died without the necessary breastmilk supply.¹⁵⁵

Chimpanzees and non-human primates are not the only animals committed to their parental duties. Rather, save some exceptions, parenthood is an almost universal duty shared between animals—human and non-human. Researchers observed orca mothers educating and disciplining their children through head movements, distinct noises, and tails slapping the water.¹⁵⁶ The diverse and specific language that orcas use with their children, classified as “baby talk,” is different from the clicks and whistles they use when around the pod.¹⁵⁷ Pigs display parallels to human postpartum disorders when exposed to certain biological, social, and management factors.¹⁵⁸ Remedies that work for human mothers to cure depression after birth—such as a larger social network for support—also work for pig mothers.¹⁵⁹ Some animal parents carry out burdensome physical tasks to raise their offspring. Female strawberry dart frogs lay six eggs at a time and males will protect them following ten days, urinating on the eggs until they hatch into tadpoles.¹⁶⁰ Mothers then carry the tadpoles into the trees, climbing anywhere from three to forty feet, placing them in pools of water that gather in the leaves.¹⁶¹ Mothers will continue to bring the tadpoles food for the next few months, climbing up and down the trees and traveling extensively.¹⁶²

151. *Id.* ¶ 20.

152. *Id.*

153. *Id.*

154. *Id.* ¶ 21.

155. *Id.*

156. Marina Kachar, et al., *Orcas are Social Mammals*, 3 INT’L J. AVIAN & WILDLIFE BIOLOGY 291, 293 (2018).

157. *Id.* at 294.

158. See Courtney Daigle, *Parallels between Postpartum Disorders in Humans and Prewaning Piglet Mortality in Sows*, 8 ANIMALS 1, 1 (2018) (showing that pigs display symptoms of postpartum depression when exposed to certain factors).

159. *Id.*

160. Erica R. Hendry, *A Mother’s Journey: How Strawberry Dart Frogs Are Born at the Smithsonian National Zoo*, SMITHSONIAN MAG. (Feb. 26, 2010), <https://www.smithsonianmag.com/smithsonian-institution/a-mothers-journey-how-strawberry-dart-frogs-are-born-at-the-smithsonian-national-zoo-116054632/>.

161. *Id.*

162. *Id.*

2. Animals as Community Members

Beyond their parental and familial roles, animals exist in species-specific and ecological communities comprised of many different animals and plants. Even 100 years ago, humans remarked on the “mutual support” between “allies” within animal communities.¹⁶³ Animals have their own social contracts with one another: unspoken agreements based on mutual benefit manifesting in intricate relationships between both individuals and species.

Goodall’s affidavit for NhRP’s brief mentioned that chimpanzees will adopt orphaned chimpanzees within their community, even if they are not biologically related.¹⁶⁴ One twelve-year-old male chimpanzee cared for a three-and-a-half-year-old male and endured aggression from other adult chimpanzees to protect the orphaned chimpanzee.¹⁶⁵ Generally, adult male chimpanzees protect the territory of their community, fighting with neighboring primate gangs when necessary and closely cooperating to fend off attacks.¹⁶⁶ Even if adult male chimpanzees may be competing within their own community for social dominance, they will put aside their differences to defend their group from outside threats.¹⁶⁷

In addition to chimpanzees, many animals derive support from their species-specific communities. Herds of grazing animals like deer, cattle, horses, and sheep, exist in social hierarchies and benefit from the support of group members for psychological well-being and physical protection.¹⁶⁸ Pelicans, geese, and other waterfowl travel in flight flocks that are highly organized to benefit from aerodynamic formations.¹⁶⁹ Some species of birds even migrate with their relatives. For example, the long-tailed tit preserves family bonds in autumn migration.¹⁷⁰ Animals can also form particularized mutualistic relationships with a different species by working together in a manner that benefits each party. Red-billed oxpeckers, a species of bird native to sub-Saharan Africa, feed from ticks and parasites on black

163. C.F. Holder, *Animal Communities*, 80 SCI. AM. 347, 347 (1899).

164. Goodall, *supra* note 141, ¶ 22.

165. *Id.*

166. *Id.* ¶ 22.

167. *Id.*

168. See MICHAEL D. BREED & JANICE MOORE, ANIMAL BEHAVIOR 367–97 (2012) (explaining the structure and benefits of animal cooperation, such as in group structures like schools, flocks, hordes, and herds).

169. Peter Friederici, *How a Flock of Birds Can Fly and Move Together*, AUDUBON (Mar. 2009), <https://www.audubon.org/magazine/march-april-2009/how-flock-birds-can-fly-and-move-together>.

170. See Raisa Chetverikova et al., *Special Case Among Passerine Birds: Long-tailed Tits Keep Family Bonds During Migration*, 71 BEHAV. ECOLOGY & SOCIOBIOLOGY 1 (2017) (finding that long-tailed tits retain family bonds during migration, since numerous individuals were genetically related in usually temporary flocks).

rhinoceroses.¹⁷¹ The oxpeckers also serve as a warning system for the visually challenged black rhinos, sounding alarm calls when humans approach.¹⁷² Aphids (small, sap-sucking insects) exist in a symbiotic relationship with several species of ants.¹⁷³ Aphids secrete a sugary liquid called honeydew, which ants feed on in exchange for protection from predators and transportation to their nests at night or during the winter.¹⁷⁴ Animal communities are so intricate and interdependent that the introduction of foreign factors like invasive species can create “dramatic and widespread effects” on animal communities.¹⁷⁵

3. Animals as Individuals

To overcome the opposition to non-human personhood, many draw similarities between certain animals (namely primates) and humans to prove that animals deserve rights.¹⁷⁶ Critics of non-human personhood “rely on the naturally ‘superior’ intelligence and cognitive abilities of humans to justify affording rights to humans at the exclusion of other species.”¹⁷⁷ Humans see their own behaviors reflected in the cognitive abilities of certain animals like primates, elephants, and cetaceans, and herald them as superior. Researchers have observed advanced cognitive abilities like self-awareness in many animals.

Humans are misled by the common phrase “bird-brained.” Studies of domestic chickens reveal that they have the capacity for self-control and self-assessment—both elements of self-awareness.¹⁷⁸ Chickens exist in complex social hierarchies, exhibiting complex emotions and cognition on the same level as many other birds and mammals.¹⁷⁹ Due to our limited interactions with fish and common myths about their “three-second memory,” fish are also considered a group of animals with low cognitive abilities and nonexistent emotional capabilities.¹⁸⁰ One study examined the capacity of the

171. Gloria Dickie, *Hitchhiking oxpeckers warn endangered rhinos when people are nearby*, SCIENCE NEWS (Apr. 9, 2020, 11:00 AM), <https://www.sciencenews.org/article/oxpecker-birds-warn-endangered-black-rhinos-people-near-poaching>.

172. *Id.*

173. Ada McVean, *Farmer ants and their aphid herds*, MCGILL OFF. SCI. & SOC’Y (Aug. 16, 2017), <https://www.mcgill.ca/oss/article/did-you-know/farmer-ants-and-their-aphid-herds>.

174. *Id.*

175. See generally J. Sean Doody et al., *Chronic Effects of an Invasive Species on an Animal Community*, 98 ECOLOGY 2093 (2017) (finding that introducing invasive species can trigger trophic cascades within animal communities).

176. Emily A. Fitzgerald, *[Ape]rsonhood*, 34 REV. LITIG. 337, 358 (2015).

177. *Id.* at 359.

178. Lori Marino, *Thinking Chickens: A Review of Cognition, Emotion, and Behavior in the Domestic Chicken*, 20 ANIMAL COGNITION 127, 133–34 (2017).

179. *Id.* at 134.

180. Joseph Stromberg, *Are fish far more intelligent than we realize?*, VOX (Aug. 4, 2014, 8:30 AM), <https://www.vox.com/2014/8/4/5958871/fish-intelligence-smart-research-behavior-pain>.

bluestreak cleaner wrasse (“cleaners”)—a species of fish that eats parasites or dead tissue on the bodies of larger fish in a mutualistic relationship—to demonstrate “theory of mind” abilities.¹⁸¹ “Theory of mind” abilities involve representing the perceptual states of others in strategic interactions, essentially exhibiting that the animal can comprehend what other animals see and know.¹⁸²

Cleaner fish will often work with reproductive partners to clean larger “client” fish.¹⁸³ Cleaners frequently “cheat” and feed on mucus, rather than the dead tissue or parasites that the client fish want removed.¹⁸⁴ Cheating leads to the client fish ending the interaction prematurely, even though the cleaners prefer to feed on mucus.¹⁸⁵ Because pairs of cleaners work together, if the female cleaner feeds on mucus and the client fish ends the interaction, the male cleaner is also punished for the female’s behavior without the benefits of consuming mucus.¹⁸⁶ Larger males punish cheating female cleaners through chasing and biting.¹⁸⁷ This exhibits “theory of mind” behavior because the female will either refrain from consuming mucus when the male is in sight or cooperate in fear of retribution.¹⁸⁸ Cleaners will also avoid consuming mucus from one client fish if there is a bystander client fish observing the behavior, as opposed to cheating when unobserved.¹⁸⁹ These behaviors demonstrate that cleaner fish understand that other fish perceive them and that perception results in implications of their actions.¹⁹⁰

Relying on cognitive abilities for a measurement of personhood or duties can lead to pitfalls by promoting human-centered values and conflicting with the concept of intrinsic rights for mentally-incapacitated humans. More persuasive than animal cognition is the personality of the individual. Recent research is revealing that individual non-humans, possess their own unique personalities, like humans.¹⁹¹ Huge variations in productivity exist between different water striders, a species of water insects that skim the surface of water. Some striders are passive and lazy, while others are ambitious and

181. Katherine McAuliffe et al. *Cleaner fish are sensitive to what their partners can and cannot see*, 4 *Comm’n Biology* 1 (2021).

182. *Id.* at 2.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. John A. Shivik, *Do animals have personalities? Why scientists are starting to admit they do.*, NBC (Dec. 1, 2017, 4:33 AM), <https://www.nbcnews.com/think/opinion/do-animals-have-personalities-why-scientists-are-starting-admit-they-ncna823516>.

hard-working.¹⁹² Male fiddler crabs attract females with their personalities rather than their appearance or physical performance.¹⁹³ Bluebirds have individual stresses and personalities that drive the development of their species' ecology depending on their level of aggression.¹⁹⁴

Given the rapidly evolving science regarding animal sentience, individuality, and culture, a reassessment of human laws and the legal status of animals is overdue. The simple categorization of "property" does not properly encompass the complexities of animals as beings, nor does it provide necessary boundaries to prevent human actions that threaten animals. As Judge Fahey emphasized in her concurrence from *Lavery II*, the issue of animal personhood "is not merely a definitional question, but a deep dilemma of ethics and policy that demands our attention."¹⁹⁵

III. PROPOSAL

The United States legal system has slowly expanded personhood to different groups over time. As the law developed to match society's changing values, "the composition of the class of legal persons has evolved from including only white, male citizens to including all living human beings and a limited group of juridical entities."¹⁹⁶ We should aim to add animals to the "juridical entities." A haphazard collection of laws currently governs animals for the purpose of human interests. Integrating animal interests into human legal systems requires categorical change. Hesitation to provide animals legal personhood springs from the supposed uplifting of animals to the level of humans. The proposed category of limited "juridical entities" is wholly separate from living human beings.

Special classifications of legal personhood are afforded to other "juridical entities" without collapsing the U.S. legal system. Opponents of legal personhood for animals argue that elevating legal status for all non-humans will bring certain humans, like those with limited cognitive abilities,

192. Andrew Sih & Jason V. Watters, *The mix matters: behavioural types and group dynamics in water striders*, 142 BEHAVIOUR 1417, 1427–28 (2005).

193. See Leeann T. Reaney & Patricia R.Y. Backwell, *Risk-taking behavior predicts aggression and mating success in a fiddler crab*, 18 BEHAV. ECOLOGY 521 (2007) (describing an experiment with results showing that female fiddler crabs were more likely to mate with "bold" male fiddler crabs).

194. See Renée A. Duckworth, *Aggressive behaviour affects selection on morphology by influencing settlement patterns in a passerine bird*, ROYAL SOC'Y BIOLOGY PROC. 1789 (2006) (finding that more aggressive bluebirds compete more effectively for nesting territory).

190. Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery, 100 N.E.3d 846, 848 (N.Y. 2018).

196. Fitzgerald, *supra* note 176, at 340–41.

down in legal status.¹⁹⁷ This argument ignores the fundamental difference between actual persons and juridical persons. Juridical persons are artificial or fictional persons that are “not necessarily precluded from possessing rights equal to natural persons.”¹⁹⁸ Despite their potential to possess rights equal to natural persons, the rights of juridical persons may be defined and limited.¹⁹⁹ If granting legal personhood to non-humans harmed vulnerable human populations like children and mentally-incapacitated individuals, the circumstantial and limited categorization of entities like corporations and fetuses as persons would have damaged them already.

Some animal advocates propose the options of “quasi-property” or “quasi-personhood” as a new status for non-human animals.²⁰⁰ These new terms may appear to be additions to the legal labeling scheme that will only facially affect animals if they are unaccompanied by actual changes to animal rights.²⁰¹ The new terms real value is the potential to “expand to include more species than ever. . . into a category of ‘persons.’”²⁰² The species identified as having this potential are primates, elephants, and orcas—perhaps poking a hole in the NhRP’s legal theory as applied in the long term if the most cognitively advanced non-human animals can achieve personhood.²⁰³

At the least, the law should reconsider legal personhood. The clarified definition in Black’s Law Dictionary and the evolving moral views of human society warrants a reevaluation of non-human animals under United States laws. An update is long overdue, given that non-human animals status has been static since the founding of the country. A default status of limited legal personhood would provide better protections than existing federal or state laws and avoid irreversible injuries of valuable entities who occupy our planet alongside us.

CONCLUSION

In the words of Jane Goodall, “chimpanzees have well-defined duties and responsibilities.”²⁰⁴ Beyond just chimpanzees, non-human animals generally exhibit their own unique duties and responsibilities. As scientific

197. See generally Richard L. Cupp, Jr., *Focusing on Human Responsibility Rather Than Legal Personhood for Nonhuman Animals*, 33 PACE ENV’T L. REV. 517 (2016) (arguing against legal personhood for animals because of the risk of harm to the legal status of vulnerable humans such as those with limited cognitive abilities).

198. Fitzgerald, *supra* note 176, at 343.

199. *Id.* at 345.

200. Angela Fernandez, *Animals as Property, Quasi-Property, or Quasi-Person*, BROOKS UNIV. ANIMAL L. FUNDAMENTALS 1, 51 (Nov. 19, 2021).

201. *Id.*

202. *Id.*

203. *Id.*

204. Goodall, *supra* note 141, at ¶ 14.

understanding of animal capacity develops and ethical questions arise, human legal systems must alter their standards and categorizations to reflect these advancements. The property status of animals does not match their role in human society or their value outside of human existence. This is evidenced by the question posed in Judge Fahey's concurrence: "Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her?"²⁰⁵ Whether it is through the legislature or the courts, the status of non-human animals should be confronted, or it will continue to plague our courtrooms and our collective conscience.

205. Nonhuman Rts. Project, Inc., on Behalf of Tommy v. Lavery, 100 N.E.3d 846, 848 (N.Y. 2018).