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High Noon for Animal Rights Law: The Coming Showdown Between Pet Owners and Guardians

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About our cover

You will no doubt recognize a familiar face on the cover of this edition of Bellwether. His name is Chondo, and he is one of the Wegman Weimaraners. Photographed by and printed courtesy of William Wegman, Chondo doesn’t like to sit long, but is eager to work. According to Wegman’s website, www.wegmanworld.com, Weimaraners in particular like to play, and they see their photo ops as an interactive game.

Chondo is the perfect model for our cover story on animal rights law. “Whether we like it or not, people’s attitudes to animals have changed dramatically in the last 20–30 years, and our legal system is struggling to keep pace,” says James Serpell, Ph.D., the Marie A. Moore Professor of Humane Ethics and Animal Welfare and director of the Center for the Interaction of Animals and Society (CIAS). “The moral boundaries that traditionally separated humans and nonhumans have become increasingly blurred, and some animals—especially companion animals—have acquired a social and emotional value that far exceeds their basic economic worth. The ‘guardianship’ debate, like the ‘animal rights’ controversy before it, reflects these changing sensibilities and the rising tide of public pressure to award animals higher moral and legal status than they have hitherto enjoyed.” For more information about the CIAS, please visit www.vet.upenn.edu/research/centers/cias/.
By Susan I. Finkelstein

A part of a divorce settlement, a judge orders a Colorado man to pay $140 per month in “pet support” for the family dog.

In Seattle, a judge awards $45,000 to the woman whose 12-year-old cat was mauled to death by a neighbor’s dog. The amount included $30,000 for the pet’s special value, and $15,000 for emotional distress. The cat’s owner said her animal’s death left her with sleep disturbances, panic attacks, and depression.

In Nashville, the owners of “Gizmo,” a 16-year-old Yorkshire terrier killed last year when he was allegedly kicked like a football, are asking a civil court to award them $200,000 in damages. After the incident occurred, local police arrested two men, who were charged with cruelty to animals (a misdemeanor) and felony vandalism, a charge that could carry two to 12 years in prison.

These are actual cases, only a few of hundreds that have surfaced in the American and Canadian legal systems in the past several years. An indication that the status of animals—particularly “companion animals”—is changing, these scenarios are increasingly common as society ponders new evidence regarding the sentience of animals and their place in a human world.

Modern research has shown that non-human mammals share similar emotive and cognitive characteristics with humans, and are remarkably like us neurologically and genetically. But it’s not just our similar biology that binds us so closely to dogs (and to other pets, for that matter). We have a long history together: Domesticated dogs have been sharing their lives with people for more than 12,000 years, domesticated cats for about 4,500 years. According to a 2003–2004 survey of the American Pet Products Manufacturers Association, 63 percent of U.S. households (about 69 million homes) own a pet, and 45 percent own more than one. The New York Times recently estimated that an average dog owner will spend approximately $11,500 on the animal over the span of its life. Not surprisingly, the veterinary profession experienced its own unprecedented boom in the last 20 years as well: The number of practitioners in the U.S. increased from 32,000 in 1980 to a projected 70,384 in 2005 (according to the Association of American Veterinary Colleges).

Pets as property

These facts are more than statistics: They reflect a gradual but dramatic transformation in how society views its companion animals. Most people with pets who describe themselves as animal “owners” consider that kind of ownership very different, say, than owning a table or a lamp. Although the law has long considered domesticated animals to be personal property, possessing no inherent rights, and with no status apart from their owners, a distinction is made between a living being and an inanimate object. Damaging, breaking, or discarding your table or lamp does not qualify as a crime; doing the same things to your dog does.

Anti-cruelty statutes do not confer legal rights to animals or change their status as property; rather, they aim to protect animals from mistreatment by imposing a penalty for cruel or neglectful acts toward them. Today, anti-cruelty laws exist at the state and federal levels. The Animal Welfare Act provides protection at the federal level, and each of the 50 states and the District of Columbia share many anti-cruelty provisions. Most states deem it an act of cruelty, for instance, to “overdrive, overwork, or work an animal when it is unfit for labor.” Abandonment, poisoning, and failure to supply animals with adequate food, water, and shelter are also identified as crimes in many state anti-cruelty laws. Forty-one states and the District of Columbia now impose felony-level penalties for certain cruelty violations, including animal fighting. Plainly, most reasonable people believe animals do have a basic “right of protection” against needless pain and suffering. Some would even argue that animals have a “right of protection”...
against any type of pain or suffering, under any circumstances.

Pet guardians vs. pet owners
Which brings us to this issue’s crux—and greatest paradox: If the law regards animals as a form of property, on par with inanimate objects, then they cannot have legal “rights.” Hence, a primary goal of today’s animal-rights movement is to eliminate the idea of animals as property, to alter a public mindset that they say leads to suffering. Advocates assert that using the term “pet guardians” rather than “pet owners” will promote greater responsibility and respect for animals without granting them additional protections or changing their legal status. Some do not necessarily support elevating animals to the status of humans, but believe pets “should be categorized as family members, constitutive property, companion constitutive chattel, or sentient property, rather than as mere personal property” (see Mary Margaret McEachern Nunalee and G. Robert Weedon, “Modern Trends in Veterinary Malpractice: How Our Evolving Attitudes toward Non-Human Animals Will Change Veterinary Medicine,” Animal Law, Vol. 10, 2004).

For other animal rightists, though, the goal is ambitious: To actually effect a universal change in the legal classification of people who have domesticated animals from “owners” to “guardians.” Animals, in turn, would essentially become wards, a title that confers a certain amount of self-determination or autonomy, similar to that of children. In Defense of Animals (IDA), a California-based animal-advocacy group, is heading a national effort to add or substitute the phrase

Pets and the law
Opponents of the proposed terminology—among which are animal healthcare professionals, and many organizations within the pet industry—believe the move will cause unintended consequences that will not necessarily improve the lot of animals. Charlotte Lacroix, D.V.M., J.D., an adjunct professor at the School and specialist in veterinary law and practice management, has spoken and written extensively on the subject. She raises the following questions in Keystone Veterinarian, the magazine of the Pennsylvania Veterinary Medical Association:

- Can guardians treat their own pets?
- Can pets make demands of their guardians?
- Can pets sue their guardians? Veterinarians? Government?
- Can guardians be divested of their property right?
- Who will pay and provide for care of divested pets?
- Who is responsible for veterinary bills, if care that benefits the pet was not approved by the guardian?
- What do shelters do with abandoned animals?
- What if a veterinarian disagrees with the guardian?

If pet owners are permitted to recover large awards, veterinarians will become more vulnerable to malpractice suits, forcing an increase in insurance premiums to cover costs of litigation and skyrocketing monetary awards.

Pet guardian for pet owner in official statutes, ordinances, and public communications. The Guardian Campaign’s written mission is “to bring about a more just, humane world by modeling responsible, caring, and respectful language and behavior toward the animals and the people we encounter at home, in school, and in our community” www.guardiancampaign.com.
At a recent lecture at the School, Dr. Lacroix further pondered the impact of the law regulating our relationship with animals. “Do we have a society where we have lots of rules and regulations, or do we have a society where we get to do whatever we want? And that’s what this balance is—regulation vs. non-regulation. How much can you really regulate? Are parents good parents because they’re afraid that child welfare laws are going to result in their children being taken away from them? Is regulation really an incentive for people to be better parents, or better pet owners? Or would education be a stronger force?”

Regarding the wholesale placement of animals into a legal non-property classification, Dr. Lacroix believes an incremental change might work better. “There’s no question in my mind that animals are not cars, but there’s also no question in my mind that animals are not necessarily akin to children. They don’t have the same needs, the same interests, nor are they humans with the same roles in society, etc… Are we going to make them children overnight just by changing terminology, or instead maybe continue to strengthen the animal cruelty statutes by imposing additional obligations on pet owners and enforcing such laws before proposing new legal paradigms? Can we ship away at this property concept so that we recognize animals are not cars, but on the other hand, not turn the law on its head to take animals from property status to basically human status without debating in an open forum on which specific legal ‘rights’ animals should and should not be conferred?”

What this means to veterinarians

Inevitably, taking animals out of the realm of property will also allow courts to accept an increasing number of independent claims for the wrongful death of companion animals. Non-economic damages that previously applied only to the death of a close human family member could be awarded, such as compensation for the loss of society/companionship, pain and suffering, and mental anguish. In fact, as the cases at the beginning of this article show, courts are already awarding damages greater than an animal’s “market value” (which for most household pets is little or nothing) for emotional distress resulting from cruelty or negligence that leads to the injury or death of an animal.

For veterinarians particularly, the detrimental repercussions of courts allowing non-economic damages could challenge the practice of veterinary medicine as we currently know it. If pet owners are permitted to recover large awards, veterinarians will become more vulnerable to malpractice suits, forcing an increase in insurance premiums to cover costs of litigation and skyrocketing monetary awards. Veterinarians already face several levels of liability in treating patients: Malpractice liability, premises liability, and bailment liability, and they can be held accountable for the negligence committed by a technician or other staff member who works for them. With increased malpractice lawsuits brought against veterinarians, minor oversights could become increasingly complex—and expensive. Some veterinarians might be forced to practice “defensive medicine,” using expensive and often unnecessary treatments to avoid lawsuits (“Modern Trends in Veterinary Malpractice”). Finally, veterinarians’ increased overhead will force them to raise their fees, and many pet owners may no longer be able to afford proper care for their animals. This then becomes an animal welfare issue.

Taking the “pet guardian” issue to its logical conclusion, many critics believe the elimination of property status for pets will ultimately result in the elimination of keeping companion animals at all. Animals themselves, they conclude, would suffer the most from the good intentions of animal rightists.

Owners as guardians

The problem seems to stem from the word “guardian,” which has a specific legal definition imparting a distinct set of responsibilities. The designation of “friend” or even “caretaker,” while elevating the status of animals above property, would not carry the same accountability on the part of “guardians.” A guardian may not even be a part of the family that owns the animal, but can be a legally appointed third party.

Dr. Lacroix specifically addresses the “friend” model. She is not convinced that society as a whole truly views animals as family members, akin to spouses and children. “According to a study by the American Pet Association … most people believe their pets are their best friend, as opposed to their children or their spouses. And that has very important legal consequences. If your pet is your best friend … you don’t have a guardianship obligation to your best friend; if your friend is injured or dies from the negligent acts of another, you don’t get non-economic damages.”

She continues, “The much-publicized information stating that pets are family members is anecdotal and not statistically significant. Under the ‘guardianship’ model, to require that pet owners always act in the best interests of their pets, regardless of the costs, goes beyond what most pet owners would want. So if the majority of society views pets as ‘best friends’ as opposed to children, then laws requiring owners to act in the capacity of guardian go too far.”

Despite heated controversy in the legal and animal-welfare communities, the Guardian Campaign has already met with some success. On the following page is a listing of the 12 cities and one county that have already passed ordinances incorporating the term pet guardian, and when these changes occurred; one state has included similar language in its constitution.

In addition, the bar associations of 11 states (Arizona, Connecticut, Florida, Michigan, Minnesota, Missouri, New Jersey, New York, Pennsylvania, Texas, Washington) and the District of Columbia now have animal-law sections or committees. Two are in the process of forming (Massachusetts and Oregon). At
least 50 law schools have offered, do offer, or plan to offer animal law courses, reading groups, and/or seminars. Next year, Penn Law School will offer an elective course on animal rights law that covers topics that range from the historical perspective of animals as property to current animal anti-cruelty statutes.

Passed Ordinances

<table>
<thead>
<tr>
<th>City, State</th>
<th>Date</th>
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<tbody>
<tr>
<td>Albany, California</td>
<td>June 7, 2004</td>
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<tr>
<td>Windsor, Ontario, Canada</td>
<td>May 10, 2004</td>
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<tr>
<td>Wanaque, New Jersey</td>
<td>May 10, 2004</td>
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<tr>
<td>Sebastopol, California</td>
<td>December 2003</td>
</tr>
<tr>
<td>Marin County, California</td>
<td>(28 cities) December 2003</td>
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<tr>
<td>San Francisco, California</td>
<td>January 13, 2003</td>
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<tr>
<td>Amherst, Massachusetts</td>
<td>April 24, 2002</td>
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<tr>
<td>Menomonee Falls, Wisconsin</td>
<td>March 11, 2002</td>
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<tr>
<td>Sherwood, Arkansas</td>
<td>September 24, 2001</td>
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<tr>
<td>Rhode Island (statewide)</td>
<td>July 5, 2001</td>
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<tr>
<td>Berkeley, California</td>
<td>February 27, 2001</td>
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<tr>
<td>West Hollywood, California</td>
<td>February 19, 2001</td>
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<tr>
<td>Boulder, Colorado</td>
<td>July 12, 2000</td>
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</tbody>
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Increased pressure on veterinarians

Today, with an increasingly comprehensive amount of medical information available to laypersons over the Internet and through the media, people are more informed than ever about veterinary care. They are aware of the newest diagnostic and treatment options, the latest specialties, and possible risks of various procedures. These expectations of a higher standard of care from veterinarians inevitably places incredible pressure on the profession. Veterinarians are beginning to realize there is no turning back. As Bernard Rollin, author of Animal Rights and Human Morality, put it, “[The veterinary] professional leadership needs to explain the realities of this dilemma to its constituency. That constituency then needs to decide if it wants the professional benefits of pediatricians, or the legal liability of garage mechanics.”

Are animals property?

Regardless of whether a consensus on the question is ever reached, it is clear that our society is in the process of dramatically altering its views toward animals. At the very least, the debate has raised public awareness of animal rights as a growing issue that warrants open discussion. Everyone whose lives are touched by animals must carefully consider the economic, political, and social implications of what such a major legal shift can or cannot accomplish.

For further reading:


American Veterinary Medical Association (AVMA) Position Statement

Ownership vs. Guardianship: Terminology Describing the Relationship Between Animals and Their Owners

The American Veterinary Medical Association promotes the optimal health and well-being of animals. Further, the AVMA recognizes the role of responsible owners in providing for their animals’ care. Any change in terminology describing the relationship between animals and owners does not strengthen this relationship and may, in fact, diminish it. Such changes in terminology may decrease the ability of veterinarians to provide services and, ultimately, result in animal suffering.

Pennsylvania Veterinary Medical Association (PVMA) Position Statements

On Pets as Property

Animals are not property in the same way that tables, lamps, or cars are property. Owners should be allowed to prove that pet animals have economic values above their purchase price or fair market value. Because of current common-law precedents, legislative changes most likely will be necessary to allow for expansion of these economic values.

On “Owner” vs. “Guardian”

The PVMA supports the current legal standing of animals as the property of their owners and opposes using the term “guardian” to describe these parties. Guardianship statues would undermine the protective care that owners can provide for their animals and the freedom of choice owners now are free to exercise, and could permit third parties to petition courts for custody of a pet or other animal for which they do not approve of the husbandry practices.

On Non-Economic Damages

The PVMA opposes legislation permitting the recovery of non-economic damages for the loss or injury of a pet, livestock, or other animal. The tort of negligent infliction of emotion distress should not be expanded to allow people to recover emotional-distress damages in litigation involving animals. Loss of companionship—a measure of damages arising out of marital and parental relationships—should not be recoverable in litigation involving animals, particularly when it is not available for the loss of close family relatives.