



AMA Journal of Ethics®

September 2024, Volume 26, Number 9: E696-700

HEALTH LAW

Should Nonhuman Animals Be Recognized Legally as Persons?

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Abstract

This article explores the legal status of nonhuman animals used in biomedical research. While acknowledging that, presently, nonhuman animals in research settings hold no personal legal rights, this article explores what a legal person is and proposes that it is possible for nonhuman animals to become legal persons and receive better protections under the federal Animal Welfare Act.

Introduction

Many readers of this article might have a strong sense of the importance of the ethical treatment of nonhuman animals in scientific experimentation. How might that ethic be reflected within the legal system? Since the publication of Peter Singer's book, *Animal Liberation*, in 1975,¹ the ethical discussion about the status of nonhuman animals has become increasingly robust on a global basis.^{2,3,4} This article focuses on a possible expansion of this concern about nonhuman animal rights by considering the concept of legal personhood.

What Is a Person?

Beginning as early as the Greeks, society accepted a hierarchy of status, with human men at the top and plants at the bottom, and the presence of rationality as a key factor in determining position in the hierarchy: free men, free women, children, slaves, animals, and plants in descending order.⁵ Moreover, from an early time, some nonhuman animals—those that were useful and had financial value—were given the legal status of personal property. The law's focus at this point was not on the nonhuman animal at all but on the animal's financial value to the human owner.⁶ Accordingly, legal rules about human conduct toward nonhuman animals as property developed within criminal law—but not rules related to nonhuman animals themselves. All legal systems have long held that nonhuman animals are things and domestic nonhuman animals are personal property, not legal persons.

So, what does it mean to be a legal person? Can a nonhuman animal be included under this definition? It is not a biological definition; it does not require 2 legs and big brains. Instead, a legal person is a category created by the political process of lawmaking for the purpose of designating who or what has the capacity to hold and exercise some legal rights. Historically, in the United States, human slaves were not legal persons. As

individuals, they held no legal rights and had no capacity to seek relief in court.⁷ Today, all humans are legal persons, but not all have the same rights. Children and undocumented immigrants have very limited rights under the laws of the United States, but all are legal persons. Yet legal persons need not be humans. Consider that **corporations are legal persons** in the United States.⁸ This means that when harm, usually financial, exists for a corporation, it can be a plaintiff in a lawsuit (or, if causing the harm, a defendant). It can seek legal relief for some harms.

Can these standards be applied to nonhuman animals? The animals have only modest personal financial interests: that which is necessary to provide food and shelter. So, let us consider the possibility of physical harm and mental pain and suffering as a focus point for endowing animals with personhood and legal rights. Should nonhuman animals have personhood and a right to be free from “unnecessary” pain and suffering? Yes, but defining *unnecessary* is the trick.⁹

Consider the situation of a cat, Tom, the human owner of the cat, Jerry (Tom is Jerry’s property), and a bad human, Wolf. If Wolf beats up Jerry with a baseball bat, Jerry, being a legal person with the right to be free from intentional infliction of harm, may sue Wolf for the harm inflicted. If Wolf beats up Tom, the cat, Tom is not a legal person and therefore has no legal remedy available to sue Wolf (Wolf may be criminally liable under state anti-cruelty laws). Jerry can recover from Wolf the financial value of harm to Tom, but in a majority of jurisdictions he cannot receive compensation for his grief, pain, and suffering for what happened to Tom.^{10,11} If an entity is not a legal person, it can have no rights. If it is a legal person, then some rights can be conferred, but not all harms are recognized by the law.

The Animal Welfare Act

What if, at Big University, a professor wishes to do spinal experiments on cats; the cats will necessarily experience some level of pain. The professor is sure his experiment will add to the knowledge of the operation of the brain. Some organizations oppose any such experiment.^{12,13,14} Others might ask about the necessity of using cats or the possibility reducing the number of cats and the degree of pain. The cats themselves have no voice in this debate.

These difficult and complex questions were addressed by the US Congress in 1966 when it adopted the Animal Welfare Act (AWA) with a focus on stolen companion nonhuman animals and nonhuman animals in experimentation.¹⁵ In the 1985 amendments to the federal AWA,¹⁶ Congress adopted a more complex regulation scheme for nonhuman animal experimentation. The new law allowed that some pain and suffering of nonhuman animals is acceptable for the advancement of science. However, Congress created a system of controls to ensure that the pain and suffering of nonhuman animals used in research is in fact necessary and minimized. First, the decision to proceed is not left solely to the researcher, as the **Institutional Animal Care and Use Committee** at the researcher’s institution must also agree that the researcher’s assessment of the need for practices involving pain to nonhuman animals is correct. Second, any experiment with a listed nonhuman animal must show that all precautions have been taken to reduce pain and suffering to a minimum.

Does the AWA provide any legal rights for nonhuman animals? No, not at this time. What happens if the professor at Big University does not comply with the law? Assuming that he does follow the procedures required, there may be no one in the room of the

experiment to observe or measure the degree of pain and suffering a specific animal may experience. It is very difficult to objectively measure nonhuman animals' perceived pain¹⁷ and also very difficult to decide if a procedure likely to cause pain is unnecessary. But, even if a case can be made that the pain-inducing procedure either will be or was unnecessary, there would only be modest possible consequences for the professor. Mistreatment of research animals is not a crime under the AWA. State anti-cruelty laws tend to exempt actions within science.¹⁷ Perhaps the professor will be at risk of having funding withdrawn from his National Institutes of Health grant. Or perhaps the professor's institution will impose a sanction, or his peers will shun him. Clearly a cat has no specific remedy.

Would it be possible to give cats a legal right? Yes, Congress could adopt an amendment that acknowledges all animals under the jurisdiction of the AWA to possess a cause of action to stop, by injunction, any action that would clearly violate the existing protections provided under the law. So not all cats, but laboratory cats, would have a cause of action against the professor to stop an experiment or to provide the necessary care. With the granting of this legal right, a cat would become a legal person. If an experiment violated the cat's right to be free from unnecessary pain and suffering, a judge would see the cat as an individual deserving the consideration and protection of the law; this is, by definition, a legal person.

Should All Nonhuman Animals Be Recognized as Persons?

If a legislature makes nonhuman lab animals legal persons for limited purposes, does that mean that the chicken in the pen or the dogs on the couches of the United States are now also legal persons? No. While many individuals seek legal rights for all nonhuman animals, that will not happen or should not happen. Given the extraordinary complexity of all human-nonhuman animal interactions and nonhuman animal uses—and the billions of dollars some of those interactions represent—obtaining such legal personhood for nonhuman farm animals from those holding political powers would be nearly impossible in the near term. Additionally, the uniform adoption of rights for all animals should not happen, as rights will have to be crafted for animals in different categories. Legal rights for companion animals will be separate from those for zoo animals or the cows in the field. Legal rights will have to accommodate the nature of the human-nonhuman animal context.

How Could It Happen?

A constitutional amendment might be drafted that would allow nonhuman animals to hold legal rights. The following model language might be considered: *As animals have interests apart from humans, Congress shall have the power to adopt laws providing personhood for all primates (all mammals? all vertebrates?).* This possibility, however, does not seem realistic in the near term—but in a hundred years, hopefully.

On the other hand, perhaps a Constitutional amendment is not necessary. In a 2018 case, the Ninth Circuit Court of Appeals ruled against a macaque named Narotu^{18,19} for a claim under US copyright law.²⁰ The organization People for the Ethical Treatment of Animals (PETA) brought a legal action on behalf of Narotu. A picture that Narotu had taken of himself with the defendant's camera was being sold by the defendant. PETA claimed that, as Narotu took the picture (which is factually correct), he had copyright control over the use of the picture. The statute provides protection for any "person," and PETA wanted the court to declare that Narotu was a legal person. In declining to do so, the court said that the claim could be made by Narotu if Congress would simply change

the definition of person in that specific law to include primates. The court's reasoning suggests that Congress has the power to create personhood for nonhuman animals but must specifically do so.

At present, the federal protections provided for nonhuman animals in science labs are very weak. One way to enhance the level of protection in the law is to allow nonhuman animals to present their case directly to a court. As with all the trust laws in our 50 states, the law could allow any human or nonprofit corporation to petition the court for the right to represent the animals in question. Amending language could be as follows: *The provisions of this law providing protection for nonhuman laboratory animals may be enforced in federal courts with injunctive powers. Any human or nonprofit corporation may petition the court on behalf of specific nonhuman animals and, upon a showing of sufficient interests and resources, be granted permission to file an action.*

While a number of attorneys and nonprofit corporations are available to represent nonhuman animals in court, the real-world difficulty is that the public usually has no idea what is happening in science laboratories, so the lack of information would be a significant difficulty in bringing a case should the law be amended.

Conclusion

Ethical concern for nonhuman animals directs the actions of those who hold that ethical belief. If those who hold an ethical position about nonhuman animals also believe others should change their conduct, the path of the law must be taken in order for those beliefs to become legal standards of conduct. Nonhuman animals in science are a group for which ethical concerns, but no legal rights, presently exist. Both the Constitution and Congress represent paths available for legal change. The future will be interesting, as proponents of different ethical views seek resolution of this significant dilemma.

References

1. Singer P. *Animal Liberation: A New Ethics for Our Treatment of Animals*. Avon Press; 1977.
2. Nussbaum M. They can think, feel pain, love. Isn't it time animals had rights? *Harvard Gazette*. January 24, 2023. Accessed February 12, 2024. <https://news.harvard.edu/gazette/story/2023/01/they-can-think-feel-pain-love-isnt-it-time-animals-had-rights/>
3. Animal rights. *BBC*. Accessed February 12, 2024. https://www.bbc.co.uk/ethics/animals/rights/rights_1.shtml
4. Animal rights: definition, issues, and examples. Humane League. December 16, 2020. Updated July 8, 2022. Accessed February 12, 2024. <https://thehumaneleague.org/article/animal-rights>
5. Wise SM. How nonhuman animals were trapped in a nonexistent universe. *Anim Law*. 1995;1:15-45.
6. Favre D, Tsang V. The development of anti-cruelty laws during the 1800's. *Detroit Coll Law Rev*. 1993;1993(1):1-35.
7. *Dred Scott v Sandford*, 60 US 393 (1857).
8. Totenberg N. When did companies become people? Excavating the legal evolution. *NPR*. July 28, 2014. Accessed May 29, 2024. <https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution>
9. Favre D. *The Future of Animal Law*. Edward Elgar; 2021.
10. *Rabideau v City of Racine*, 627 NW2d 795 (Wis 2001).

11. Favre D. *Animal Law: Welfare, Interests and Rights*. 3rd ed. Aspen Press; 2019:chap 4.
12. Cruelty Free International. Accessed February 12, 2024. <https://crueltyfreeinternational.org/>
13. National Anti-Vivisection Society. Accessed February 12, 2024. <https://navs.org/>
14. People for the Ethical Treatment of Animals. Accessed February 12, 2024. <https://www.peta.org/issues/animals-used-for-experimentation/>
15. Animal Welfare Act, 7 USC §§2131-2159 (1966).
16. Standards and Certification Process for Humane Handling, Care, Treatment, and Transportation of Animals, 7 USC §2143(a-f) (1985).
17. Hernandez-Avalos I, Mota-Rojas D, Mora-Medina P, et al. Review of different methods used for clinical recognition and assessment of pain in dogs and cats. *Int J Vet Sci Med*. 2019;7(1):43-54.
18. Cullinane S. Monkey does not own selfie copyright, appeals court rules. *CNN*. April 24, 2018. Accessed April 12, 2024. <https://www.cnn.com/2018/04/24/us/monkey-selfie-peta-appeal/index.html>
19. *Naruto v Slater*, 888 F3d 418 (9th Cir 2018).
20. US Copyright Act, 17 USC §§101-810 (2018).

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Citation

AMA J Ethics. 2024;26(9):E696-700.

DOI

10.1001/amajethics.2024.696.

Conflict of Interest Disclosure

Author disclosed no conflicts of interest.

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