

The Rise of Animal Law

Will growing interest in how the legal system deals with animals ultimately lead to changes for researchers?

AT THE OREGON NATIONAL PRIMATE RESEARCH CENTER in Beaverton, some 20 law students tour the outdoor enclosures that house breeding colonies of macaque and rhesus monkeys and talk with the veterinarian in charge of their care. “It’s a very powerful trip for the students,” says Kathy Hessler, who teaches a course on animal law at Lewis & Clark Law School in nearby Portland. “Some of them are really shaken.” That’s not because they see violations of the law, Hessler explains: “The primate center is working very hard to meet the requirements under the law, but there’s a disconnect between what the law provides and what the students think the animals need.”

Hessler and her class are part of the rapidly growing field of animal law, a relatively new area of study that examines—and often challenges—how the law treats animals. As recently as 2000, only a handful of law schools in the United States offered courses in animal law. Now roughly 120 do. These include several of the nation’s premier law schools, including Harvard, Stanford, and Columbia, which have established endowed programs in animal law thanks to \$1 million donations from TV celebrity and longtime animal rights activist Bob Barker (see table). Some of those who teach animal law courses, including Hessler, describe themselves as activists.

Others shy away from that label. But many take issue with a legal system that treats animals as property and provides few mechanisms for protecting their interests in court.

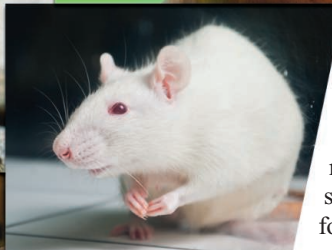
Some of these legal scholars have proposed strategies for advancing animal rights through steppingstone cases that erode the notion of animals as property and grant them some of the same protections people have. Others, drawing inspiration from antislavery and civil rights movements, advocate a more direct effort to establish fundamental rights for animals—at least for more cognitively sophisticated species such as great apes and cetaceans (see sidebar, p. 30). No one is arguing that orangutans should be given the right to vote, but some legal scholars see no reason why apes shouldn’t have rights similar to those of a child or a person in a coma. Whether these efforts will succeed remains to be seen. But if they do, there could be repercussions for everyone who works with animals—including scientists.

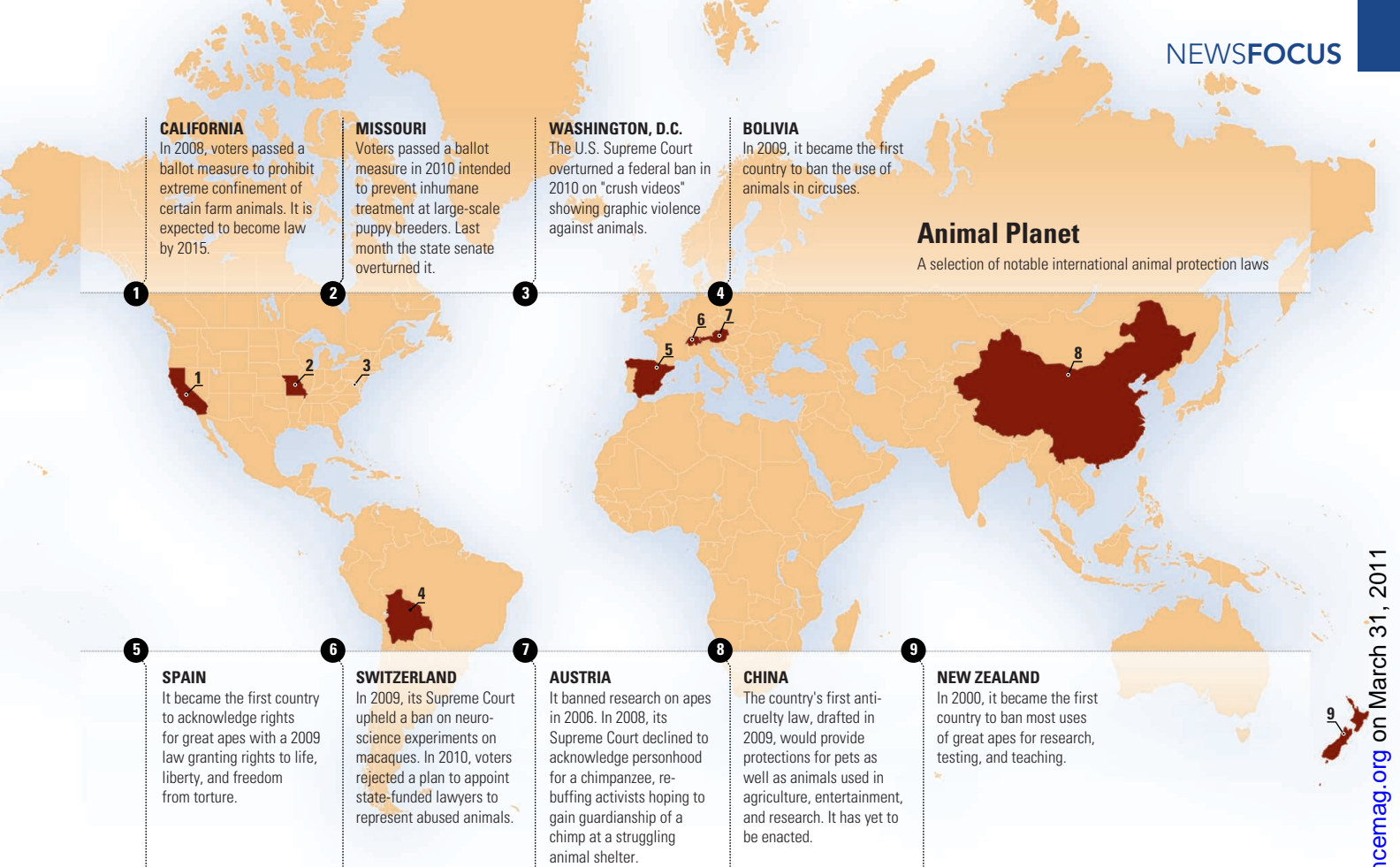
“It’s a developing area of law, and we’re monitoring it closely to see how it may evolve,” says Andrew Cardon, director of state and legal affairs for the National Association for Biomedical Research, an advocacy group in Washington, D.C. “Our concern is that incremental changes in the law could have negative consequences for lifesaving research.”

A movement is born

Joyce Tischler has loved animals since she was a child. After graduating from law school in 1977, she began searching for a way to use her law degree to help animals. She and a like-minded colleague put an ad in a San Francisco legal newspaper to see whether anyone else shared their interests. “About six people showed up to our first meeting,” Tischler says. “We formed a little group and met for several years to educate ourselves about the laws that relate to animals.” That group grew into the Animal Legal Defense Fund (ALDF), a Cotati, California, organization that has been a driving force in the growth of animal law.

ALDF’s efforts include litigation, legislation, and education. The group has filed scores of civil lawsuits to protect animals and assists with hundreds of criminal prosecutions each





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year. In 2010, ALDF and other animal protection groups successfully sued to stop BP from carrying out “controlled burns” of spilled oil in the Gulf of Mexico that would have endangered sea turtles. ALDF drafted a 2008 Virginia law that toughened penalties for dogfighting in the wake of the Michael Vick scandal. (Vick, an American football star, was convicted in 2007 on dogfighting charges.) Tischler says she’s especially excited about a current project in which ALDF lawyers are working with scientists and leaders from government and industry on strategies for implementing a 2007 National Research Council report urging companies to adopt alternatives to toxicity testing in animals. ALDF’s Web site encourages visitors to petition Congress to adopt an Animal Bill of Rights, which includes “The right of laboratory animals not to be used in cruel or unnecessary experiments.”

ALDF now has student chapters at 155 of the 200 U.S. law schools accredited by the American Bar Association (ABA). ALDF student chapters help establish animal law courses, arrange talks and symposia, and produce articles for law review journals.

Mainstream legal establishments are taking notice. ABA created a committee on animal law under its Tort Trial and Insurance Prac-

tice Section in 2004. The committee sponsors continuing education courses for practicing lawyers and develops policy proposals aimed at improving animal welfare. The Association of American Law Schools started a section on animal law in 2008 to promote education and professional development.

Tischler and other animal law pioneers attribute the field’s rapid growth to a combination of societal change and scientific advances in animal cognition. “Pets are becoming of increasing importance to indi-

viduals and considered part of the family circle,” says David Favre, a leading animal law scholar who teaches at Michigan State University College of Law in East Lansing. People’s bonds with their pets tend to foster protective attitudes toward other animals, Favre says. That’s reflected in a spate of recent state laws that punish not only animal cruelty but also neglect. Fourteen states now have laws that explicitly prohibit leaving animals in an unattended vehicle in hot or cold weather, for example.

The Price Is Right: \$1 Million. As the game show’s host for 35 years, Bob Barker gradually eliminated fur and leather prizes and signed off each episode with a plea for viewers to spay and neuter their pets. More recently, he’s written \$1 million checks to eight leading law schools to endow programs in animal rights law, plus two to his alma mater, Drury University in Springfield, Missouri, for undergraduate animal rights studies.



YEAR	SCHOOL
2001	Harvard Law School
2004	Duke University School of Law
2004	Stanford Law School
2004	Columbia Law School
2004	UCLA School of Law
2005	Northwestern University School of Law
2006	Georgetown University Law Center
2008	Drury University (undergraduate)
2009	University of Virginia School of Law
2009	Drury University (undergraduate)

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At the same time, books such as *The Omnivore's Dilemma* and movies such as *Food, Inc.* have increased public concern about how animals are raised and slaughtered for food, and the law is changing in this arena, too. In 2008, for example, California voters approved a ballot measure that will outlaw cages that restrict the movement of egg-laying hens, calves raised for veal, and pregnant sows (see map, p. 29).

In parallel with these societal changes, research with a wide range of nonhuman animals has demonstrated behaviors and traits once thought to be the exclusive domain of humans, including cooperation, altruism, empathy, and a sense of fairness. "Science is incredibly important to animal law," says Mariann Sullivan, a New York City lawyer who chairs the ABA's Animal Law Committee. "Cognitive ethology is really what animal lawyers rely on in arguing that conditions for animals in any area should be improved."

According to animal law scholars and practitioners, the law has not kept up with science and society. "The legal and even moral distinctions we make about how we treat [animals] are based on the choices humans make about using animals and have nothing to do with the scientifically determined capacity of animals to feel pain or be self-aware or any of those things," Hessler says. A pet rat, a lab rat, an endangered wild rat, and a city rat that gnaws its way into someone's basement all have a similar interest in staying alive and avoiding pain, Hessler says, but the law now treats them very differently. "Inclusion of the interests of the animals themselves is what is novel in the animal law approach," she says.

Case studies

Some students may take animal law courses because they're already interested in animal protection, but instructors say many more sign up simply because the field is new and fast-moving. Coursework includes study-

ing potentially precedent-setting cases. One of the most active areas involves monetary awards for emotional distress suffered by pet owners, says Bruce Wagman, a lawyer who teaches at the University of California (UC) Hastings College of the Law in San Francisco and developed the first casebook on animal law. "That's a hotbed of litigation and judicial opinions," Wagman says.

Historically, in cases in which a pet has been killed, U.S. courts have limited awards to the purchase price or replacement cost of the animal—typically a few hundred dollars. In recent years, grieving pet owners have argued that emotional bonds with pets are comparable to those with family, and they've sought monetary compensation for emotional distress. Courts often award damages for emotional distress after the death of an immediate family member, but not for loss of property, Wagman says. Pet owners have had some success when the pet's death was caused intentionally. In 2006, for example,

A Road Map for Animal Rights

In 1772, a slave named James Somerset won his freedom in an English court. Months earlier, three people acting on his behalf applied to the Court of King's Bench for a writ of habeas corpus, which would require Somerset's captor—he'd escaped his owner and been recaptured—to bring Somerset before the court to determine the legality of his imprisonment. In deciding that English common law provided no basis for holding Somerset, the court brought an end to slavery in that country.

The case is a potential blueprint for establishing personhood and legal rights for animals, says Steven Wise, a lawyer and legal scholar in Coral Gables, Florida, and founder of the Nonhuman Rights Project (NHRP). In the eyes of the law, animals are considered things to be owned, as slaves once were, Wise notes: "The story of James Somerset is a metaphor for how any legal thing [such as an animal] can use the court system to become a legal person."

That's a goal Wise has been working toward for 30 years, and he now says his group is close to filing lawsuits on behalf of intelligent animals such as chimpanzees and dolphins in an attempt to convince courts that at least some nonhuman animals meet the requirements of legal personhood and should be accorded certain basic rights. "We're hoping to file the first suits, if everything goes right, in 2012, and if everything goes wrong, in 2013," Wise says.

As improbable as it may sound, there's a chance he will succeed, says Richard Cupp, a legal scholar at Pepperdine University in Malibu, California. "Steven is a very smart guy, and he'll choose his jurisdictions very carefully," Cupp says. "In the short term, I suspect he won't be successful, but I could be wrong."

In law review articles and books, Wise has laid out a philosophical framework for animal rights. He argues that some nonhuman animals, particularly great apes and cetaceans, are cognitively complex in many of the same ways that humans are: They can have desires, act intentionally, and have some sense of self. Therefore, Wise asserts, they deserve basic "dignity" rights, such as the right not to be harmed or held in a distressing environment. Human infants and people in a vegetative state have such rights, and Wise argues that a chimpanzee of similar or greater intelligence should be granted them as well.

Getting a judge or jury to consider these arguments is the goal of NHRP. Since 2007, Wise has recruited more than 50 volunteers, including lawyers and sociologists, who are working to identify potential plaintiffs and determine which jurisdictions are most likely to be sympathetic to their arguments and which legal strategies are most likely to be effective. He estimates that they've spent a cumulative 20,000 hours analyzing dozens of legal and sociological issues in all 50 states.

The first case will likely involve an animal being held in substandard conditions: perhaps a dolphin kept in a small pool at an aquarium or a chimpanzee confined to a small cage at a zoo or research facility. NHRP will file a lawsuit in trial court, probably using habeas corpus or another common law writ, *de homine replegiando*, used centuries ago in slavery cases.

If the trial court dismisses the case, Wise says he will appeal all the way to the state's highest court. NHRP is combing over the judicial decisions of state appellate court and high court judges to determine their judicial philosophies. Volunteers are also looking for courts sympathetic to civil rights and animal welfare issues, as well as those that have ruled in favor



Rattling cages. Steven Wise wants courts to acknowledge "dignity" rights for some animals.

a Washington state judge awarded a woman \$5000 for emotional distress after a boy stole her cat from her porch and took it to a nearby schoolyard, where he doused it in gasoline and set it on fire. However, when a pet dies as a result of negligence—due to veterinary malpractice, for example—few if any courts have been willing to award damages for emotional distress, Wagman says: “That’s the dividing line now, but people are constantly trying to push that envelope.”

The law is also changing rapidly in how animals are dealt with in the establishment of trusts and custody cases. Forty-five states have statutes enabling people to set up trusts to provide for their pets after their death, up from eight states in 2000. Pets are increasingly an issue in divorce proceedings, too, with judges being forced to decide whether to treat pets as property, whereby whoever bought the animal keeps it, or more like children, for whom consideration is given to who can provide the best home.

of gay marriage, which Wise suspects might reflect a sensitivity to equality that would work in his favor.

People have tried previously—and unsuccessfully—to gain legal standing for animals. In 1998, Wise lost a case in which he argued that a dolphin named Kama had legal standing to sue the New England Aquarium to prevent being transferred to a Navy marine mammal facility. In 2004, a district judge in San Francisco ruled that whales, porpoises, and dolphins (represented by a self-appointed attorney) did not have legal standing under federal law to sue the Navy to stop allegedly harmful sonar testing. In both cases, the judges ruled that only “persons” can sue under federal law and that the legislators who wrote the laws did not intend the definition of “person” to include cetaceans.

Wise says he’s learned from his mistakes in the Kama case. That’s why he’s focusing on state common law. “Common law is the law that judges make, so you don’t get into this issue of legislative intent,” he says. “We’re looking for courts that view common law as elastic, as something that changes as morality changes or as new scientific facts come in” about the cognitive capabilities of nonhuman animals.

If he wins, the animal in question will be moved to a better home. But more important from Wise’s perspective, a legal door that has been slammed shut will have opened just a crack, enabling him and others to push for more rights for more animals. “Win or lose, we’re going to keep going,” he says. —G.M.

Such cases erode the notion of animals as property and move them closer toward some of the protections and privileges accorded to people—a move that concerns some advocates of biomedical research. But Favre, whose writings on animal law and philosophy are required reading in many animal law courses, finds it long overdue. In a 2010 article in the *Marquette Law Review*, he argues for classifying domestic animals as “living property.” This designation would acknowledge that animals have interests—in staying alive, moving freely about, and socializing with other members of their species, for example—that should be weighed against human interests by the legal system.

Favre argues that the law already provides modest rights for animals to protect these interests: Anticruelty laws protect their right not to be harmed, for instance. He advocates expanding such existing rights and creating new ones. Perhaps most provocatively, he argues in a 2005 article in the *Michigan State Law Review* that animals, through self-appointed attorneys, should have the right to sue humans who violate their primary interests. Currently, animals do not have legal standing to sue, and animal welfare advocates have had limited success suing on their behalf. That’s because courts will only consider harm done to a human being, leaving animal advocates in the difficult position of arguing that they themselves have been harmed by an animal’s suffering. Favre argues that an animal’s interests should be part of the legal equation.

Reason for concern?

Although the growth of animal law is undeniable, the implications for animal research are uncertain. There are serious barriers to implementing the kind of theoretical changes to the legal system that Favre and others advocate, says Taimie Bryant, who teaches animal law at the UC Los Angeles School of Law. “How you would take that from academia and put it into a practical setting where most entities that use animals have more lobbying power than academics isn’t clear,” Bryant says. She thinks changes that affect scientists are more likely to come from societal change and the efforts of organizations like the ALDF and the Humane Society of the United States (HSUS).

Indeed, the HSUS legal team has grown from three full-time lawyers in 2005 to 16 today, and the organization draws from a network of 2000 lawyers who have volunteered to work pro bono, says Jonathan Lovvorn, vice president and chief counsel of animal protection litigation and research. Most liti-

gation and lobbying efforts at HSUS involve pets, livestock, and wildlife, but the group also takes on issues involving research animals when the opportunity arises, including pushing for the Great Ape Protection Act, which would ban invasive research on those animals (*Science*, 13 March 2009, p. 1414).

Some research advocates are wary of all these trends. “Those of us who represent scientists who work with animals don’t look on this as a positive development, although a lot of what they’re doing we have no objection to,” says Deborah Runkle, a senior program associate at the American Association for the Advancement of Science, which supports the use of animals in scientific research (and publishes *Science*). “It’s not an immediate threat, but it’s something that needs to be watched,” says Alice Ra’anan, director of government relations and science policy for the American Physiological Society. “If there’s a concern, it’s that there are relatively few lawyers who are interested in this who have an understanding and appreciation of animal research and of the laws that already exist to protect animals.”

The growth of animal law both reflects and encourages societal change, says Richard Cupp, who writes and teaches about the legal and moral standing of animals at Pepperdine University School of Law in Malibu, California. Cupp applauds legal protections for animal welfare, but in several law review articles he has argued that establishing legal rights for animals would not serve society’s best interests. To pick one example, if animals were given the right to sue as Favre proposes, activists suing on behalf of research animals could bog down universities with endless lawsuits. “We could lose a lot of research that might be very helpful,” Cupp says.

At a more philosophical level, Cupp argues that talking about rights for animals obscures the fact that at the end of the day any legal case involving animals will be decided by humans. The developing field of animal law should focus on emphasizing and delineating humans’ moral responsibility toward other animals rather than on establishing legal rights, Cupp says: “We’re stepping toward something, and the fight is over what we should be stepping toward.” —GREG MILLER

Read more about animal law cases and issues online:

Animal Legal Defense Fund: <http://www.aldf.org/>

Animal Legal and Historical Center at Michigan State University College of Law: <http://www.animallaw.info/>

National Association for Biomedical Research, Animal Law Section: <http://www.nabranimallaw.org/>