

# PETS AS PROPERTY: SIGNS OF CHANGE IN THE LAW OF JUDGMENT COLLECTIONS

By  
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*Americans are deeply connected to their companion animals, regardless of what protections the law affords animals. Because the law follows culture, recent legislative and judicial developments have begun to reflect the bonds formed between human and nonhuman animals. This Article first highlights how courts and society viewed animals in the twentieth century to the present day, focusing on how courts have struck a balance between protecting animals yet still classifying them as property. While the law still views companion animals as property, this Article highlights the interstitial “property-but-not-property” framework courts use to consider the interests of animals in debt collection cases, arguing that laws and courts must go further to protect both animals and their humans.*

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*A pet<sup>1</sup> . . . occupies a special place somewhere in between a person and a piece of personal property.*

—*Corso v. Crawford Dog & Cat Hospital, Inc.*<sup>2</sup>

## I. INTRODUCTION

As a matter of law, pets are still property—in most contexts, no different from a house, a car, or the brooch you inherited from your grandmother.<sup>3</sup> To you and your children, your pet—even if only a rescue—may be an integral part of the family, one for whom you might willingly spend thousands of dollars on vet bills if he were sick or injured.<sup>4</sup> Notwithstanding the fact that under many state’s debt collection laws, he can then be seized, sold, or killed to pay those very bills. Today, more than two-thirds of American households own pets, spending more than \$50 billion on pet care annually.<sup>5</sup> If a pet is hurt, killed, or taken from its human companions, the relevant humans mourn, grieve, and sometimes become deeply depressed. Owners often conduct funerals for their deceased pets;<sup>6</sup> something they rarely do for their totaled car, broken television, or worn-out clothing.

Some Americans form personal connections with their pets as profound as those they form with the human beings in their lives.<sup>7</sup> Pets often even fill the void once occupied by children.<sup>8</sup> As a matter of sociological fact, pets have become companions.<sup>9</sup> They are no longer ‘things.’ The law follows culture, even if only slowly.

Divorce and family law, for example, illustrate how both courts and legislatures have begun to change the way animals are treated in

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<sup>1</sup> This Article will use the terms ‘companion animal’ and ‘pet’ interchangeably, understanding that there is some dispute about the use of the term ‘pet.’

<sup>2</sup> *Corso v. Crawford Dog & Cat Hospital, Inc.*, 415 N.Y.S.2d 182, 183 (N.Y. Civ. Ct. 1979).

<sup>3</sup> Rachel Hartigan Shea, *Q&A: Pets Are Becoming People, Legally Speaking*, NAT’L GEOGRAPHIC (Apr. 7, 2014), <https://news.nationalgeographic.com/news/2014/04/140406-pets-cats-dogs-animal-rights-citizen-canine/> [https://perma.cc/8EY7-N59N] (accessed Feb. 5, 2020).

<sup>4</sup> Sam Paul, *Pet Owners Spend Thousands a Year to Keep Their Furry Family Members Happy and Healthy, Study Finds*, FOX NEWS (Jan. 26, 2018), <https://www.foxnews.com/lifestyle/pet-owners-spend-thousands-a-year-to-keep-their-furry-family-members-happy-and-healthy-study-finds> [https://perma.cc/FU8A-QH3C] (accessed Feb. 5, 2020).

<sup>5</sup> Suzanne Monyak, *When the Law Recognizes Animals as People*, NEW REPUBLIC (Feb. 2, 2018), <https://newrepublic.com/article/146870/law-recognizes-animals-people> [https://perma.cc/L6K4-S9R9] (accessed Feb. 5, 2020).

<sup>6</sup> See *Corso*, 415 N.Y.S.2d at 183 (describing how a poodle owner sued a veterinarian for not turning over the remains of her dog to a funeral coordinator, with whom she had planned an elaborate funeral).

<sup>7</sup> *Id.*

<sup>8</sup> David Favre, *Twenty Years and Change*, 20 ANIMAL L. 7, 8 (2013).

<sup>9</sup> Ryan Jacobs, *Why Pets Should be Included in Sociological Inquiries*, PAC. STANDARD (Jan. 27, 2014), <https://psmag.com/environment/pets-sociological-subjects-73339> [https://perma.cc/968U-MNCU] (accessed Feb. 5, 2020).

the law. In divorce actions, courts traditionally applied property analysis to determine who should be awarded ownership—‘custody’ was not the question—of a pet.<sup>10</sup> Most courts still adhere to this frame. Ownership is ownership, even if the party in whom it is recognized intends to kill the pet simply to spite his or her ex. Once ownership is recognized in one or the other spouse, most courts will not engage in a custody or ‘visitation’ analysis.<sup>11</sup>

In recent years, however, a few courts have begun to take into account the best interests of the family as a whole (including those of the animal) rather than looking solely at market value and formal indicia of ownership.<sup>12</sup> Consistent with the sociological fact that pets are often companions, not things, this emerging minority has recognized the importance of emotional relationships between human animals and non-human animals, analyzing custody issues with respect to pets in a manner similar to custody issues with respect to children.<sup>13</sup> Some courts have even gone so far as to consider whether support should be ordered and how to best meet the pet’s needs in custody and visitation.<sup>14</sup>

Family law legislation has also begun to follow this trend, albeit slowly. California Governor Jerry Brown signed Assembly Bill 2274 in September of 2018, which allows a judge, at the request of one party, to order the other to care for a pet during marriage dissolution proceedings.<sup>15</sup> The law also allows judges to assign joint or sole custody of the pet, taking into account the care—that is, the prevention of acts of harm or cruelty and provision of basic needs—of the animal.<sup>16</sup> In 2016, Alaska Governor Bill Walker signed HB 147 into law—the first law to expressly require that judges take the “well-being of the animal” into

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<sup>10</sup> L. Morgan Eason, *A Bone to Pick: Applying a “Best Interest of the Family” Standard in Pet Custody Disputes*, 62 S.D. L. REV. 79, 80, 85 (2017).

<sup>11</sup> *Id.*; see *C.R.S. v. T.K.S.*, 746 N.Y.S.2d 568, 570 (N.Y. App. Div. 2002) (explaining that the final distributive award for a dog would be made at trial and any credit for proven value would also be made at that time); see also, e.g., *Hament v. Baker*, 97A.3d 461, 463 (Vt. 2014) (explaining that the Court could consider many things in deciding who to award the pet dog to, but ultimately a dog is property, so it is divided and awarded to one party and no visitation arrangement will be provided by the Court); *Bennett v. Bennett*, 655 So. 2d 109, 110–11 (Fla. Dist. Ct. App. 1995) (explaining that a pet is property, and there is no authority for granting custody or visitation; to do so would lead to continuing enforcement and supervision problems of which the Court was not prepared to undertake for animals like it does for children).

<sup>12</sup> Eason, *supra* note 10, at 91–92.

<sup>13</sup> Heidi Stroh, *Puppy Love: Providing for the Legal Protection of Animals When Their Owners Get Divorced*, 2 J. ANIMAL L. & ETHICS 231, 245–46 (2007); see, e.g., *Baggett v. Baggett*, 422 S.W.3d 537, 550 (Tenn. Ct. App. 2013) (holding that the trial court properly considered the needs of the parties’ dogs and the ability of the parties to care for them when the husband appealed the division of property).

<sup>14</sup> Stroh, *supra* note 13, at 244.

<sup>15</sup> Kabir Chibber, *In California Divorces, Pets Will Be Treated More Like Children*, QUARTZ (Oct. 4, 2018), [https://qz.com/1413462/pets-will-be-treated-like-children-in-california-divorces/?utm\\_source=QZfb](https://qz.com/1413462/pets-will-be-treated-like-children-in-california-divorces/?utm_source=QZfb) [<https://perma.cc/9TVA-MES2>] (accessed Feb. 5, 2020).

<sup>16</sup> *Id.*

account in pet custody disputes.<sup>17</sup> In Illinois, a new law went into effect January 1, 2018; it too allows judges in divorce proceedings to consider the well-being of the animal in making custody decisions.<sup>18</sup> These legislative and judicial developments are promising steps in the direction of treating pets as more than simply property in the eyes of the law.

This Article is the first to explore similar recent signs of change in the law of debt collection. This Article suggests that changes in debt collection cannot be understood except as part of a broader change of attitude, both generally and within the law, towards the relationship between humans and nonhuman animals. Part II examines classic attitudes towards animals in philosophy, society, and the law. Part III explores how these attitudes have begun to change in recent years. Part IV then chronicles recent changes in the law of judicial liens and debt collection. Part V, finally, describes a direct challenge to the animals-as-property frame itself, through the work of the Nonhuman Rights Project.

## II. THROUGH THE MID-TWENTIETH CENTURY

Pre-modern philosophy characterized nonhuman animals as categorically different from, and inherently inferior to, humans.<sup>19</sup> The classic Western tradition, to a significant extent, viewed animals as things—morally indistinguishable from inanimate objects. Descartes, for example, viewed animals as devoid of both reason and feeling.<sup>20</sup> On the other hand, humans' ability to use language demonstrated consciousness.<sup>21</sup> The possession of reason, feeling, and consciousness meant that humans were categorically different from nonhumans.<sup>22</sup> Consistent with this view, Descartes performed experiments on living, un-anesthetized animals and compared their screams to noises made by a malfunctioning machine.<sup>23</sup> His disregard of their apparent suffering evidenced his view that animals did not suffer as humans did; they hurt no more than a field being plowed.

Hobbes, Locke, and Kant, by contrast, believed that animals had feelings but lacked reason.<sup>24</sup> As a result, humans were justified in

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<sup>17</sup> Nicole Pallotta, *Alaska Legislature Becomes First to Require Consideration of Animals' Interests in Custody Cases*, ANIMAL LEGAL DEF. FUND (Jan. 20, 2017), <https://aldf.org/article/alaska-legislature-becomes-first-to-require-consideration-of-animals-interests-in-custody-cases/> [<https://perma.cc/CY7E-QE2H>] (accessed Feb. 5, 2020).

<sup>18</sup> Leonor Vivanco-Pregaman, *New State Law Treats Pets More Like Children in Custody Cases*, CHI. TRIB. (Dec. 25, 2017), <http://www.chicagotribune.com/news/local/breaking/ct-met-pet-custody-law-20171218-story.html> [<https://perma.cc/9XWY-6M4C>] (accessed Feb. 5, 2020).

<sup>19</sup> DAVID DEGRAZIA, ANIMAL RIGHTS: A VERY SHORT INTRODUCTION 7 (2002).

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW 38 (1995).

<sup>24</sup> DEGRAZIA, *supra* note 19, at 4–5.

treating animals as property and using them for their own purposes.<sup>25</sup> At the time, not even women and children were treated as fully human in the eyes of the law; both were treated, for many purposes, as the property of the men to whom their care was entrusted.<sup>26</sup> There was no obvious reason to treat nonhumans any better.

Many non-Western traditions, by contrast, tended to regard all life as sacred.<sup>27</sup> Buddhists believed in a connection between all living things; Native Americans generally killed animals for consumption and use, but did it in a manner they believed to be respectful.<sup>28</sup> Even in many non-Western traditions, human use of animals was acceptable, so long as animals were dealt with and used respectfully.<sup>29</sup> Animals were valued, but not necessarily protected more extensively than other types of property.

It was nevertheless out of the Western tradition that modern notions of nonhuman animals as comparable to humans emerged.<sup>30</sup> In Western philosophy, principles of humane treatment find their origins in the work of Jeremy Bentham.<sup>31</sup> Bentham observed that a week-old human baby could not converse any better than a horse or dog; this did not mean that the baby could not reason.<sup>32</sup> Bentham did not, however, focus on whether animals could talk or reason; he focused instead on whether they could suffer.<sup>33</sup> This philosophical reframing, in turn, ultimately had a profound impact on our legal system.<sup>34</sup> If animals thought and felt and suffered, it seemed less justified to disregard their thoughts, feelings, and suffering. Thus, in 1867, dogfighting was outlawed in New York.<sup>35</sup> In 1914, *McCallister v. Sappingfield* made Oregon one of the first states to allow tort recovery for more than just the fair market value of animals that had been harmed or killed.<sup>36</sup>

As views towards nonhuman animals and the laws regarding them changed, a split developed between animal welfare and animal

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<sup>25</sup> *Id.*

<sup>26</sup> Tara J. Gilbreath, *Where's Fido: Pets are Missing in Domestic Violence Shelters and Stalking Laws*, 4 J. ANIMAL L. 1, 3 (2008) (addressing “two key areas of domestic violence law where disregard for the bond shared by an animal and owner place both the animal and the domestic violence victim in danger”).

<sup>27</sup> DEGRAZIA, *supra* note 19, at 6.

<sup>28</sup> *Id.* at 6–7.

<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.*

<sup>31</sup> Gary L. Francione, *Animals—Property or Persons?*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 113 (Cass R. Sunstein & Martha C. Nussbaum eds., 2004) [hereinafter ANIMAL RIGHTS: CURRENT DEBATES].

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 114.

<sup>35</sup> Favre, *supra* note 8, at 11.

<sup>36</sup> Melody Finnemore, *The Evolution of Animal Law*, 68 OR. ST. B. BULL. 28, 29 (2008); see also STEVEN C. TAUBER, NAVIGATING THE JUNGLE: LAW, POLITICS, AND THE ANIMAL ADVOCACY MOVEMENT 145 (2016) (showing progress in other states on how courts value companion animals).

rights advocates.<sup>37</sup> Animal welfare advocates promote the humane use of animals; animal rights advocates, by contrast, take the position that animals do not exist for human use—that their right to exist is independent of their utility to humans.<sup>38</sup> Societies dedicated to preserving both animal welfare and animal rights began to form fairly early in American history.

In 1866, Henry Bergh founded the American Society for Prevention of Cruelty to Animals (ASPCA) after successfully limiting animal abuse in Russia.<sup>39</sup> The early American animal rights movement focused on state-level policy through the ASPCA.<sup>40</sup> In 1877, activists formed the American Humane Association (AHA) to concentrate on national policies requiring the humane treatment of animals.<sup>41</sup> The AHA worked to enforce existing federal law that required people transporting animals, or ‘cargo,’ to give them food, water, and rest every twenty-eight hours.<sup>42</sup>

In the 1950s, part of the membership of the AHA disagreed with the AHA’s failure to counter what they perceived to be abuse of animals in the scientific community.<sup>43</sup> They broke with the AHA in 1954 to form the Humane Society of the United States (HSUS).<sup>44</sup> HSUS’s stated purpose was to oppose the use and exploitation of all animals, not just pets and livestock.<sup>45</sup>

### III. FROM THE LATE-TWENTIETH CENTURY TO THE PRESENT

Beginning in the late twentieth century, philosophers began to challenge the notion that nonhuman animals were either categorically different from or inferior to humans. Peter Singer asserted that all beings capable of suffering should be considered equally.<sup>46</sup> Applying a utilitarian framework, he argued that all animal suffering should be included when calculating the positive and negative consequences of actions—such as using nonhuman animals as involuntary experimental subjects.<sup>47</sup> Singer asserted further that giving more weight to

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<sup>37</sup> See, e.g., Harold W. Hannah, *Animals as Property—Changing Concepts*, 25 S. ILL. U. L.J. 571(2001) (providing an in-depth historical overview of how advocates have advanced different theories to bring about changes in animal law).

<sup>38</sup> Gary L. Francione, *The Abolition of Animal Exploitation*, in *THE ANIMAL RIGHTS DEBATE* 1, 5 (Gary L. Francione & Robert Garner eds., 2010).

<sup>39</sup> TAUBER, *supra* note 36, at 51. During his diplomatic mission to Russia in the 1860s, Bergh “witnessed a driver wantonly beat an exhausted horse and used his authority to force the driver to cease the abuse.” *Id.*

<sup>40</sup> *Id.* at 52.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 53.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> PETER SINGER, *ANIMAL LIBERATION* 8 (Random House 2d ed. 1990).

<sup>47</sup> FRANCIONE, *supra* note 23, at 254.

human interests constituted a species bias no more morally defensible than the racial biases inherent in race-based discrimination.<sup>48</sup>

Other philosophers advanced alternative approaches to incorporating nonhuman animals into moral philosophy. Tom Regan asserted that mammals were conscious creatures and for this reason possessed the same inherent value that humans possessed.<sup>49</sup> Gary Francione argued that, like humans, nonhuman animals possessed interests that could not be traded away, irrespective of the benefits to humans, and were therefore entitled to the right to not be owned.<sup>50</sup> Martha Nussbaum reasoned that nonhuman animals, like humans, were entitled to rights based on their inherent capabilities: life, bodily health, bodily integrity, senses, emotions, practical reason, affiliation, other species, play, and control over one's environment.<sup>51</sup> At the same time, the political and intellectual climate in the United States and other Western countries regarding privilege, exploitation, and discrimination was changing.<sup>52</sup> The civil rights movement began to challenge racial, sexual, and other forms of discrimination.<sup>53</sup> As a result, the animal rights movement found itself planting seeds in much more receptive soil.<sup>54</sup>

The Humane Society of the United States (HSUS) and the American Society for the Prevention of Cruelty to Animals (ASPCA) continued to lobby for expanded animal rights.<sup>55</sup> On a local level, these societies also worked to protect individual animals.<sup>56</sup> Local governments commonly authorized the ASPCA to run shelters and investigate instances of animal cruelty.<sup>57</sup> The HSUS, similarly devoted significant time and resources to rescuing and caring for abused, neglected, and abandoned animals.<sup>58</sup>

In the late 1970s, the militant underground animal rights group Animal Liberation Front (ALF) became active in the United Kingdom and quickly spread to the United States.<sup>59</sup> ALF has been described as an "international, leaderless resistance that engages in direct action in

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<sup>48</sup> *Id.*

<sup>49</sup> Tom Regan, *The Case for Animal Rights*, in 3 *ADVANCES IN ANIMAL WELFARE SCI.* 179, 186–87 (Michael W. Fox & Linda D. Mickley eds., 1987).

<sup>50</sup> Gary Francione, *Animals as Property*, 2 *ANIMAL L.* 1, 5 (1996).

<sup>51</sup> Martha Nussbaum, *Beyond 'Compassion and Humanity': Justice for Nonhuman Animals*, in *ANIMAL RIGHTS: CURRENT DEBATES*, *supra* note 31, at 314–17.

<sup>52</sup> DEGRAZIA, *supra* note 19, at 8.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *History of the ASPCA*, ASPCA, <https://www.asPCA.org/about-us/history-of-the-asPCA> [<https://perma.cc/ZWG4-FZN6>] (accessed Feb. 5, 2020); *The Humane Society of the United States History*, FUNDING UNIVERSE (2003), [www.fundinguniverse.com/company-histories/the-humane-society-of-the-united-states-history](http://www.fundinguniverse.com/company-histories/the-humane-society-of-the-united-states-history) [<https://perma.cc/2XD6-PEZ8>] (accessed Feb. 5, 2020).

<sup>56</sup> ASPCA, *supra* note 55.

<sup>57</sup> *Id.*

<sup>58</sup> FUNDING UNIVERSE, *supra* note 55.

<sup>59</sup> *History of the Animal Liberation Front*, ANIMAL LIBERATION FRONT, [http://www.animalliberationfront.com/ALFront/Premise\\_History/ALF\\_History.htm](http://www.animalliberationfront.com/ALFront/Premise_History/ALF_History.htm) [<https://perma.cc/4QD6-FQG6>] (accessed Feb. 5, 2020).

pursuit of animal rights. Activists see themselves as a modern-day Underground Railroad, removing animals from laboratories and farms, destroying facilities, arranging safe houses, veterinary care[,] and operating sanctuaries where the animals subsequently live.”<sup>60</sup> Congress responded in 1992 by enacting the Animal Enterprise Terrorism Act, which classified as a ‘terrorist’ any person who damaged the property of an animal enterprise or of a person or entity connected to an animal enterprise<sup>61</sup>—basically a Fugitive Slave Act<sup>62</sup> for animals, reaffirming the traditional animals-as-property framework. In the meantime, in 1980, U.S. animal rights advocates founded a less legally questionable, but more publicly assertive, advocacy organization, People for the Ethical Treatment of Animals (PETA).<sup>63</sup> PETA used more aggressive tactics and took less compromising stances than HSUS or ASPCA, employing confrontation, promoting veganism, and making media publicity a central part of its mission.<sup>64</sup> For example, PETA collects and broadcasts videos of brutality towards nonhuman animals,<sup>65</sup> with a view towards changing both public attitudes and the law.

These changes in culture were echoed by changes in the law. Subsection A below focuses on changes in the courts while Subsection B focuses on legislative action.

### A. *Changes in Case Law*

#### 1. *Federal Cases*

According to Joyce Tischler’s *The History of Animal Law*, the “first animal rights lawsuit” was *Jones v. Butz*,<sup>66</sup> decided in 1974, and was brought to protect the interests of nonhuman animals themselves rather than to protect the property rights of their human owners.<sup>67</sup> In *Jones*, plaintiffs challenged an exemption for kosher slaughter in the Humane Slaughter Act on the grounds that it violated the Establishment and Free Exercise clauses.<sup>68</sup> Plaintiffs had no property interests

<sup>60</sup> See *Animal Liberation Front*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Animal\\_Liberation\\_Front](https://en.wikipedia.org/wiki/Animal_Liberation_Front) [<https://perma.cc/Z6E9-BN5T>] (accessed Feb. 5, 2020) (explaining that the mission of the ALF is to save animal lives and prevent animal suffering through whatever means necessary).

<sup>61</sup> Michael Hill, *The Animal Enterprise Terrorism Act: The Need for a Whistleblower Exception*, 61 CASE W. RES. L. REV. 651, 652, 656 (2010).

<sup>62</sup> See *Fugitive Slave Act 1850*, YALE L. SCH.: AVALON PROJECT, [https://avalon.law.yale.edu/19th\\_century/fugitive.asp](https://avalon.law.yale.edu/19th_century/fugitive.asp) [<https://perma.cc/LYT9-N8S4>] (accessed Feb. 5, 2020) (requiring “all good citizens” to “aid and assist” in the kidnapping of runaway slaves, even if one did not agree with that policy).

<sup>63</sup> Peter Simonson, *Social Noise and Segmented Rhythms: News, Entertainment, and Celebrity in the Crusade for Animal Rights*, 4 COMM. REV. 399, 400 (2001).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 204.

<sup>66</sup> *Jones v. Butz*, 374 F. Supp. 1284 (S.D.N.Y. 1974) (regarding Constitutional challenges to the Humane Slaughter Act).

<sup>67</sup> Joyce Tischler, *The History of Animal Law, Part I (1972–1987)*, 1 STAN. J. ANIMAL L. & POL’Y 1, 4 (2008).

<sup>68</sup> *Jones*, 374 F. Supp. at 1285–86.



at stake; they instead sought to limit the previously absolute property rights of slaughterhouses in hopes of reducing the suffering of livestock animals.<sup>69</sup>

A second decision revolutionizing federal animal rights litigation was handed down twenty-four years later, in 1998. In federal court, standing had historically presented the single most serious obstacle to animal activists seeking to sue on behalf of nonhumans.<sup>70</sup> This changed in the *en banc* case *Animal Legal Defense Fund, Inc. (ALDF) v. Glickman*.<sup>71</sup> There, a split Court of Appeals for the District of Columbia held that ALDF had standing to sue on behalf of the plaintiff, Mr. Jurnove, who was a frequent zoo visitor.<sup>72</sup> Mr. Jurnove knew that chimpanzees were highly social animals, and was therefore greatly upset to find a particular chimpanzee confined in isolation with no other chimpanzees in its enclosure.<sup>73</sup> In Mr. Jurnove's lawsuit, they asserted that the U.S. Department of Agriculture's lax enforcement of the Animal Welfare Act harmed the zoo animals.<sup>74</sup> In an opinion by Judge Wald, the Court ruled that Mr. Jurnove satisfied the injury, causation, and redressability requirements of standing and fell within the zone of interests protected by the Animal Welfare Act.<sup>75</sup> The opinion substantially expanded the possibilities of litigation under the Animal Welfare Act and similar federal statutes, on the grounds that nonhuman animals were not adequately being protected.<sup>76</sup>

## 2. State Cases

A parallel evolution has occurred in state courts. In addition to the changes in divorce and family law outlined above in Part I, recent years have also seen substantial changes in tort law. The traditional rule was that an owner could not recover damages in excess of property replacement value of pets injured or killed. Most importantly, an owner could not recover damages for emotional distress in such cases,<sup>77</sup> just as one could not recover damages for emotional distress for a totaled car or broken television set.

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<sup>69</sup> *Id.* at 1290–91.

<sup>70</sup> Symposium, *Confronting Barriers to the Courtroom for Animal Advocates*, 13 *ANIMAL L.* 13, 61 (2006).

<sup>71</sup> *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 429 (D.C. Cir. 1998).

<sup>72</sup> *Id.* at 445.

<sup>73</sup> *Id.* at 429.

<sup>74</sup> *Id.* at 430.

<sup>75</sup> *Id.* at 445.

<sup>76</sup> Rob Roy Smith, *Standing on Their Own Four Legs: The Future of Animal Welfare Litigation After Animal Legal Defense Fund, Inc. v. Glickman*, 29 *ENVTL. L.* 989, 992, 1003 (1999).

<sup>77</sup> See *Kaufman v. Langhofer*, 222 P.3d 272, 273 (Ariz. Ct. App. 2009) (denying emotional distress damages to owner in veterinary malpractice case); *Harabes v. Barkery, Inc.*, 791 A.2d 1142, 1144 (N.J. Super. Ct. Law Div. 2001) (denying recovery to dog owners for negligent infliction of emotional distress and loss of companionship after the dog died when negligently subjected to extreme heat at a dog grooming facility); *Rabideau v. City of Racine*, 627 N.W.2d 795, 798–99 (Wis. 2001) (acknowledging that pets are more

These rules, however, appear to be under assault. A California appeals court consolidated the cases of *Martinez v. Robledo* and *Workman v. Klause*, allowing the owners of companion animals to recover the reasonable and necessary cost of treatment beyond the market value of the injured animals.<sup>78</sup> In *Martinez*, the plaintiff's neighbor intentionally shot the plaintiff's dog.<sup>79</sup> In *Workman*, the plaintiff's dog had to have emergency surgery after a veterinarian negligently performed a surgery to remove a small liver lobe.<sup>80</sup> The resulting veterinary bills for the dogs' injuries amounted to \$20,789.81 and \$37,766.06, respectively—well in excess of the dogs' market values.<sup>81</sup> The Court ruled that the respective owners could recover the veterinary bills as reasonable and necessary costs of treatment, notwithstanding the traditional tort recovery rule.<sup>82</sup> Although *Martinez* and *Workman* did not authorize damages for emotional distress, they did allow recovery well beyond fair market value, a significant change in the common law.<sup>83</sup>

Similarly, in *Leith v. Frost*, an Illinois court allowed a plaintiff dog owner to recover veterinary costs well in excess of the fair market value of her injured dog.<sup>84</sup> The plaintiff conceded the dog was worth at most \$200, but the Court awarded the plaintiff-owner \$4,784 for the reasonable and customary cost of veterinary care after her neighbor's dog mauled hers.<sup>85</sup> Again, the *Leith* court awarded damages in excess of the pet's fair market value, notwithstanding the traditional rule.

Perhaps presaging changes yet to come, a concurring opinion in a Texas case would have upheld a trial court award for the death of plaintiffs' dogs based on the "intrinsic value of the dogs to [plaintiffs] and the value of the dogs as companions to [plaintiffs]; and . . . special value to [plaintiffs] as beloved pets."<sup>86</sup> In *Bueckner v. Hamel*, the majority applied the common law rule to allow owners of a dalmatian and an Australian shepherd to recover \$1,825 when a neighbor negligently, carelessly, or intentionally killed plaintiffs' dogs.<sup>87</sup> The concurrence, however, articulated a more expansive basis for recovery—dictum in

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than property, but not allowing owner to recover under negligent infliction of emotional distress or intentional infliction of emotional distress when owner saw her dog shot by a police officer); see also Casey Chapman, *Not Your Coffee Table: An Evaluation of Companion Animals as Personal Property*, 38 CAP. U. L. REV. 187, 188 (2009) (explaining that owners generally cannot recover for damages beyond fair market value when pets die).

<sup>78</sup> TAUBER, *supra* note 36, at 145.

<sup>79</sup> *Martinez v. Robledo*, 147 Cal. Rptr. 3d 921, 922 (Cal. Ct. App. 2012).

<sup>80</sup> *Id.* at 923.

<sup>81</sup> *Id.* at 922–23.

<sup>82</sup> *Id.* at 927.

<sup>83</sup> *Id.*

<sup>84</sup> *Leith v. Frost*, 899 N.E.2d 635, 641 (Ill. App. Ct. 2008).

<sup>85</sup> *Id.*

<sup>86</sup> *Bueckner v. Hamel*, 886 S.W.2d 368, 373 (Tex. App. 1994) (Andell, J., concurring).

<sup>87</sup> *Id.* at 370, 372.

the case in question, but of great possible significance to future cases.<sup>88</sup>

The ultimate question is whether the law should treat killed or injured dogs or other pets just as it treats totaled cars or broken television sets. In the real world, it is clear that human owners often form very different relationships with their pets than they form with inanimate objects. Studies have shown that companion animals positively affect the physical and mental health of their owners.<sup>89</sup> Seniors with animal companions are thought to live longer and happier lives.<sup>90</sup> When a pet is injured or dies, its owner can be devastated. Some owners have felt grief so profound when they lose a pet that they are unable to perform the basic functions of daily life.<sup>91</sup> The same is not true of cars or TVs, which are easily replaceable.

It is therefore, perhaps, unsurprising that a few courts have begun to allow compensation for mental anguish and punitive damages in cases involving the killing of a companion animal where the defendant's actions were egregious, malicious, willful, or reckless.<sup>92</sup>

In Florida, a court allowed a plaintiff dog owner to collect damages for mental suffering when a garbage collector killed her dog.<sup>93</sup> The dog was tied up outside, not in reach of the trash can; without apparent provocation, the garbage man hurled an empty trash can at the dog.<sup>94</sup> The dog died from the incident.<sup>95</sup> The Court acknowledged the grief resulting from the loss of a pet dog and said that, "[T]he malicious destruction of the pet provides an element of damage for which the owner should recover, irrespective of the value of the animal . . . ."<sup>96</sup> The Court recognized the grief that owners can feel upon the loss of a pet, especially when deprived of their pet in a malicious way.<sup>97</sup>

Similarly, in Washington, a court allowed for recovery of emotional distress damages to a plaintiff cat owner when her cat was maliciously set on fire by three young boys and had to be euthanized after

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<sup>88</sup> *Id.* at 376, 378.

<sup>89</sup> Eason, *supra* note 10, at 80.

<sup>90</sup> Rebecca J. Huss, *Re-Evaluating the Role of Companion Animals in the Era of the Aging Boomer*, 47 AKRON L. REV. 497, 500–06 (2014).

<sup>91</sup> Stroh, *supra* note 13, at 243.

<sup>92</sup> See Symposium, *A Slave by Any Other Name is Still a Slave: The Tilikum Case and Application of the Thirteenth Amendment to Nonhuman Animals*, 19 ANIMAL L. 221, 227 (2013) ("Courts and legislatures are increasingly recognizing tort damages for the injury or killing of a companion animal, including damages for emotional distress, sentimental damages, and punitive damages."); see also David Favre, *Overview of Damages for Injury to Animals—Pet Losses*, MICH. ST. U.: ANIMAL LEGAL & HIST. CTR. (2003), <https://www.animallaw.info/article/overview-damages-injury-animals-pet-losses> [https://perma.cc/AJV5-UREG] (accessed Feb. 5, 2020) (discussing the types of damages awarded in various states' animal abuse cases, including punitive and noneconomic damages).

<sup>93</sup> *La Porte v. Associated Indeps., Inc.*, 163 So. 2d 267, 269 (Fla. 1964).

<sup>94</sup> *Id.* at 267–68.

<sup>95</sup> *Id.* at 268.

<sup>96</sup> *Id.* at 269.

<sup>97</sup> *Id.*

suffering first, second, and third-degree burns.<sup>98</sup> The Court held that a malicious injury to a pet could support a claim and be considered a factor in measuring an owner's emotional distress damages.<sup>99</sup>

Yet, these cases are outliers. In most states, pet owners still face an uphill battle if they want to collect damages beyond fair market value, particularly if they seek damages for emotional distress.<sup>100</sup> In most jurisdictions, killed or injured pets are still treated no differently in tort law than cars or TVs.<sup>101</sup> Nevertheless, the law appears to be gradually shifting to reflect cultural changes in this regard. Courts have followed culture in recognizing that pet owners are often willing to pay medical expenses far in excess of the market values of their nonhuman companions and in treating such payments as reasonable and therefore recoverable.<sup>102</sup> Additionally, courts have also followed culture by beginning to allow the recovery of emotional and punitive damages, recognizing that, at least in some cases, the very purpose of the injury to the animal may have been to cause emotional injury to its owner.<sup>103</sup>

But courts are not the only venues in which the law surrounding the treatment of nonhuman animals is changing. Also following culture, legislatures have been making changes as well.

## B. Changes in Statutory Law

### 1. Federal Legislation

The Animal Welfare Act (AWA), the seminal federal animal protection statute, was originally enacted in 1966 as the Laboratory Animal Welfare Act.<sup>104</sup> In 1970, Congress changed the name of the Act and expanded its coverage.<sup>105</sup> Initially, the AWA was meant to prevent the theft of pets that were then being sold to laboratories.<sup>106</sup> The 1970 expansion required humane treatment of all warm-blooded animals, except birds, rats, and mice by animal dealers and exhibitors, including zoos, circuses, and fairs, but exempting pet stores, rodeos, and agricul-

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<sup>98</sup> *Womack v. Von Rardon*, 135 P.3d 542, 543 (Wash. Ct. App. 2006).

<sup>99</sup> *Id.* at 546.

<sup>100</sup> Sabrina DeFabritiis, *Barking up the Wrong Tree: Companion Animals, Emotional Damages and the Judiciary's Failure to Keep Pace*, 32 N. ILL. U. L. REV. 237, 245–46 (2012).

<sup>101</sup> *Animals' Legal Status*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/issue/animals-legal-status/> [<https://perma.cc/X8NT-T4JJ>] (accessed Feb. 5, 2020).

<sup>102</sup> See *Leith v. Frost*, 899 N.E.2d 635, 641 (Ill. Ct. App. 2008) (explaining that the personal value of the plaintiff's dog can be ascertained by the amount of money they spent on the dog's veterinary care).

<sup>103</sup> See *Burgess v. Taylor*, 44 S.W.3d 806, 810–11 (Ky. App. 2001) (allowing punitive damages where the defendant sold plaintiff's pet horses to slaughter knowing that it would likely cause severe emotional distress to the plaintiff); see also *Propes v. Griffith*, 25 S.W.3d 544, 551 (Mo. App. WD 2000) (allowing punitive damages where a neighbor intentionally took the plaintiff's dogs and had them euthanized).

<sup>104</sup> TAUBER, *supra* note 36, at 75–76.

<sup>105</sup> *Id.* at 76.

<sup>106</sup> *Id.* at 75.

ture.<sup>107</sup> In 1985, after PETA publicly exposed the treatment of animals in research laboratories, the AWA was amended to regulate the treatment of animals in laboratories as well.<sup>108</sup> The 1985 amendment also increased penalties for violations.<sup>109</sup>

Although advocates often complain that the AWA is too weak and not adequately enforced, its protections have been given increasingly broad scope over the years.<sup>110</sup> The AWA has been joined by, the Marine Mammal Protection Act, the Wild Free-Roaming Horses and Burros Act, the Endangered Species Act, the African Elephant Conservation Act, the Dolphin Protection Consumer Information Act, the Fur Seal Act of 1966, and the Humane Slaughter Act, among others.<sup>111</sup> Again, the law seems to follow culture.

## 2. State Legislation

Because pets are still considered property, people cannot leave their nonhuman animal companions property, money, or life insurance proceeds directly.<sup>112</sup> Nevertheless, as of 2016, some forty-six states and the District of Columbia have enacted some sort of pet trust law that allows pets to be the beneficiaries of a trust.<sup>113</sup> Again, law seems to be following culture. Even after death, owners want to provide for their beloved nonhuman animal family members. Trusts for the benefit of pets are categorically different from the mere arrangements for the division and disposition of property; grantors of trusts for the benefit of pets are attempting to secure their pets' well-being after they (the grantors) are gone. One of the most famous examples is that of hotel heiress, Leona Helmsley, who left \$12 million in a trust for her Maltese dog, Trouble.<sup>114</sup> Although a court later reduced that amount to \$2 million, the trust still allowed Trouble to live a pampered life after Helmsley's death.<sup>115</sup>

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<sup>107</sup> *Id.* at 76.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *See id.* at 76–77 (discussing the Marine Mammal Protection Act, the Wild Free-Roaming Horses and Burros Act, and the Endangered Species Act); *see also* Henry Cohen, *Federal Animal Protection Statutes*, 1 ANIMAL L. 153, 160, 163–164, 171 (1995) (providing brief summaries of relevant federal animal protection statutes).

<sup>112</sup> Barbara Marquand, *Trusts for Dogs? Providing for Pets After You're Gone*, FORBES (Dec. 1, 2015), <https://www.forbes.com/sites/barbaramarquand/2015/12/01/provide-for-pet-after-death-insurance-trust/#68a955fd7819> [https://perma.cc/8YJB-WTRL] (accessed Feb. 5, 2020).

<sup>113</sup> *Id.*; ADAM P. KARP, UNDERSTANDING ANIMAL LAW 557 (2016) (“To date, 46 states and the District of Columbia have some adaptation of a pet trust law.”).

<sup>114</sup> Susan Donaldson James, *Leona Helmsley's Little Rich Dog Trouble Dies in Luxury*, ABC NEWS (June 10, 2011), <https://abcnews.go.com/US/leona-helmsleys-dog-trouble-richest-world-dies-12/story?id=13810168> [https://perma.cc/5E8P-9GT5] (accessed Feb. 5, 2020).

<sup>115</sup> *Id.*

As a matter of sociological fact, our pets mean more to us than other property we own. The difference is not one of degree; our relationship with our pets is different from our relationship with other items categorized as ‘property’ by the law—we do not equate our pets with hairdryers. Generally, we do not care what happens to our hairdryer after we die. We may bequeath our hairdryer to a particular beneficiary because we think this beneficiary is more responsible or deserving than another, but we rarely care about what happens to the hairdryer itself. By contrast, most owners *do* care about what happens to their pets. It is common for owners to want assurance that, after they pass, their pets will be taken care of; the pets themselves are the intended beneficiaries, not the humans charged with the care.<sup>116</sup>

Further evidence that pets mean more to us than other property are the ‘hot car laws.’ Fifteen states—Arizona, California, Colorado, Connecticut, Delaware, Florida, Indiana, Kansas, Louisiana, Massachusetts, Ohio, Oregon, Tennessee, Vermont, and Wisconsin—have now enacted laws that allow any person to break into a car to rescue a distressed animal, and limits the civil or criminal liability of the person for damages.<sup>117</sup> Most of these laws have requirements that the person must follow, like making sure breaking in is the only way to save the animal, calling 911 or law enforcement, leaving a note, and staying on the scene until law enforcement arrives.<sup>118</sup>

In addition, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New York, North Carolina, North Dakota, Rhode Island, South Dakota, Virginia, and Washington now have laws that allow law enforcement, firefighters, animal control officers, or other authorized personnel to break into cars to save distressed animals.<sup>119</sup> Although New Jersey and West Virginia do not have hot car laws, their laws make it a crime to leave an animal unattended in a car—as much as it is a crime to leave a child unattended in a car.<sup>120</sup>

All fifty states and the District of Columbia have enacted laws that prohibit animal cruelty and make it a felony.<sup>121</sup> After all, “[h]e

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<sup>116</sup> See, e.g., Cindy Wilson et al., *Companion Animals in Obituaries: An Exploratory Study*, 26 ANTHROZOÖS 227, 234 (2015) (“Including the [companion animal] in the obituary extends the fabric of the family system and may represent a symbolic manifestation of fictive kinship, leaving another living ‘relative’ with whom family members can grieve their loss.”).

<sup>117</sup> Rebecca F. Wisch, *Table of State Laws that Protect Animals Left in Parked Vehicles*, MICH. ST. UNIV.: ANIMAL LEGAL & HIST. CTR. (July 16, 2018), <http://www.animallaw.info/topic/table-state-laws-protect-animals-left-parked-vehicles> [https://perma.cc/7WKL-JKDT] (accessed Feb. 5, 2020).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> TAUBER, *supra* note 36, at 135; see also Monyak, *supra* note 5 (explaining that even though pets are formally considered property, all fifty states have laws prohibiting cruelty against animals).

who is cruel to animals becomes hard also in his dealings with men. We can judge the heart of a man by his treatment of animals.”<sup>122</sup>

A few state legislatures have also addressed the damages available for death or injury to pets. For example, in Tennessee, owners of a dog or cat can now recover up to \$5,000 in noneconomic damages for the death of their pet.<sup>123</sup> The Tennessee statute does not, however, authorize awards of noneconomic damages in actions for professional negligence against a licensed veterinarian.<sup>124</sup>

In Connecticut, in addition to the fair market value of the pet, the owner of a companion dog or cat can recover veterinary costs and burial expenses from those who intentionally kill or injure their pets.<sup>125</sup> The court may also award punitive damages and attorney’s fees.<sup>126</sup>

In Illinois, in addition to the fair market value of their pets, owners can recover any veterinary costs and damages for emotional distress.<sup>127</sup> Furthermore, for each act of abuse or neglect toward the pet, owners may recover no less than \$500, but no more than \$25,000, in punitive damages, plus attorney’s fees and costs.<sup>128</sup>

In Maryland, pet owners can recover up to \$10,000 for [reasonable] veterinary care if someone tortuously injures their pet, and if injuries result in death, the fair market value of the pet may also be recovered.<sup>129</sup>

In Nevada, if a dog or cat is unlawfully and intentionally or negligently killed or injured, its owner can recover veterinary costs, any reduction in the value of the pet by reason of its injury, the pet’s fair market value if it is killed, burial costs, and attorney’s fees and costs.<sup>130</sup> Noneconomic and punitive damages, however, are explicitly excluded, and the total award may not exceed \$5,000.<sup>131</sup>

Finally, in California, willful or grossly negligent injuries to pets, committed in ‘disregard of humanity,’ may be subject to exemplary damages.<sup>132</sup>

#### IV. RECENT CHANGES IN THE LAW OF JUDICIAL LIENS

This brings us to the Article’s primary focus: recent changes in the law of judicial liens. The changing law of judicial liens cannot be understood except in the context of the broader changes in culture and

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<sup>122</sup> Gilbreath, *supra* note 26, at 1 (citing Immanuel Kant, *Duties in Regard to Animals*, in ANIMAL RIGHTS AND HUMAN OBLIGATIONS 23–24 (Tom Regan & Peter Singer eds., 2d ed. 1989)).

<sup>123</sup> TENN. CODE ANN. § 44-17-403(a)(1) (West 2018).

<sup>124</sup> TENN. CODE ANN. § 44-17-403(e) (West 2018).

<sup>125</sup> CONN. GEN. STAT. ANN § 22-351a(b) (West 2018).

<sup>126</sup> CONN. GEN. STAT. ANN § 22-351a(c) (West 2018).

<sup>127</sup> 510 ILL. COMP. STAT. ANN § 70/16.3 (West 2018).

<sup>128</sup> 510 ILL. COMP. STAT. ANN § 70/16.3 (West 2018).

<sup>129</sup> MD. CODE ANN., CTS. & JUD. PROC. § 11-110 (West 2019).

<sup>130</sup> NEV. REV. STAT. § 41.740(1)(a)–(d) (2018).

<sup>131</sup> *Id.* at §§ (2)–(3).

<sup>132</sup> CAL. CIV. CODE § 3340 (West 2019).

the law outlined in the preceding Parts. As in other legal contexts, the treatment of companion animals in the law of judicial liens is evolving in response to changes in culture.

For those unfamiliar with the collections process, some background information may be useful: A ‘lien’ is a legal interest held by a creditor in a debtor’s property;<sup>133</sup> a ‘judicial lien’ is a lien “obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.”<sup>134</sup> When a debtor is adjudged to owe money to a creditor and does not satisfy the resulting judgment, the creditor may ask the court to impose a lien on the debtor’s property.<sup>135</sup> Then, the court usually directs the local sheriff to seize the property to be liquidated to satisfy the judgment.<sup>136</sup> Judicial liens include liens by attachment, garnishment, judgment, and execution,<sup>137</sup> but the differences among the various types of liens are not important for purposes of this Article. It suffices to observe that judicial liens enable a creditor to reach a debtor’s property through legal process—certain types of property thought to be essential to the debtor’s continued day-to-day living are exempt, and these exemptions vary from state to state.<sup>138</sup> Exemptions for animals (and their implications) are the focus of this Part.

While case law is sparse concerning actual instances of creditors seizing household pets to satisfy a debt,<sup>139</sup> eight states nevertheless specifically exempt household pets or domestic animals kept for family use from a creditor’s reach.<sup>140</sup> Twenty-six states do not have a specific exemption for pets, but have enacted statutes that in some way allow either a generic ‘animals’ exemption, not restricted to livestock,<sup>141</sup> or a ‘wildcard exemption’ that exempts any personal property of the debtor’s choice, including pets or other animals, up to some specified

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<sup>133</sup> *Lien*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> See WILLIAM HOUSTON BROWN ET AL., THE LAW OF DEBTORS AND CREDITORS § 6:18 (West 2019) (listing the various types of judicial liens and the ‘principal effects’ of obtaining a judicial lien).

<sup>138</sup> See, e.g., ALASKA STAT. § 09.38.020 (2019) (providing an example of the personal property exemptions afforded by Alaska state law). For a sample exemption form for debtors; see also WILLIAM HOUSTON BROWN ET AL., BANKRUPTCY EXEMPTION MANUAL § 9:33 (West 2019) (providing an example state court form for a Notice of Right to Claim Exemptions from Execution).

<sup>139</sup> See *In re Gallegos*, No. 98-01945, 1998 B.R.LEXIS 1481, at \*111 (Bankr. D. Idaho Oct. 16, 1998) (acknowledging the lack of authority or precedent concerning horses as household pets).

<sup>140</sup> ALASKA STAT. § 09.38.020 (2019); ARIZ. REV. STAT. ANN. § 33-1125 (2019); LA. STAT. ANN. § 13:3881 (2018); MD. CODE ANN., CTS. & JUD. PROC. § 11-504 (LexisNexis 2019); N.Y. C.P.L.R. § 5205 (McKinney 2019); OR. REV. STAT. § 18.345 (2019); VA. CODE ANN. § 34-26 (2019).

<sup>141</sup> These states are: Alabama, California, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Maine, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Rhode Island, South Carolina, Vermont, Washington, West Virginia, and Wisconsin. See, e.g., GA. CODE ANN. § 44-13-100 (2019) (detailing Georgia’s generic animals exemption).



aggregate value.<sup>142</sup> Finally, the laws of sixteen states cannot fairly be interpreted to allow a debtor to exempt pets.<sup>143</sup> In such states, creditors can take, or threaten to take, pets—the nonhuman animal members of the family—in satisfaction of their liens.<sup>144</sup> There are more states that specifically exempt church pews and burial plots from judicial liens than there are states that specifically exempt household pets.<sup>145</sup>

The interrelationship of the various areas of the law in which issues involving nonhuman animals arise becomes evident when one explores which states have protected pets from judicial liens. Generally, states that reject a strict pets-as-property frame in one context tend to do so in other contexts as well. For example, New York, the state with perhaps the most generous judicial lien exemption for animals in the United States,<sup>146</sup> has been the site of multiple animal rights cases. For instance, the aforementioned *Jones v. Butz*<sup>147</sup> case was brought in New York. It was followed closely by another notable animal abuse case in which the court, though ruling for defendant as a matter of law, agreed with plaintiff that the conditions of the municipal zoos of New York were “disturbing and even dreadful.”<sup>148</sup> Undeterred by the setback, New York-based animal rights activists succeeded less than a decade later in a suit against the U.S. Department of Agriculture, obtaining an injunction that prohibited the hot iron facial branding of dairy cows.<sup>149</sup> Maryland, another state that specifically excludes animals from the reach of creditors,<sup>150</sup> has been the only state to convict

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<sup>142</sup> See, e.g., *Golden Eagle Distrib., Corp. v. Wise Equip. & Rentals, Inc.*, No. 15 C 8235, 2017 WL 4574967, at \*5 (N.D. Ill. Oct. 12, 2017) (holding a debtor cannot assert the exemption more than once, and thus is not entitled to multiple ‘wildcard exemptions’ totaling in far excess of a statutory cap); see also WILLIAM HOUSTON BROWN ET AL., *THE LAW OF DEBTORS AND CREDITORS* § 6:69 (West 2019) (“Additionally, many exemptions statutes include a catchall provision, often called a ‘wildcard exemption,’ that allows the debtor to exempt property that the debtor selects up to a certain value.”).

<sup>143</sup> These states are: Arkansas, Colorado, Connecticut, Delaware, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Hampshire, North Dakota, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, and Wyoming. See, e.g., COLO. REV. STAT. ANN. § 13-54-102 (West 2018) (detailing Colorado’s property exemptions from levy and sale under writ of attachment or writ of exclusion).

<sup>144</sup> See, e.g., KY. REV. STAT. ANN. § 427.010 (West 2018) (detailing Kentucky’s exemptions for debtor’s personal property from execution, attachment, garnishment, distress, or fee bill).

<sup>145</sup> These states include: Delaware, Kansas, Idaho, Maine, Minnesota, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Utah, Wisconsin, and Wyoming. See, e.g., S.D. CODIFIED LAWS § 43-45-2 (2019) (detailing South Dakota’s property exemptions from process, levy, or sale).

<sup>146</sup> See N.Y. C.P.L.R. § 5205 (McKinney 2019) (providing not only that domestic animals be spared from creditors, but also that there be necessary food for those animals for 120 days).

<sup>147</sup> *Jones*, 374 F. Supp. at 1284.

<sup>148</sup> *Jones v. Beame*, 380 N.E.2d 277, 278 (N.Y. 1978).

<sup>149</sup> *Humane Soc’y of Rochester & Monroe Cty. for Prevention of Cruelty to Animals, Inc. v. Lyng*, 633 F.Supp. 480, 486 (W.D.N.Y. 1986).

<sup>150</sup> MD. CODE ANN., CTS. & JUD. PROC. § 11-504 (Lexis Nexis 2018).

an animal researcher for cruelty to animals by reason of the laboratory conditions in which the researcher kept the animals.<sup>151</sup> In another notable case from a specific exemption state, Oregon,<sup>152</sup> the state Supreme Court applied the Fourth Amendment exception of ‘exigent circumstances’ to justify an animal welfare officer’s warrantless seizure of a horse who appeared to be starving.<sup>153</sup>

The fact that eight states specifically exempt household pets, or domestic animals kept for family use, from a creditor’s reach is particularly noteworthy in view of the fact that reported cases in which creditors actually attempt to levy on pets are rare. In this regard, state legislatures appear to be reflecting changing cultural norms rather than responding to reported abuses.

Reliable counts of pets taken to satisfy judicial liens do not appear to be available; nevertheless, it seems unlikely that many pets are taken simply for sale in satisfaction of the debt—the resale value of the typical household pet is minimal. An additional deterrent to seizure is the fact that animals, if seized, must be cared for until they can be sold. Unlike inanimate objects, living creatures cannot simply be left on a warehouse shelf for a month or two until auction. The cost of upkeep until auction (even if a sheriff has established procedures for seizing living creatures) would likely be borne by the creditor, and the resale value of most pets generally makes seizure economically unattractive.<sup>154</sup>

Thus, legislatures in the eight states with pet exclusions seem to have enacted such exclusions in part to reflect changing cultural norms—expressing a wide-spread sense that pets are not just property. Indeed, specific exclusions for pets resemble specific exclusions that many such states have for items of sentimental value, such as family photos or books.<sup>155</sup>

Although the issue does not often arise, courts have similarly been sympathetic to the view that there is something more to the household pet—even when the animal does have an ascertainable market value.

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<sup>151</sup> *Taub v. State*, 463 A.2d 819, 820 (Md. 1983). See Tischler, *supra* note 67, at 20 (“This is the only case in U.S. history in which an animal researcher has been convicted . . . for cruelty to animals as a result of the conditions in which the animals were kept in the laboratory.”).

<sup>152</sup> OR. REV. STAT. § 18.345 (2018).

<sup>153</sup> *State v. Fessenden*, 333 P.3d 278, 285–87 (Or. 2014) (reaching a notable conclusion that the typical argument for ‘exigent circumstances’ would be in defense of human life, not animals or property).

<sup>154</sup> See *Adopt Your New Best Friend!*, HUMANE SOC’Y OF TACOMA & PIERCE COUNTY, <http://www.thehumanesociety.org/adopt/> [<https://perma.cc/5ZD6-9A3K>] (accessed Feb. 5, 2020) (showing that the listing price range for adopting cats is generally \$30–\$135, while the range is \$80–\$500 for dogs).

<sup>155</sup> See ALA. CODE § 6-10-6 (1975) (“[A]ll family portraits or pictures . . . shall . . . be exempt from levy and sale under execution or other process for the collection of debts.”); see also VA. CODE ANN. § 34-26 (2015) (“[E]very householder shall be entitled to hold exempt from creditor process . . . [t]he family Bible[,] . . . [w]edding and engagement rings[,] . . . [f]amily portraits and family heirlooms[,] . . . [a]ll animals owned as pets . . .”).

In *In re Gallegos*, one of the few cases in which a court directly addressed the problem of enforcing judicial liens on household pets, a bankruptcy court found that a horse named Mittens was exempt from the owners' creditors' reach.<sup>156</sup> The Idaho statute regarding judicial lien exemptions entitled a debtor to exempt one 'household pet' of up to \$500 in value "if reasonably held for the personal use of the individual or a dependent . . ."<sup>157</sup> The court identified two 'mane' issues: (1) whether Mittens was a household pet and, if so, (2) whether Mittens was "reasonably held for the personal use of debtors or their dependents."<sup>158</sup> Citing the debtors' affidavit, the court noted that the debtors "purchased the horse to care for and to act as a companion to [the debtors'] young daughter."<sup>159</sup> The family also enjoyed petting and feeding Mittens.<sup>160</sup> Additionally, the defendants' intent to ride Mittens did not per se preclude the horse from the 'personal use' requirement of the judicial lien exemption.<sup>161</sup> However, the court noted that the matter might have been resolved differently had Mittens been bred to become a competitive racehorse.<sup>162</sup>

In enacting specific exemptions for household pets, family photos, and other items to which debtors may be especially emotionally attached, legislatures may also be concerned that creditors might attempt to use such items to exert illegitimate leverage in their collection efforts. Just as a creditor may attempt to seize monetarily worthless but emotionally priceless family photos to compel a debtor's cooperation—beyond that required by law—so too may a creditor seize a beloved household pet for leverage in the absence of such an exemption. Mittens, of course, could have been sold to be killed and rendered into glue and dog food.

Judicial lien exemptions such as the one in *Gallegos* are essential because these sorts of cutthroat collection tactics are standard operating procedure in many industries. In *Salminen v. Morrison & Frampton, PLLP*,<sup>163</sup> for example, a judgment creditor directed the sheriff to "take everything that is not nailed down" in the debtors' house. Although the creditor had indeed won a judgment against the debtors, the debtors had timely filed a notice of claimed exemptions and requested a hearing.<sup>164</sup> The creditor, however, obtained a warrant of execution based on a false affidavit<sup>165</sup> which stated, among other

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<sup>156</sup> *In re Gallegos*, 226 B.R. 111, 111 (Bankr. D. Idaho 1998).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *See id.* at 112 (denying any 'horseplay' in making this determination but appreciating the creditor's persistent attempts to 'lasso' assets to satisfy creditor's claims); *see also In re Canutt*, 264 F. Supp. 919, 921 (D. Or. 1967) (finding a horse to be exempt as a 'domestic animal' within the meaning of the relevant Oregon statute).

<sup>162</sup> *In re Gallegos*, 226 B.R. at 112.

<sup>163</sup> *Salminen v. Morrison & Frampton, PLLP*, 339 P.3d 602, 606 (Mont. 2014).

<sup>164</sup> *Id.* at 605.

<sup>165</sup> *Id.* at 606.

things, that the creditor was entitled to execute upon all of the debtors' personal property.<sup>166</sup> In fact, all of the debtors' personal property was exempt from levy as a matter of state law.<sup>167</sup> The creditor's representative told the sheriff that the debtors, who were absent from their family home at that time, were expecting the seizure<sup>168</sup>—a representation that was also false.

Pursuant to the warrant of execution thus obtained, a moving company, the sheriff, and the creditor's representative, emptied the debtors' house of all of its contents.<sup>169</sup> When the debtors stumbled upon the scene hours later, they found that everything not nailed down was in the process of being taken—the phone, open boxes of food such as crackers and cereal, and even a photo of the family's son in his border patrol uniform.<sup>170</sup> Faced with a crying mother, the creditor's representative 'graciously' allowed debtors to keep a phone book, family photos, Easter baskets, batteries, and some food.<sup>171</sup> Everything else—beds, medical equipment, family heirlooms, the cremated ashes of one debtor's aunt, and "thousands of other articles of personal property that had no economic value and from which the judgment creditor could not realize any value," were taken away.<sup>172</sup> The creditor even secretly pocketed \$5,400 in cash.<sup>173</sup>

Incredibly, the district court dismissed the debtors' claims of conversion, abuse of process and wrongful levy; however, the Supreme Court of Montana reversed and concluded that all of the property seized in the raid was exempt from levy.<sup>174</sup> The manner and context of the raid indicated that the seizure of clearly exempt property with minimal value had been undertaken simply to exert leverage on the debtors.<sup>175</sup> As a practical matter, of course, the creditor's tactic was effective; it took five months, and an appeal to the state supreme court, for the debtors to get their property back.<sup>176</sup> The court noted that it was possible that the raid had been conducted simply to send a threatening message to the debtors—pay up or this may happen again.<sup>177</sup>

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<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 607.

<sup>168</sup> *Id.* at 605.

<sup>169</sup> *Id.* at 605–06.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 606–07.

<sup>174</sup> *Id.* at 609–11.

<sup>175</sup> *See id.* ("[The plaintiffs] allege that [defendant] procured the warrant of execution not because he had actual reason to believe that property in their home was subject to execution as required by the statute. Rather, they allege that [defendant] procured the warrant with the plan to seize all of their personal property so that they would provide other assets to satisfy the judgment . . .").

<sup>176</sup> *Id.* at 607.

<sup>177</sup> *See id.* at 610 (opining further that "[s]eizure of the cremated remains of a family member, used clothing, food, medications, and such, clearly has nothing to do with a genuine attempt to satisfy a very substantial judgment").

If the *Salminen* debtors had owned a dog, it seems likely that the creditor would have taken the dog as well—although a provision specifically exempting pets from judicial liens might have given even the *Salminen* creditor a pause. Had the creditor taken a pet, and had the pet come to harm, such a provision would almost certainly have exposed the creditor to liability—possibly even to punitive damages or criminal sanctions.

Nevertheless, a number of states continue to treat animals as property—just like any other property—for lien purposes. In *Gomez v. Innocent*, the plaintiff's dog, Pilot, caught a potentially lethal virus.<sup>178</sup> The defendant veterinarian was successful in treating him, but refused to return Pilot to his family until the plaintiff paid the bill in full.<sup>179</sup> The Georgia Court of Appeals held that, in accordance with a Georgia statute that unequivocally grants a lien to veterinarians for any animal they treat, and entitles them to retain the animal until charges are paid,<sup>180</sup> the defendant was fully within his rights.<sup>181</sup> For this purpose, animals are property; it is unimaginable that a doctor would be allowed to keep a child until the child's medical bills were paid.

## V. CHALLENGING THE PROPERTY FRAME ITSELF

As has been documented in prior Parts of this Article, our culture's attitude towards nonhuman animals is changing. The law is following, but it is often slow to change.<sup>182</sup> In their most direct challenge to the property frame itself, animal rights activists have established yet another organization, the Nonhuman Rights Project (NhRP). NhRP is a nonprofit organization whose mission is to change the frame through which the law views members of the most intelligent nonhuman animal species—great apes, elephants, dolphins, and whales—from animals-as-property to animals as legal persons deserving of fundamental rights.<sup>183</sup> NhRP's litigation team works in conjunction with its legislative team to attempt to secure legal personhood, and some set of correlative rights, for a limited subset of nonhuman animals.<sup>184</sup>

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<sup>178</sup> *Gomez v. Innocent*, 765 S.E.2d 405, 405 (Ga. Ct. App. 2014).

<sup>179</sup> *Id.* at 406.

<sup>180</sup> GA. CODE ANN. § 44-14-490 (2019).

<sup>181</sup> *Gomez*, 765 S.E.2d at 406–07.

<sup>182</sup> See Thomas G. Kelch, *Toward a Non-Property Status for Animals*, 6 N.Y.U. ENVTL. L.J. 531, 531 (1998) (examining areas of law where the common law has slowly changed and arguing that the elements necessary for such change presently exist for the abolishment of animals as property); Catherine L. Wolfe, *Animals Are Not Property and Should Be Legally Reclassified*, 1 MID-ATLANTIC J.L. & PUB. POL'Y 148, 152–53 (2012) (arguing for the elimination of animals as property and that a new category for animals should be created so that their special qualities may be recognized and more appropriately addressed).

<sup>183</sup> *Our Objectives*, NONHUMAN RIGHTS PROJECT, <https://www.nonhumanrights.org/who-we-are/> [<https://perma.cc/YJ84-BFY5>] (accessed Feb. 5, 2020).

<sup>184</sup> *Litigation*, NONHUMAN RIGHTS PROJECT, <https://www.nonhumanrights.org/litigation/> [<https://perma.cc/7EY7-NQFY>] (accessed Feb. 5, 2020).

Its focus is currently on great apes, whales, dolphins, and elephants held in captivity; its tool: the writ of habeas corpus.<sup>185</sup>

There is ample evidence of the intelligence, self-awareness, culture, and social sophistication of members of these species.<sup>186</sup> Some animals have cognitive faculties that surpass that of humans.<sup>187</sup> Improving the lives of captive members of these species seems like a realistic starting point for what will likely be a much larger and longer-term effort.<sup>188</sup> NhRP's current strategy is to establish the writ of habeas corpus as a viable legal tool for improving the lives of such captives.<sup>189</sup>

This mimics the strategy used successfully over a century and a half ago to convert black American slaves from property, to legal persons in the eyes of the law.<sup>190</sup> A similar shift was critical to the development of women's rights.<sup>191</sup> Like animals, the law justified treatment of slaves and women as non-legal persons, on the grounds that neither were capable of the kind of rational behavior thought to be unique to white males.<sup>192</sup> Over time—a very long time—this view changed. NhRP's current strategy is to move the law in the same direction for great apes, whales, dolphins, and elephants, held in captivity.<sup>193</sup>

NhRP currently has eight clients: four apes—Tommy, Kiko, Hercules, and Leo—and four elephants—Beulah, Karen, Minnie, and Happy.<sup>194</sup> NhRP's writ of habeas corpus on behalf of Tommy, a chimpanzee, was denied on the grounds that chimpanzees, as a class, are unable to “bear any legal duties, submit to societal responsibilities[,] or

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<sup>185</sup> *Id.*; *Our Objectives*, *supra* note 183.

<sup>186</sup> Dorothy I. Riddle, *Evolving Notions of Nonhuman Personhood: Is Moral Standing Sufficient?*, 24 J. EVOLUTION & TECH. 4, 8–9 (Sept. 2014), <https://jetpress.org/v24.3/Riddle.pdf> [<https://perma.cc/BPF2-HPUK>] (accessed Feb. 5, 2020).

<sup>187</sup> Dominique Mosbergen, *Human Intelligence Isn't Superior to that of Other Animals, Researchers Say*, HUFFPOST (Dec. 11, 2013), [https://www.huffpost.com/entry/human-intelligence-animals\\_n\\_4400395](https://www.huffpost.com/entry/human-intelligence-animals_n_4400395) [<https://perma.cc/8UWL-S6QB>] (accessed Feb. 5, 2020).

<sup>188</sup> *Litigation*, *supra* note 183.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> See Ann D. Gordon, *The Trial of Susan B. Anthony*, in FEDERAL TRIALS AND GREAT DEBATES IN UNITED STATES HISTORY 10 (2005) (detailing how a petition for a writ of habeas corpus was used to free Anthony from an order to have her held in federal custody).

<sup>192</sup> Derek W. St. Pierre, *The Transition from Property to People: The Road to Recognition of Rights for Non-Human Animals*, 9 HASTINGS WOMEN'S L.J. 255, 256, 267–68 (1998).

<sup>193</sup> *Litigation*, *supra* note 183; see Gilbreath, *supra* note 26, at 17–18 (arguing that pets should also be considered victims of domestic violence and therefore entitled to enter abuse shelters); David Favre, *Integrating Animal Interests into Our Legal System*, 10 ANIMAL L. 87, 90–91 (2004) (expressing skepticism about whether activists should have the goal of eliminating the property status of animals or whether other methods, such as transforming ownership into legal guardianship, will actually further animals rights faster).

<sup>194</sup> *Litigation*, *supra* note 183.

be held legally accountable for their actions.”<sup>195</sup> To the extent these findings purport to be factual, these are, of course, empirical questions as to which the court’s findings are not unambiguously supported by the evidence. NhRP has affirmed that it will continue its litigation on Tommy’s behalf.<sup>196</sup>

NhRP has also filed a writ of habeas corpus on behalf of Beulah, Karen, and Minnie.<sup>197</sup> On December 26, 2017, its petition was denied on two grounds: (1) lack of standing, because the petitioners had no significant relationship with the elephants, and (2) no demonstrated possibility or probability of success.<sup>198</sup> NhRP has appealed.<sup>199</sup>

Whether NhRP’s strategy will prove productive remains to be seen. In the meantime, courts and legislatures are moving away from the animals-as-property frame, without adopting the kind of full-blown animals-as-legal-persons frame NhRP advocates.

## VI. CONCLUSION

Our culture’s view of nonhuman animals—and particularly of companion animals—is clearly changing. Law follows culture. Thus, the treatment of animals in divorce proceedings and tort cases is moving significantly away from the traditional animals-as-property frame. Standing to advocate for the welfare of nonhumans has been expanded. Multiple animal welfare statutes have been enacted, including statutes permitting trusts for the care of animals.

This Article has chronicled similar changes in the law of judicial liens. Eight states now provide debtors with specific exemptions for companion animals; twenty-six others permit debtors to elect to include companion animals in a broader exemption that includes other types of property, up to some limited aggregate fair market value. Only sixteen states continue to allow creditors to seize, or threaten to seize, companion animals to satisfy their debts. The paucity of reported cases suggests that changes in this area of the law cannot be explained as a response to litigated abuses. Rather, such changes appear to have been enacted in response to changes in cultural norms and can only be fully understood within the broader cultural and legal context this paper has outlined.

The treatment of nonhuman animals in the law appears to be one of the most rapidly changing areas of American law because of evol-

<sup>195</sup> *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 998 N.Y.S.2d 248, 251 (N.Y. App. Div. 2014).

<sup>196</sup> *Client, Tommy (Chimpanzee)*, NONHUMAN RIGHTS PROJECT, <https://www.nonhumanrights.org/client-tommy/> [https://perma.cc/4YBP-DDN5] (accessed Feb. 5, 2020).

<sup>197</sup> *Nonhuman Rights Project, Inc. ex rel. Beulah, Minnie & Karen v. R.W. Comerford & Sons, Inc.*, No. LLICV175009822S, 2018 WL 1787370, at \*1 (Conn. Super. Ct. Feb. 27, 2018).

<sup>198</sup> *Id.*

<sup>199</sup> *Clients, Beulah, Karen, Minnie (Elephants)*, NONHUMAN RIGHTS PROJECT, <https://www.nonhumanrights.org/clients-beulah-karen-minnie/> [https://perma.cc/A7RJ-XVJ8] (accessed Feb. 5, 2020).

ing societal norms—in many regards comparable to, although perhaps several steps behind, the treatment of sexual orientation. Regardless of whether current attempts to challenge the animals-as-property frame itself are successful, it seems likely that the next several decades will see major changes in all affected areas of the law.