

# THE DUALITY OF DOGS: PROPERTY OR PERSON?

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## INTRODUCTION

Dogs have been with man since before humans recorded history, serving as our helpful allies in hunting and working, as our protectors, and even as our companions.<sup>1</sup> Today, there are currently over seventy-six million dogs in the United States, and they can be found in more than a third of all U.S. households,<sup>2</sup> significantly outnumbering cats in the U.S.,<sup>3</sup> proving that—at least by popularity—they remain “man’s best friend.”<sup>4</sup> But what status does a dog have under the law? Are they merely property to be owned, like a chair or a computer, or are they something more, which existing property law cannot properly account for?

Most Americans believe that their dogs are not chattel property but rather living beings deserving of at least some form of protections and basic rights.<sup>5</sup> However, our courts and our legislators often struggle to achieve balance between the established, time-honored conclusion that dogs are chattel property with the needs and wants of modern society, which increasingly turns to courts with disputes that cast dogs as beings worthy of greater respect.<sup>6</sup>

To better understand the problem, Part I of this Note first briefly reviews the history of how dogs have been treated under American law, how society and courts have previously understood dogs, and how society’s view on the rights of dogs has changed over time. Part II of this Note then explores how the legal system’s understanding of dogs has changed in three areas: (1) the right of dogs to not suffer imminent harm; (2) custody disputes over dogs; and (3) the unique rights granted to dogs used in law enforcement. Finally, in Part III, this Note

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1. See Paul Rincon, *Dogs Are Humans’ Oldest Companions*, *DNA Shows*, BBC NEWS (Oct. 29, 2020), <https://www.bbc.com/news/science-environment-54690458> [<https://perma.cc/Y22K-AMEY>]; Fresh Air, *How Dogs Evolved Into ‘Our Best Friends’*, NPR (Nov. 8, 2011, 12:01 PM ET), <https://www.npr.org/2011/11/08/142100653/how-dogs-evolved-into-our-best-friends> [<https://perma.cc/FD88-UVCA>].

2. In 2017–18, 38.4% of households owned at least one dog. *U.S. Pet Ownership Statistics*, AM. VETERINARY MED. ASS’N (Jan. 19, 2019, 4:20 PM), <https://www.avma.org/resources-tools/reports-statistics/us-pet-ownership-statistics> [<https://perma.cc/D4GB-KTZU>].

3. See *id.*

4. The phrase “man’s best friend” comes from a speech made by the plaintiff’s lawyer in *Burden v. Hornsby*, an 1870 civil case over the shooting death of a prized hunting dog in Missouri. *Old Drum Story*, JOHNSON CNTY. HIS. SOC’Y, <https://jocomohistory.org/old-drum-story/> [<https://perma.cc/E28B-9L4W>].

5. Garret M. Broad, *Public Support for Animal Rights Goes Beyond Keeping Dogs Out of Overhead Bins*, THE CONVERSATION (Mar. 22, 2018, 6:41 AM), <https://theconversation.com/public-support-for-animal-rights-goes-beyond-keeping-dogs-out-of-overhead-bins-93410> [<https://perma.cc/CHW3-T6NQ>].

6. See, e.g., *infra* Parts I.B., II.B.

considers why the law treats dogs differently in some areas and not others, whether there is a common connection between these advancements, and, if there is a commonality, what it may mean for the future legal status of dogs in America.

### I. A SHORT HISTORY OF THE LEGAL STATUS OF DOGS

This Part briefly considers the history of dogs' legal status within the United States, covering the history of societal views and how dogs have been treated in legislation and by courts over time. The summary begins with the early legal recognition of dogs as creatures with no inherent value and ends with the current, majority view that dogs are property with limited interests. The final section of Part I offers an example from 2013 of how courts are still struggling to reconcile the historical precedent of dogs as minimally valuable animals with the modern argument for advancements in the value and rights of dogs.

#### A. *The Historical Status of Dogs*

At the beginning of our nation's founding in the eighteenth century, dogs were considered mere property.<sup>7</sup> Jeremy Bentham, a noted barrister, legal writer, and early animal rights legal activist of the time, lamented that companion animals had been "neglected by the insensibility of ancient jurists" and "degraded into the class of *things*."<sup>8</sup> Bentham's views became the basis of a book entitled "Introduction to the Principles of Morals and Legislation." The piece was very influential and was used by others to later propose legal advancements in animal welfare.<sup>9</sup> However, this progress would be short lived. Dogs, much like children at that time,<sup>10</sup> would remain legally worthless for years to come.

By the nineteenth century, legislatures and courts continued to assign very little value to dogs, even less so than in Bentham's time.<sup>11</sup> In *Ward v. State*, an

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7. See DAVID FAVRE & PETER L. BORCHELT, ANIMAL LAW & DOG BEHAVIOR 6.2 (1999) (ebook).

8. *Id.*

9. *Id.*

10. In the eighteenth century, children, like dogs, were considered things as well; they were considered as property of their parents. However, a child's perceived uselessness made them worth very little under the law. In Blackstone's 1758 legal commentaries, a child abduction was not considered a theft, unless the child in question was dressed. Then, the thief could be charged with stealing something of legal value—the child's clothes. See Judith Ennew, *The History of Children's Rights: Whose Story?*, CULTURAL SURVIVAL (Apr. 2, 2010), <https://www.culturalsurvival.org/ourpublications/csq/article/the-history-childrens-rights-whose-story> [<https://perma.cc/R93F-TAM6>].

11. See *Ward v. State*, 48 Ala. 161, 164 (1872) (holding that a dog was not personal property and thus the crime of larceny could not apply); *State v. Marshall*, 13 Tex. 55, 58–59 (1854) (refusing

early case dealing with the value of a dog, the court referred to William Blackstone,<sup>12</sup> who wrote that dogs had “no *intrinsic* value,” as they did not “serve for food” and were creatures “kept for whim and pleasure.”<sup>13</sup> Because the dog did not seem to serve any useful purpose like cattle or sheep, the court in *Ward* agreed with Blackstone’s assessment and with common law precedent in the jurisdiction that dogs could not be classified as personal property.<sup>14</sup> As such, the *Ward* court held that the crime of larceny—the theft of personal property—could not apply to dogs.<sup>15</sup> The court noted that, short of a change of law, there was nothing they could do but follow precedent.<sup>16</sup>

Halfway across the country, the Texas Supreme Court came to a similar conclusion on dogs as the *Ward* court. In *State v. Marshall*, the court refused to extend the protections of an animal cruelty statute to dogs.<sup>17</sup> The court reasoned that the statute, which covered a short list of livestock “or any other property,” did not cover dogs, which were not within the same “class or description of the animals” mentioned.<sup>18</sup> Similar to the court in *Ward*, the *Marshall* Court deferred to common law and the fact that the legislature, if it had intended to include dogs, would have named them in the animal cruelty statute.<sup>19</sup>

Courts continued to see dogs as uniquely unlike other domestic animals (and thus, not as property) well into the 1800s. In one case from 1897, the Supreme Court explained that while dogs “had no intrinsic value,” they were “peculiar” in the fact that, as a class of animals, dogs varied wildly in their usefulness to people (with some being useful companions and others being dangerous nuisances).<sup>20</sup> Dogs at this time were excluded from the definition of

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to extend an animal protection statute to dogs on the grounds that dogs were unlike livestock and other animate property).

12. William Blackstone was an English judge, jurist, and lawyer whose famous work, *Commentaries on the Laws of England*, was so important, it is still reprinted and revised today. Blackstone’s writings were especially influential, and his *Commentaries* became the basis for American legal theory. See e.g., WILFRID PRIEST, *WILLIAM BLACKSTONE: LAW AND LETTERS IN THE EIGHTEENTH CENTURY* (2008).

13. *Ward*, 48 Ala. at 162.

14. “[W]e think it persuasive to show that these animals, in this State, are not regarded as property, in the proper sense of that term, as they are neither administered as such, nor taxed as other property.” See *Ward*, 48 Ala. at 162–64.

15. See *id.* at 164.

16. See *id.*

17. See *Marshall*, 13 Tex. at 59.

18. *Id.* at 58–59.

19. “They are not regarded by the law as being of the same intrinsic value as property as the animals enumerated in the statute; and cannot, we think, be brought within the prohibition under the general expression ‘any other property’ by intendment. Nor, in point of fact, do we suppose it was intended by the lawmakers to include them. Had it been, they would doubtless have been included among the animals expressly enumerated.” See *id.* at 59.

20. See FAVRE & BORCHELT, *supra* note 7, at Ch. 1.3 C. (citing *Sentell v. New Orleans & C.R. Co.*, 166 US 698, 710 (1897)).

“property” because they were not held to be “domestic animals.”<sup>21</sup> It was not until the 1900s that dogs were officially and consistently classified as property (as domestic animals) through court decisions and statutes.<sup>22</sup>

Over time, families began to abandon the practice of keeping livestock, and pet ownership gradually increased. This transition began in the 1800s as horses and other working animals became less necessary for daily life and continued well into the 1900s.<sup>23</sup> Some of this transition is due to the creation of new pesticides for animal parasites (such as fleas and ticks), newer advances in medical care that allowed pets to live longer, and inventions such as commercialized cat litter that allowed pets to live indoors and more closely with their humans.<sup>24</sup> Animal rights groups recognized this shift and adapted their activism efforts, but pets would not become their primary concern until the middle of the twentieth century.<sup>25</sup>

While Britain had a nationwide animal welfare law that included dogs by the 1800s, America did not enact federal legislation until the passage of the Animal Welfare Act (“AWA”) in 1966.<sup>26</sup> It was shaped, in large part, by social and political pressures following public uproar over the treatment of dogs and cats by the research industry.<sup>27</sup> Just as advancements in children’s rights occurred through media influence on public sentiment regarding children and their care,<sup>28</sup> the national outrage over canine mistreatment came after two articles in *Life* and *Sports Illustrated* magazines exposed how experimental research industries allowed—or at least turned a blind eye to—the acquisition and “farming” of dogs to be used in experiments and testing.<sup>29</sup> The 1966 *Life* article focused on the horrific conditions in which dogs were kept at these

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21. *Id.*

22. *Id.*; see also *Dickerman v. Consol. Ry. Co.*, 65 A. 289 (Conn. 1907) (holding that registered dogs could be considered property by statute, but that an unlicensed dog over six months could not); *Phillips v. San Luis Obispo Cty. Dep’t etc. Reg.*, 228 Cal. Rptr. 101 (Cal. App. 2d Dist. 1986) (holding unambiguously that dogs are property).

23. See Janet M. Davis, *The History of Animal Protection in the United States*, THE AM. HISTORIAN (Nov. 2015), <https://www.oah.org/tah/issues/2015/november/the-history-of-animal-protection-in-the-united-states/> [<https://perma.cc/6A3F-9428>]; KATHERINE C. GRIER, PETS IN AMERICA: A HISTORY 131 (2006) (ebook).

24. Davis, *supra* note 23. It is interesting to note that cat litter was not widely available before 1947. *Id.*

25. *Id.*

26. See Benjamin Adams & Jean Larson, *Legislative History of the Animal Welfare Act: Introduction*, USDA NAT’L AGRIC. LIBR. (June 2014), <https://www.nal.usda.gov/awic/legislative-history-animal-welfare-act-introduction> [<https://perma.cc/8CAV-NXE9>].

27. *See id.*

28. Developments for children’s rights in America started in private law and then, through increasingly available communications such as magazines and media, a change in public sentiment occurred, leading to further advancements. See MARY ANN MASON, FROM FATHER’S PROPERTY TO CHILDREN’S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES 51 (1994).

29. *See id.*

facilities,<sup>30</sup> and the 1965 *Sports Illustrated* article detailed the story of a family pet stolen for medical testing purposes.<sup>31</sup> The *Sports Illustrated* story focused on the plight of Pepper the Dalmatian, a dog that mysteriously disappeared from her front yard and was later seen in a newspaper photograph of an “animal dealer’s” overcrowded truck.<sup>32</sup> Pepper’s owners tracked down the location of that animal dealer, only to find that she had been delivered to a “dog farm.”<sup>33</sup> Despite their best efforts, which included involvement by a congressperson from New York, Pepper was never returned and was eventually euthanized at a New York hospital after being subjected to experimental testing.<sup>34</sup>

Over the next six years, two amendments were added to the AWA ensuring the humane treatment, care, and transportation of dogs.<sup>35</sup> In 1985, Congress amended the AWA again to require medical testing facilities to find alternatives to dogs and primates whenever experiments involved pain and suffering.<sup>36</sup> Finally, twenty-five years after *Sports Illustrated* detailed Pepper’s story, the AWA was amended in 1990 to specifically address pet theft.<sup>37</sup>

The AWA and its subsequent amendments are important because they altered the legal rights of dogs to match society’s increased valuation of them. The original passage of the AWA occurred within a year of the publication of the *Sports Illustrated* and *Life* articles, which was no coincidence; the exposé in *Life* inspired a flurry of letters to legislators seeking action over the abuse of dogs used in experimental testing.<sup>38</sup> Subsequent amendments to the AWA often followed increased public sentiment against animal suffering in experimental testing, and they expressly protected the rights of the animals involved more robustly.<sup>39</sup> This shift in modern sentiment stood in stark contrast to the earlier

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30. The article described the extreme neglect of animals at dog farming facilities, including photos of “skeletal dogs.” The article was aptly entitled “Concentration Camp for Dogs.” See Adams & Larson, *supra* note 26.

31. *See id.*

32. *See id.*

33. A “dog farm” is a location that dogs were held before transfer to various medical testing facilities. *See id.*

34. *See* Adams & Larson, *supra* note 26.

35. *See* Amber M. Lopez-Hunter, *Fur Babies Matter: My Dog Is Not Property*, 4 SAVANNAH L. REV. 259, 1072 (2017); *see also* Adams & Larson, *supra* note 26.

36. *See* Adams & Larson, *supra* note 26.

37. Pet theft had declined since the initial enactment of the AWA, but it had not stopped completely, as dealers found new ways to collect animals from shelters through purchase or fraudulent means. The 1990 amendment, which was passed through the 1990 Farm Bill, prevented shelters from selling dogs and cats for at least five days, giving rightful owners a chance at reuniting with their lost pets. *See* Adams & Larson *supra* note 26.

38. The 1966 *Life* magazine article, which showcased “shocking abuse” of dogs in dog farms, led to Congress being “inundated with mail.” *See* ANDREW N. ROWAN, OF MICE, MODELS AND MEN: A CRITICAL EVALUATION OF ANIMAL RESEARCH 56 (1984).

39. *See id.* at 57. Public pressure for more regulations on animal testing and care continued to increase after the 1976 amendment to the AWA; *see also* Adams & Larson, *supra* note 26 (discussing the Silver Spring Monkey case, where testimony and photos of mistreated and

American idea of dogs as worthless property.<sup>40</sup> Instead, dogs were seen as quasi-beings worthy of protection under the law, and the AWA and its amendments legally reflected this societal change.<sup>41</sup>

*B. The Current Status of Dogs: Property with Limited Interests*

Today, dogs are still generally viewed as property, but as property with limited interests.<sup>42</sup> A limited interest in this context means that, while a dog may be considered a form of personal property similar to a chair or a book, the ownership of a dog is “imperfect” and not nearly as absolute.<sup>43</sup> For most chattel property, the Fourteenth Amendment to the U.S. Constitution safeguards a property owner’s rights, as the provision requires due process before the government may deprive an individual of “life, liberty, or property.”<sup>44</sup> However, the property rights of dog owners are not given the same consideration, and the government can subject dog owners to “peculiar and drastic police regulation” without it violating the dog owners’ constitutional rights.<sup>45</sup> Unlike most personal property (e.g., books, cars, or other property that would require notice and an opportunity to be heard before permanently losing the property), dogs can be confiscated or even destroyed whenever necessary for “the protection of the public’s health, safety, and welfare.”<sup>46</sup> Dogs, for example, can be taken off the streets by animal control officers and later rehomed or destroyed pursuant to state statute, and the owner may not be entitled to a hearing or other due process rights in the process.<sup>47</sup> It is “within the discretion of the legislature” to determine to what extent dogs are considered property and how far the government may go to regulate them.<sup>48</sup>

Most jurisdictions hold that the loss of a dog or other companion animal only entitles the owner to the “fair market value” of the animal, just like any other ordinary chattel property.<sup>49</sup> For nearly all dog owners, claims for the sentimental value of the pet are barred, even in jurisdictions like Texas, where

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disfigured monkeys led the public to demand increased protections for laboratory animals in 1981 and the creation of a new protection bill in 1985).

40. See *supra* Part I.A.

41. See Adams & Larson, *supra* note 26.

42. GA. CODE ANN § 4-5-6 (2020).

43. *Id.*

44. U.S. CONST. amend. XIV, § 1.

45. GA. CODE ANN § 4-5-6 (2020).

46. *Id.*

47. See Johnston v. Atlanta Humane Soc’y, 326 S.E.2d 585 (Ga. Ct. App. 1985).

48. C.J.S. ANIMALS § 5, Westlaw (database updated Feb. 2023); Georgia law mirrors the Corpus Juris Secundum in saying that dogs are property, but with a limited property interest. See 1 Ga. Jur. § 2:2 (West, Westlaw through Sep. 2021).

49. See Debra Squires-Lee, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 N.Y.U. L. REV. 1059, 1061 (1995).

a claim based on sentimental value would be granted for other personal property such as heirlooms, photos, and other treasured possessions.<sup>50</sup>

In *Strickland v. Medlen*, the Supreme Court of Texas held that the owners of a wrongly euthanized dog could not collect sentimental or intrinsic value for the loss of their dog.<sup>51</sup> Avery, the Medlen family dog, escaped from their yard during a thunderstorm one night.<sup>52</sup> The family searched for Avery and discovered that Fort Worth Animal Control had taken possession of the animal.<sup>53</sup> After arranging for pickup from the facility, Jeremy Medlen packed up his two small children and drove to the location, only to discover that their beloved Avery had actually been killed the day before.<sup>54</sup> Avery had been put in a cage labeled “hold for owner,” but a facility worker euthanized the dog instead.<sup>55</sup> The family hired an attorney and sued for the negligent death of Avery.<sup>56</sup> The family based their argument, in part, on Texas precedent set under *Brown v. Frontier Theaters, Inc.* in 1963. In *Brown*, the court had established that claims for the loss of property such as family heirlooms<sup>57</sup> could be granted based upon its sentimental value as opposed to the property’s low fair market value.<sup>58</sup> The precedent had never been applied to the sentimental value of dogs before.<sup>59</sup> The case was originally dismissed by the trial court after the judge ruled that the Medlens could not recover sentimental value for their dog, but the appeals court overturned that decision and ruled in the family’s favor, sending the case to the Texas Supreme Court.<sup>60</sup> The case received national media coverage,<sup>61</sup> and the Medlen family garnered support from the Texas Dog Commission and eleven law professors, all of whom filed amicus briefs with

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50. See *Strickland v. Medlen*, 397 S.W.3d 184, 186, 195-96 (Tex. 2013) (holding that dogs do not have a value for companionship or sentimental value under Texas law, which allowed sentimental value for other types of personal property); see also *Barking Hound Vill., LLC v. Monyak*, 787 S.E.2d 191 (Ga. 2016) (holding that dogs do not have sentimental value); *Carbasha v. Musulin*, 618 S.E.2d 368 (W. Va. 2005) (holding damages for mental suffering and sentimental value of dog are not recoverable); *Mitchell v. Heinrichs*, 27 P.3d 309 (Alaska 2001) (holding that the owner can only claim actual value of dog and lost breeding opportunities, not sentimental value).

51. See *Strickland*, 397 S.W.3d at 190–92.

52. Maria Nikias, *How Much Is a Pet Worth? Texas Supreme Court to Rule on Dog’s Sentimental Value*, ABC NEWS (Jan. 11, 2013, 9:58 PM), <https://abcnews.go.com/US/texas-supreme-court-rule-dogs-sentimental/story?id=18186388>.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. In *Brown*, those items included a wedding veil, a point lace collar belonging to the plaintiff’s grandmother, a pistol owned by her grandfather, and a watch owned by a great grandmother. See *Brown v. Frontier Theatres, Inc.*, 369 S.W.2d 299, 304 (Tex. 1963).

58. See *Strickland v. Medlen*, 397 S.W.3d 184, 189 (Tex. 2013).

59. See Nikias, *supra* note 52.

60. *Id.*

61. Many national media outlets, including ABC News, monitored the case. See *e.g.*, *id.*



the court.<sup>62</sup> The Medlen's pointed out that Texas precedent, which allowed for claims of sentimental value that exceeded fair market value of property such as heirlooms,<sup>63</sup> would have supported recovery for the destruction of Avery if he had been a dead, "taxidermied" stuffing that had been negligently destroyed.<sup>64</sup> If the family might have been entitled to sentimental damages for a dead, stuffed Avery, then it was only reasonable that they should recover for the negligent destruction of Avery when alive, if dogs are considered property.<sup>65</sup> The Court was unpersuaded by the argument.<sup>66</sup> The Texas Supreme Court acknowledged that dogs were unique and generated special value, and as beloved companions, they should not be treated like inanimate objects (e.g., a toaster).<sup>67</sup> "The term 'property' is not a pejorative," the *Strickland* court stated, "but a legal descriptor, and its use should not be misconstrued as discounting the emotional attachment that pet owners undeniably feel."<sup>68</sup>

Ultimately, despite recognizing dogs as unique and unlike other property, the court in *Strickland* refused to extend the *Brown* sentimental value doctrine to dogs, as the court was "loathe" to disturb a 122-year-old Texas precedent classifying "pets as property."<sup>69</sup> "[B]arring legislative reclassification," the court held that recovery for the death of pets was limited to the loss in value, not in the "loss of relationship."<sup>70</sup>

The progress of legal recognition for dogs appears to be at a standstill in light of cases like *Strickland*, where courts ultimately refused to break from centuries-old notions about dogs. The discussions raised by cases like *Strickland*, however, thrust the discussion of dogs as property or as beings into

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62. See *Strickland*, 397 S.W.3d at 194.

63. See *Brown v. Frontier Theatres, Inc.*, 369 S.W.2d 299, 304 (Tex. 1963).

64. See *Strickland*, 397 S.W.3d at 194.

65. *Id.*

66. See *id.*

67. See *id.* at 185–86.

68. *Id.* at 186.

69. "Pets afford here-and-now benefits—company, recreation, protection, etc.—unlike a passed-down heirloom kept around chiefly to commemorate past events or passed family members." See *id.* at 185.

70. See *Strickland*, 397 S.W.3d at 186.

the limelight,<sup>71</sup> and they encourage advancements and study in the area of animal law.<sup>72</sup>

## II. DOGS HAVING HUMAN-LIKE RIGHTS

Despite dogs' original legal status as chattel property, recent developments in caselaw and new legislation indicate that dogs are transcending that conception. States have enacted laws that protect the lives and health of dogs in danger, courts have considered the welfare of pets in granting custody during divorces, and some, like police service animals, are granted extensive rights and even duties as law enforcement officers.<sup>73</sup> The future welfare and rights of dogs are also under consideration in estate law and the rules for orders of protection.<sup>74</sup>

### A. *The Rights of Dogs to Not Suffer Imminent Harm*

The largest area of change on the legal status of dogs has occurred through recent legislation and court decisions regarding the well-being and care of dogs. Such legislation on animal welfare, including "hot car" laws, and recent changes in the rules for orders of protection, consider the physical welfare of cherished pets in ways that further separate them from property doctrines. Estate law now allows for the use of various trust instruments to ensure that a dog's quality of care will continue even after the death of its owner. These legal changes indicate that dogs, unlike other forms of chattel property, may be entitled to a basic level of care under the law.

#### 1. Hot Car Laws

One of the most popular recent developments on dogs' rights is what are known as "hot car" laws: state laws that criminalize leaving dogs in vehicles subject to high temperatures. As of 2020, thirty-one states and the District of Columbia had laws against leaving dogs in hot cars, and fourteen states allow for a person to go into a car to rescue an animal, even though entering another's vehicle and taking their animals would otherwise be considered criminal

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71. *Strickland v. Medlen* made national news, and the story of the court case was distributed through the Associated Press to newspaper outlets across the country. See Nikias, *supra* note 52; see also Paul J. Weber, *Texas Court Asks: Is Man's Best Friend Priceless?*, BLUEFIELD DAILY TELEGRAPH (Jan. 10, 2013), [https://www.bdtonline.com/archives/texas-court-asks-is-mans-best-friend-priceless/article\\_756e3da1-1dfa-56b8-b36c-f0528f88f523.html](https://www.bdtonline.com/archives/texas-court-asks-is-mans-best-friend-priceless/article_756e3da1-1dfa-56b8-b36c-f0528f88f523.html); *Texas Mulling Over Whether Grieving Dog Owners Should Be Able To Sue For The 'Emotional Value' Of Losing Pet*, AL.COM (Jan. 11, 2013, 6:56 AM), [https://www.al.com/wire/2013/01/texas\\_mulling\\_over\\_whether\\_gri.html](https://www.al.com/wire/2013/01/texas_mulling_over_whether_gri.html).

72. Harvard, along with over 150 other law schools, now offers a course in Animal Law due to questions like those raised in the *Strickland* case. See Cara Feinberg, *Are Animals "Things"?*, HARV. MAG. (Mar.–Apr. 2016), <https://www.harvardmagazine.com/2016/03/are-animals-things>.

73. See generally *infra* Part II A-C.

74. See *infra* Part II.A 3, 4.

activity.<sup>75</sup> The specifics of these “Good Samaritan” laws differ by state, but they generally allow for a person to trespass or damage property to rescue an animal in distress, even though these actions would be criminal in other contexts.<sup>76</sup> These state statutes usually require a person to: reasonably believe that the animal is in imminent danger of death or suffering great bodily harm; to call law enforcement before acting; to minimize damage to the vehicle (e.g., breaking a window or damaging a door mechanism) when removing the animal to a safer location; and to stay with the animal until law enforcement arrives.<sup>77</sup> In states such as California, Colorado, Massachusetts, and Oregon, a Good Samaritan who follows state law in rescuing a dog from a hot car receives immunity from both civil and criminal liability.<sup>78</sup>

This framework raises a question as to whether property law really governs dogs in dangerous situations like hot cars. If a dog is mere property, then why are people allowed to destroy property of possibly equal or greater value in order to save it? Hot car laws recognize the permission to damage property for the sake of a greater good, namely the dog’s well-being, which operates as a clarified necessity defense.

In Arizona, the necessity defense to a crime requires that a person have “no reasonable alternative to avoid imminent public or private injury *greater* than the injury that might reasonably result from the person’s own conduct.”<sup>79</sup> This defense would (hypothetically) allow a person to burn down a farm in order to create a fire break that saves an entire town. Arson has technically occurred, but the defendant may argue that it was necessary to prevent a much greater harm, and a court could reasonably find the damage done to be justified.

If Arizona already has a necessity defense, then why would a hot car law be necessary? Arizona Rep. Eddie Farnsworth raised this question during the final vote on Arizona’s hot car bill, HB 2494:

“[W]e have what’s called the doctrine of necessity. Though it’s not codified, it is certainly in the law. And it is used quite often. The doctrine of necessity says that there are [sic] certain actions that override the laws because the greater good is more beneficial than the law that you are overriding. I think that this is a perfect example. If you have a child that is in harm’s way in a car, I think the doctrine

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75. See *An Avoidable Tragedy: Dogs in Hot Cars*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/an-avoidable-tragedy-dogs-in-hot-cars/> [hereinafter ALDF, *Hot Cars*].

76. See *id.*

77. See *id.*

78. See ALDF, *Hot Cars*, *supra* note 75; see also CAL. PENAL CODE § 597.7 (West 2022); COLO. REV. STAT. § 13-21-108.4; MASS. GEN. LAWS ch. 140, § 174F(e) (2017); OR. REV. STAT. § 30.813.

79. See ARIZ. REV. STAT. ANN. § 13-417 (emphasis added).

of necessity would give cover if you wanted to break the window and rescue that child.”<sup>80</sup>

Representative Farnsworth is right that, under the common law, the destruction of property to save a human life in imminent danger would probably be justified under the doctrine of necessity.<sup>81</sup> But there is ambiguity as to whether the common law necessity defense would—or should—be available to someone harming personal property for a dog, which is also considered chattel.

Rep. Farnsworth did not think the doctrine of necessity should apply to animals and bristled at the thought that Arizona’s hot car law had raised pets to the same rights as humans.<sup>82</sup> “I find that to be very troubling,” he said. “You may not want to hear this, but, guess what. Animals are chattel. It means you own them.”<sup>83</sup> Rep. David Cook joined Rep. Farnsworth in echoing discomfort at the idea of placing animals “on the same level as human beings.”<sup>84</sup> However, this concern was held by only a minority, as evidenced by the bill passing thirty-five to twenty-five.<sup>85</sup>

The Arizona hot car bill was supported by Governor Doug Ducey, who said: “The last thing we’d want is any Arizonan worried about breaking into that car to save a life. Send me a bill protecting the good Samaritans who save the lives of children and pets and I’ll sign it.”<sup>86</sup>

Outside of purebred breeding animals, most dogs and cats have a “negligible fair market value.”<sup>87</sup> But hot car laws do not require potential rescuers to consider the dog’s economic value, which may be quite low,<sup>88</sup> before they damage a vehicle and rescue the animal.<sup>89</sup> Breaking a car window that

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80. H.B. 53rd Leg., 1st Reg. Sess. (Ariz. 2017), *House Floor Session Part 3 – Final Reading #1*, at 26:37 (May 10, 2017, 1:00PM), <https://www.azleg.gov/videooplayer/?eventID=2017051109>.

81. ARIZ. REV. STAT. ANN. § 13-417.

82. *See supra* note 80, at 27:12.

83. *Supra* note 80, at 27:28.

84. *Supra* note 80, at 33:20.

85. *See supra* note 80, at 37:22.

86. John Genovese, *State Senator ‘Confident’ Hot Car Break-in Bill Will be Read, Passed This Week*, (KGUN9 television broadcast Apr. 21, 2017), <https://www.kgun9.com/news/state-senator-confident-hot-car-break-in-bill-will-be-read-passed-this-week>.

87. Margit Livingston, *The Calculus of Animal Valuation: Crafting a Viable Remedy*, 82 NEB. L. REV. 783, 789–90 (2004). The New York Supreme court explained that the hypothetical value of a dog lost through negligent actions by a veterinarian would most likely be low, stating: “...unless your Yorkshire terrier was a pure-bred show dog, that fair market value, as opposed to sentimental, will be relatively small no matter how wonderful the dog was or how heartbroken and traumatized your family is by its loss.” *See* *Travis v. Murray*, 977 N.Y.S.2d 621, 626 (N.Y. Sup. Ct. 2013).

88. For an example of how little a dog has been valued under the law, see *Chalker v. Raley*, 37 S.E.2d 160, 160–62 (Ga. Ct. App. 1946) (holding that a jury was within their right to award only \$10 to the owners of an intentionally killed one year-old pit bull).

89. The laws do not contain any requirement to consider the value of what may be broken, only a reasonable limit on the damage necessary to rescue the animal or child. *See* ALDF, *Hot Cars*,

costs \$200 to replace is, in pure economic terms, a greater injury than the loss of a \$100 dog.<sup>90</sup> But these laws ignore such a cost-benefit analysis; they assume, rather, that dogs are not merely property and that dogs must have a worth beyond their pecuniary value.

It is also interesting to note that many of the state laws allowing for the rescue of dogs from hot cars also include children and vulnerable persons within the same statute, often within the same sentence.<sup>91</sup> The advancement of the rights of children and dogs have previously developed in similar ways and at similar times.<sup>92</sup> One statute covering both vulnerable children and animals together is likely not coincidental. After Arizona's hot car law passed in 2017, Arizona Humane Society CEO and bill supporter, Dr. Steven Hansen, celebrated the decision and stated:

Every year, local police and our Emergency Animal Medical Technicians™ respond to dozens of calls of children and pets left in hot cars. This law allows us to be able to direct the caller to take action, immediately, without exposing the Good Samaritan to liability for breaking a window and potentially saving a life.<sup>93</sup>

The Arizona hot car law, which protects either a “minor or domestic animal,”<sup>94</sup> is another example of how the legal and societal value of dogs often mirror those of children, where advancements in the law regarding the protection of children and dogs tends to occur at roughly the same time.<sup>95</sup>

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*supra* note 75; *see also*, CAL. PENAL CODE § 597.7(2) (West 2022); COLO. REV. STAT. § 13-21-108.4; MASS. GEN. LAWS ch. 140, § 174F(e) (2017); OR. REV. STAT. § 30.813.

90. The average fee to adopt a dog or cat ranges from \$50 to \$150. *See* Geoff Williams, *Costs to Consider When Adopting a Pet*, U.S. NEWS (July 13, 2020 10:34 AM), <https://money.usnews.com/money/personal-finance/articles/costs-to-consider-when-adopting-a-pet>.

91. *See* ARIZ. REV. STAT. ANN. § 12-558.02 (2021) (granting authority “to remove a minor or confined domestic animal...”); OR. REV. STAT. ANN. § 30.813 (West 2021); KAN. STAT. ANN. § 60-5401 (West 2021) (“... for the purpose of removing a vulnerable person or domestic animal . . .”); TENN. CODE ANN. § 29-34-209 (West 2021); WIS. STAT. ANN. § 895.484 (West 2021) (“... to enable the person or domestic animal to be removed . . .”).

92. *See supra* notes 10, 28 and accompanying texts.

93. *Arizona Bill Aimed at Ending Hot-Car Deaths Passes!*, ARIZ. HUMANE SOC. (May 10, 2017), <https://www.azhumane.org/2017/05/arizona-bill-aimed-ending-hot-car-deaths-passed-today/>; It is interesting to note that the Emergency Animal Medical team website at the Arizona Humane Society says it is specifically “devoted to saving the lives of animals” and does not mention children. *See Animal Rescue Services and Cruelty Investigations*, ARIZ. HUMANE SOC., <https://www.azhumane.org/eamt-rescue-services/>.

94. *See* ARIZ. REV. STAT. ANN. § 12-558.02 (2021).

95. *See, e.g.*, Part II; *see also*, Ennew, *supra* note 10 (comparing dogs and children in the eighteenth century).

## 2. Advancements in Minimum Standards for Care

In 2022, Texas passed a new law that ensure dogs' proper care, even when their owners leave them outside. Senate Bill 5, also known as the "Safe Outdoor Dogs Act,"<sup>96</sup> prohibited leaving dogs tethered outdoors without giving them access to clean water, food, adequate shelter, and at least a minimal standard of cleanliness.<sup>97</sup> It banned the use of heavy chains on dogs and mandated that outdoor tie outs be at least ten feet long.<sup>98</sup> The Governor of Texas initially vetoed the bill when it came to his desk during the regular session, stating that the law was "overcriminalization" with respect to existing animal cruelty laws in the state.<sup>99</sup> After public outcry, however, the Governor revived the bill during a third special session after making some minor "tweaks."<sup>100</sup> In Texas, only the Governor can call a special session, and only they choose the topics that are heard for that session.<sup>101</sup> Given this fact, it can be inferred that the criticism the Governor faced for not signing the bill the first time was substantial. It is easy to see why, considering that it was not a complex bill and meant to ensure that a dog left outside has adequate care to survive Texas's sometimes unforgiving climate.<sup>102</sup>

In recent years, Oregon has become one of the most progressive states in animal welfare.<sup>103</sup> Oregon enacted several statutes devoted to setting a minimum standard of care for animals and creating criminal penalties for those who "fail to meet animal care standards."<sup>104</sup> Courts have interpreted these statutes in interesting ways, which has advanced the legal status of dogs and other animals significantly beyond chattel property in Oregon. For example, in *State v. Nix*, the Oregon Supreme Court decided that twenty horses left to starve could be considered "victims" on an individual basis, as animals were the intended beneficiaries of the animal welfare law and each horse had been

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96. Nicholas Reimann, *New Law Banning Dog-Chaining Takes Effect In Texas—And Dominates On Facebook*, FORBES (Jan. 26, 2022 11:46 AM EST), <https://www.forbes.com/sites/nicholasreimann/2022/01/21/new-law-banning-dog-chaining-takes-effect-in-texas-and-dominates-on-facebook/?sh=504ba30c1dd7>.

97. Chuck Lindell, *These Are The New Texas Laws That Take Effect in January*, AUSTIN-AM. STATESMAN (Jan. 18, 2022 2:19 PM CT), <https://www.statesman.com/story/news/2022/01/18/texas-laws-2022-dogs-chains-outdoors-transgender-athlete-sports/6563419001/>.

98. *See id.*

99. *Id.*

100. *Id.*

101. *See id.*

102. Texas temperatures can vary wildly, from over 110 degrees Fahrenheit in summer to below 0 in winter depending on location and weather. *See Extreme Climate Records*, OFFICE OF THE TEX. ST. CLIMATOLOGIST, <https://climatexas.tamu.edu/products/texas-extremes/index.html> [<https://perma.cc/3VMP-49HR>].

103. Oregon State Legislative Policy and Research Office, *Animal Cruelty Background Brief* (Sept. 2016) <https://www.oregonlegislature.gov/lpro/publications/bb2016animalcruelty.pdf> [<https://perma.cc/GB56-XSA7>].

104. *Id.*

neglected.<sup>105</sup> *Nix* set a precedent regarding the word “victim”—a term which the defendant had argued could only apply to humans—by defining it as including non-human animals.<sup>106</sup>

In 2013, an Oregon appeals court held that a horse suffering from severe neglect qualified for an exigency exception that authorized warrantless entry onto the owner’s property for its removal.<sup>107</sup> This Fourth Amendment exigency exception had traditionally been interpreted as applying only to “persons” who were in an emergency situation.<sup>108</sup> However, the court in *State v. Fessenden* held that the exception could apply to animals, noting that Oregon had numerous statutes for animal welfare which evidenced a strong legislative intent and a social interest in preventing the cruelty and neglect of animals.<sup>109</sup> In 2014, the Oregon Supreme Court affirmed, concluding that the United States Supreme Court had not explicitly described Fourth Amendment exigency exceptions, so nothing prohibited the court from applying an exigency exception to the seizure of an animal in distress.<sup>110</sup>

Thirty-five states have felony-level punishments for certain forms of animal neglect,<sup>111</sup> and the majority of these new statutes were instituted only within the past Fifteen years.<sup>112</sup> As American society continues to push for better standards of care for dogs and other animals, it is likely that more state laws will begin to resemble recent animal welfare statutes like those passed in Oregon and Texas.

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105. See generally *State v. Nix*, 334 P.3d 437 (Or. 2014), *vacated*, 345 P.3d 416 (Or. 2015); see also Shannon Gormley, *Portland is Home to the World’s First Animal Law Professor. We Asked Her About the Biggest Legal Issues with Pets.*, WILLAMETTE WEEK (Jan. 30, 2018 6:15PM PST), <https://www.wweek.com/culture/2018/01/30/portland-is-home-to-the-worlds-first-animal-law-professor-we-asked-her-about-the-biggest-legal-issues-with-pets/>.

106. See *supra* note 103; see also *Nix*, 334 P.3d at 438–40.

107. See *State v. Fessenden*, 310 P.3d 1163, 1168–69 (Or. App. 2013), *aff’d*, 333 P.3d 278 (Or. 2014).

108. *Id.* at 1167. “Consequently, we conclude that an emergency aid exception to the Article I, section 9, warrant requirement is justified when police officers have an objectively reasonable belief . . . that a warrantless entry is necessary to either render immediate aid to persons, or to assist persons who have suffered, or who are imminently threatened with suffering, serious physical injury or harm.” See *State v. Fessenden*, 333 P.3d 278, 282 (Or. 2014).

109. See *Fessenden*, 310 P.3d at 1168–69.

110. See 333 P.3d at 287 n.15 (“The United States Supreme Court has not explicitly described the exigent circumstances exception to the warrant requirement.”). See also *id.* at 287–88 (looking to interpretations of what constitutes an exigent exception in the Ninth, Tenth, Seventh, and D.C. Circuits).

111. *Animal Neglect Facts: State and Local Law*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/animal-neglect-facts/animal-neglect-facts-state-law/> [https://perma.cc/GJ4E-6QQF].

112. *Id.*

### 3. Changes to the Rules to Orders of Protection

In at least thirty-five states, dogs may now be covered by domestic violence orders of protection.<sup>113</sup> Many states treat dogs as the property of the petitioner that may be added to a domestic violence order, whereas other jurisdictions draw a closer association between the dog's potential suffering and that of the adult victim and children, often awarding the human victim sole custody of the dog.<sup>114</sup> In some jurisdictions, the accused might be asked to leave their home, and the court may take additional measures to ensure the safety and well-being of pets that reside in the household.<sup>115</sup> In Wisconsin, for example, when there is an allegation of child abuse or domestic violence, the court "shall issue a temporary restraining order ordering the respondent to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet."<sup>116</sup>

The majority of these states created or amended their statutes to include dogs or "companion animals" after 2005, signifying a recent development toward recognizing the right of dogs to not suffer abuse.<sup>117</sup> It is likely, however, that these laws emerged less because of the consideration for dogs specifically, and more because legislators considered the growing data on how abusers use threats and abuse to pets as a means of continued control over their victims,<sup>118</sup> and then created changes in the law to make it easier for pet-owning victims to escape their abuse. Almost half of domestic abuse survivors surveyed in one study refused to leave an abusive home because they could not take their pets with them.<sup>119</sup>

While the well-being of the dog can be accounted for in orders of protection, the main concern of courts and legislators appears to be the safety and well-being of the *human* owners and family members. In this way, dogs are not fully recognized as autonomous beings deserving of independent protection rights; however, courts and legislators, by purposefully including dogs in orders of protection, have legally recognized dogs as important parts of

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113. See Rebecca F. Wish, *Domestic Violence and Pets: List of States that Include Pets in Protection Orders* MICH. ST. UNIV. ANIMAL LEGAL & HIST. CTR. (2021), <https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders> [https://perma.cc/Z2YH-M5VL].

114. In Puerto Rico, "in all cases in which a person is accused of domestic violence or child abuse, the court shall, by petition of party, issue a protection order for the petitioner so that he/she be the sole custodian of the animal." *Id.*

115. "In 2019, Rhode Island added language to its law on protection orders in domestic abuse circumstances that protects household pets. Upon petition, a judge may order that a defendant vacate the household immediately, and 'further provid[e] in the order for the safety and welfare of all household animals and pets.'" *Id.*

116. *Id.*

117. *Id.*

118. See *Understanding Animal Abuse as Intimate Partner Violence*, BATTERED WOMEN'S JUST. PROJECT (Jan. 2017), <https://www.bwjp.org/news/newsletters/january-2017.html>.

119. *Id.*



the family that cannot—and should not— be ignored. Their well-being is innately tied to the well-being of the family.

#### 4. A Dog's Future Care Through Estates and Trusts

Beyond the established right to a live a life free of cruelty,<sup>120</sup> the future well-being of dogs is also addressed legally through trust and estate laws. Currently, there is no such thing as a canine inheritance; an owner cannot leave money or property directly to their dog when they die.<sup>121</sup> This is because dogs are not viewed as independent legal entities that are capable of inheriting resources.<sup>122</sup> This view of dogs as property has required owners to act on behalf of the interests of the animal.<sup>123</sup>

However, the law has shifted within the last thirty years to circumvent this problem.<sup>124</sup> For example, a dog owner can use a trust to establish different types of agreements or directives to ensure that their dogs receive a continuous quality of life.<sup>125</sup> In all fifty states, an owner can use a trust vehicle to ensure their pets are taken care of for at least twenty-one years, if not the rest of their pets' lives.<sup>126</sup> These trusts can range from a traditional trust, where a trustee is assigned to oversee funds that will provide for the pet's continued care, to a directive in one's will that states an amount of money that will go toward the care of a decedent's pet, to a "pet protection" agreement that functions as a guardianship agreement in the event of the owner's death.<sup>127</sup> A traditional trust gives the most flexibility for owners to dictate their wishes about the animal's care and is preferable for pets with lengthy lifespans such as parrots, which may outlive even the owner's children.<sup>128</sup> Owners who are particularly concerned for their pets' well-being may also choose to buy life insurance in order to fund that trust for years after they die.<sup>129</sup> In some states, these trusts must expire after twenty-one years, regardless of whether the pet is still living; however, in most

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120. See *supra* Part II.A.

121. See 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/?sh=7b19b4537819>.

122. See *e.g.*, *supra* Part I.B.

123. See Wish, *supra* note 113.

124. Outside of Wisconsin, every state statute that allows a trust for pets has been enacted within the past thirty years. See *Pet Trust Laws*, ASPCA, <https://www.aspc.org/pet-care/pet-planning/pet-trust-laws> [<https://perma.cc/SCF2-M2CH>].

125. See 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/?sh=7b19b4537819> [<https://perma.cc/9TMA-EAJL>].

126. See *Pet Trust Laws*, *supra* note 124.

127. See Marquand, *supra* note 125.

128. See *id.*

129. See *id.*

states, the trust may continue until the death of the last surviving animal needing care.<sup>130</sup>

While these doctrines do not directly advance the rights of dogs, recent changes in trust law to allow for the long-term care of pets is one way in which legislatures are recognizing and adapting to our modern valuation of non-human family members.

### B. Divorce, Custody, and Dogs

A dog's legal interests and rights are also evolving through an unexpected area of law: marriage dissolution. While most jurisdictions still view dogs as strictly personal property for the purpose of property division after a divorce,<sup>131</sup> some states are beginning to imbue them with deeper protections.<sup>132</sup>

In 2009, a New Jersey superior court acknowledged the sentimental value that attached to dogs by their owners in *Houseman v. Dare* and held that this special connection made them more akin to an heirloom under property law.<sup>133</sup> Because a dog can be considered one-of-a-kind, the court in *Houseman* found that specific performance, in the form of returning the dog as orally agreed to, was necessary "because money damages cannot compensate the injured party for the special subjective benefits he or she derives from possession[.]" and ownership of a dog is not like property that could be split between the two parties.<sup>134</sup>

In 2013, a New York Supreme Court adopted a new standard on how to handle disputed pet custody between the parties to a divorce.<sup>135</sup> In *Travis v. Murray*, the dissolving couple fought over the custody of a dachshund named Joey, with one party wanting "sole residential custody" of the dog after the other spouse took Joey with them when they separated.<sup>136</sup> The court in *Travis* was tasked with the job of answering two questions: can there be such a thing as "custody" of a dog?; and, if so, how would a court decide who should get custody of the dog?<sup>137</sup>

In deciding what law should apply to dogs, the court considered popular articles on the subject of dogs and their "personhood," including one article that used M.R.I. scans to show that dogs had a range of emotions that were similar

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130. See *Pet Trust Laws*, *supra* note 124.

131. See Christopher G. Rhodes, *Who Gets the Dog When the Marriage Gets Ruff: Complications Arising from the Classification of Family Pets as Traditional Property*, 9 EST. PLAN. & CMTY. PROP. L. J. 293, 294 (2017).

132. See *Hament v. Baker*, 97 A.3d 461 (Vt. 2014) (holding that factors such as the welfare of the animal and each spouse's emotional connection to it may be considered in deciding which family member retains ownership of the pet upon divorce).

133. *Houseman v. Dare*, 966 A.2d 24, 27 (N.J. Super. Ct. App. Div. 2009).

134. See *id.*

135. *Travis v. Murray*, 977 N.Y.S.2d 621, 631 (N.Y. Sup. Ct. 2013).

136. *Id.* at 622–23.

137. *Id.* at 624.

to human feelings.<sup>138</sup> It also weighed how New York law had been evolving on the topic over time, and how other jurisdictions were handling issues such as whether “custody” can apply to dogs and how dogs are handled in contested divorce disputes.<sup>139</sup> Up until this point, New York courts had mostly provided relief for dog owners through replevin doctrine: whoever had the “superior possessory right in the chattel” won possession of the dog.<sup>140</sup> This doctrine only asked which party could prove a stronger claim to the dog, including whether the dog was a gift or purchased, and did not consider factors such as the ability for an owner to care for the animal or any emotional value an owner derived from the pet.<sup>141</sup> At the time of *Travis*, New York law provided little support for the idea that dogs were anything more than property; only a few cases recognized dogs as something “between a person and a personal piece of property.”<sup>142</sup> However, the *Travis* court acknowledged changing public opinion with respect to dogs,<sup>143</sup> as well as recent decisions in Vermont and Wisconsin that recognized dogs are more than mere property.<sup>144</sup>

After acknowledging that Joey was not just chattel property, the court in *Travis* turned to the question of custody. Again, it looked to precedent and guidance from other states and found mixed results.<sup>145</sup> The majority of courts, as reflected in the *Desanctis v. Pritchard* opinion from Pennsylvania, refused to extend the term “custody” to decisions regarding dog ownership.<sup>146</sup> The court

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138. *Id.* at 623; Gregory Berns, *Dogs Are People, Too*, N.Y. TIMES (Oct. 5, 2013), <https://www.nytimes.com/2013/10/06/opinion/sunday/dogs-are-people-too.html> (“Dogs, and probably many other animals (especially our closest primate relatives), seem to have emotions just like us. And this means we must reconsider their treatment as property.”)

139. *Travis*, 977 N.Y.S.2d at 627–30.

140. *Id.* at 626.

141. *Id.*

142. *Id.* at 627 (citing *Corso v. Crawford Dog and Cat Hosp., Inc.*, 415 N.Y.S.2d 182 (N.Y. Civ. Ct. 1979); *Feger v. Warwick Animal Shelter*, 870 N.Y.S.2d 124 (N.Y. App. Div. 2008)) (“These laws indicate that companion animals are treated differently from other forms of property. Recognizing companion animals as a special category of property is consistent with the laws of the state . . .”).

143. The *Travis* court noted “an earlier *New York* magazine story” and a “more recent *Times* opinion piece” that showed a “trend towards looking at dogs as being far more than property, a trend that has only intensified over the last few years.” See *Travis*, 977 N.Y.S.2d at 623.

144. “[T]he Vermont Supreme Court, drawing on *Corso*’s statement that a pet is ‘somewhere in between a person and a personal piece of property,’ noted that ‘modern courts have recognized that pets do not fit neatly within traditional property law principles’ . . . Likewise, the Wisconsin Supreme Court in *Rabideau v. City of Racine*, 243 Wis.2d 486, 491, 627 N.W.2d, 795, 798 [2001] [internal footnotes omitted], stated the following:

[W]e are uncomfortable with the law’s cold characterization of a dog . . . as mere ‘property.’ Labeling a dog ‘property’ fails to describe the value human beings place upon the companionship that they enjoy with a dog. A companion dog is not a fungible item, equivalent to other items of personal property[.]”

145. *Travis*, 977 N.Y.S.2d at 629.

146. *Id.*

in *Travis* commented that the *Desanctis* decision was one of the most restrictive, as the *Desanctis* court called the plaintiff's request for custody and visitation rights to a dog "analogous, in law, to [custody of] a table or a lamp."<sup>147</sup> Conversely, courts in Connecticut and Alabama specifically used the term "custody" when awarding ownership of a dog.<sup>148</sup> Courts in Tennessee, Michigan, and Oregon went even further by applying factors traditionally used in child custody, such as keeping pets together after divorce, considering which party could best care for the animal, and considering the possibility of visitation rights.<sup>149</sup>

Ultimately, the New York Supreme Court decided in *Travis* that custody of the dog was a valid concern worthy of relief beyond replevin and called for an additional hearing to allow the parties to present arguments for ownership of Joey.<sup>150</sup> The court placed limits upon the hearing, however, refusing to grant the right to a full custody dispute as might involve a child.<sup>151</sup> It reasoned that doing so would be wasteful and a potential procedural quagmire, which could unnecessarily delay divorce proceedings.<sup>152</sup> Instead, the owners were given a full day to argue for sole possession of Joey.<sup>153</sup>

The New York Supreme Court also settled upon a standard for deciding custody for Joey, by adopting the "best for all concerned" approach.<sup>154</sup> The court reasoned that, unlike a child, a dog cannot communicate its preferences or thoughts; the decision, therefore, cannot be made on what the dog's "best interest" is, assuming that one exists.<sup>155</sup> In the "best for all concerned" approach, each party is given a chance to explain how ownership benefits them, as well as how their ownership will create the happiest life possible for the animal.<sup>156</sup> Such an approach would also allow the court to analyze factors such as who walked the pet, who took care of their feeding and medical care, where the pet would live, and who spent more time with the animal.<sup>157</sup>

By adopting the "best for all concerned" model, the New York Supreme Court advanced the rights of dogs significantly by applying concepts traditionally reserved for family law disputes. While *Travis* did not change New

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147. *Id.* (quoting *Desanctis v. Pritchard*, 803 A.2d 230, 232 (Pa. Super. Ct. 2002)).

148. *Id.* at 628 (citing *Van Arsdale v. Van Arsdale*, No. FA114021194, 2013 WL 1365358 (Conn. Super. Mar. 15, 2013); *Placey v. Placey*, 51 So. 3d 374 (Ala. Civ. App. 2010)).

149. *See Travis*, 977 N.Y.S.2d at 629 (citing *Baggett v. Baggett*, 422 S.W.3d 537 (Tenn. App. 2013); *Aho v. Aho*, No. 304624, 2012 WL 5235982 (Mich. App. Oct. 23, 2012); *Wolf v. Taylor*, 197 P.3d 585 (Or. App. 2008)).

150. *Id.* at 630–31.

151. *Id.* at 631–32.

152. *Id.* at 631.

153. *Id.*

154. *Id.*

155. *Travis*, 977 N.Y.S.2d at 630–31.

156. *Id.* at 631.

157. *Id.*

York state law so much that dogs' rights were on par with children's,<sup>158</sup> it did establish that people had interests in pets beyond their status as chattel, and that a dog's welfare deserved protection under the law. The *Travis* court's decision was all the more striking because the court considered emerging science (e.g., M.R.I. studies) and popular opinion as expressed in different media outlets in addition to precedent.<sup>159</sup>

While Alaska,<sup>160</sup> Illinois,<sup>161</sup> and California<sup>162</sup> have attempted to tackle dogs' rights at the legislative level, most other states have not,<sup>163</sup> leaving the question of canine custody to the courts. The court in *Travis* predicted that the issue of pet custody disputes in divorces would inevitably increase as societal views on the importance of dogs change.<sup>164</sup> However, critics believe that courts are ill-prepared to handle these types of cases.<sup>165</sup> Leaving the court system to handle the issue every time it arises can lead to inconsistency and unpredictability, not only between jurisdictions that may have opposing views on dogs, but within a jurisdiction's own common law decisions.<sup>166</sup> Without modern legislative guidance, courts must often defer to archaic laws, reflecting values that do not mesh well with modern public sentiment.<sup>167</sup>

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158. *Id.* at 632.

159. *See id.* at 623–25 (mentioning Gregory Berns' *New York Times* article *Dogs Are People, Too*); *see also id.* at 623 (considering articles from *New York* magazine and *Times* opinion section).

160. *See* Karin Brulliard, *In a First, Alaska Divorce Courts Will Now Treat Pets More Like Children*, WASH. POST (Jan. 24, 2017, 12:07 PM EST), <https://www.washingtonpost.com/news/animalia/wp/2017/01/24/in-a-first-alaska-divorce-courts-will-now-treat-pets-more-like-children/> [<https://perma.cc/EZ2U-CMH6>].

161. *See* 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/HR7N-WS5G>]; *see also* Melissa Chan, *Pets Are Part of Our Families. Now They're Part of Our Divorces, Too*, TIME (Jan. 22, 2020, 6:31 PM EST), <https://time.com/5763775/pet-custody-divorce-laws-dogs/> (last visited Apr. 17, 2022).

162. *See* Chan, *supra* note 161.

163. *See* Pamela Babcock, *Are Pets Assets or Part of the Family? States Are Passing Laws That Give Judges a Longer Leash In Divorce Custody Proceedings*, ABA J. (June 1, 2019, 1:30 AM CDT), <https://www.abajournal.com/magazine/article/pets-assets-family-divorce-custody> [<https://perma.cc/FJ6E-RKZX>].

164. “The changes in the way society regards dogs and other household pets all but insures that cases involving the type of dispute seen here will only increase in frequency.” *Travis*, 977 N.Y.S.2d at 632.

165. *See* Chan, *supra* note 161.

166. *See supra* Part II.B; *see also* *Desanctis v. Pritchard*, 803 A.2d 230 (Pa. Super. 2002).

167. *See, e.g., supra* Part I; *see also* *Strickland v. Medlen*, 397 S.W.3d at 185–86, 190 (Tex. 2013) (saying “after a century-plus we are loathe to disturb” precedent on dogs being property without sentimental value).

*C. Dogs as Officers: Duties and Responsibilities*

When serving as law enforcement officers, dogs are given extensive legal rights and recognition as something akin to natural beings. In many cases, these officer dogs are even considered to have duties and responsibilities. They can be “sworn in,”<sup>168</sup> implying that there is a bond of loyalty between them and their departments. Interfering with a police dog’s “lawful performance” is prohibited in many states,<sup>169</sup> suggesting that a K-9 officer (“K-9”) has duties to perform within its role as a law enforcement officer. Black’s Law Dictionary defines “performance” as “the successful completion of a contractual duty.”<sup>170</sup> Common chattel property, in contrast, cannot perform, enter into, or complete a contractual duty. Police dogs are even given funerals and memorials when they die in the line of duty,<sup>171</sup> suggesting that K-9s are deserving of mourning, respect, and remembrance for their service. Through such laws and policies, legislators, police agencies, and communities have established that dogs, at least in some capacities, are deserving of rights as beings when they are officers of the law.

When Allegheny County Sheriff’s Office officers confronted John Rush over a probation-violation warrant on January 28, 2014, he did as many wanted criminals often do: he fled.<sup>172</sup> The officers pursued Rush, including K-9 Rocco, who cornered Rush in a basement.<sup>173</sup> The confrontation quickly turned violent, and Rush stabbed Rocco in the back.<sup>174</sup> Rush also assaulted other officers during the arrest, but Rocco received the worst of it.<sup>175</sup> Despite the care of a veterinarian, Rocco died two days later.<sup>176</sup> “I lost my partner from this, and he was also a family member,” Officer Phil Lerza, Rocco’s handler, said to the court trying Rush.<sup>177</sup>

The fact that K-9s die in the line of duty is not in itself unique. In Pittsburgh, another K-9, Ulf, was shot in 2008.<sup>178</sup> Joker, a Penn Hills K-9, was stabbed to death, much like Rocco, in 1987.<sup>179</sup> What makes Rocco’s story

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168. See *K9 Unit*, CITY OF GLENDALE, WI, <https://www.glendale-wi.org/314/K9-Unit> [<https://perma.cc/QQG6-UHPA>].

169. See *infra* notes 191, 192.

170. See *Performance*, BLACK’S LAW DICTIONARY (11<sup>th</sup> ed. 2019).

171. See Part II.C.

172. See Bobby Kerlik, *Man Gets 17 ¾ to 44 Years in Prison for Killing Police Dog Rocco*, TRIB LIVE (Mar. 10, 2015, 11:03 AM), <https://archive.triblive.com/local/pittsburgh-alleggheny/man-gets-17-3-4-to-44-years-in-prison-for-killing-police-dog-rocco/> [<https://perma.cc/3K76-JNLS>].

173. *Id.*

174. *See id.*

175. *See id.*

176. *Id.*

177. *Id.*

178. Chris Togneri, *Rocco, Fellow K-9s Immortalized with North Shore Monument*, TRIB LIVE (Aug. 8, 2015, 9:00 PM), <https://archive.triblive.com/local/pittsburgh-alleggheny/rocco-fellow-k-9s-immortalized-with-north-shore-monument/> [<https://perma.cc/8GMQ-K8CJ>].

179. *Id.*

unique is how the law treated Rocco's death when sentencing Rush, and how the community and area legislators recognized a dog as a valued officer of the law.

John Rush was subject to a sentencing range of about 18 to 44 years in prison for the crimes he committed while attempting to flee.<sup>180</sup> His sentence for killing Rocco specifically was three-and-a-half to seven years,<sup>181</sup> a span equal to the sentence Rush received for stabbing Officer Lerza, Rocco's handler.<sup>182</sup> While Officer Lerza was happy with the sentencing,<sup>183</sup> not everyone was pleased by the outcome.<sup>184</sup> "The net result is a sentence higher than you see in a number of homicide and child-abuse cases," observed Wes Oliver, a Duquesne University law professor.<sup>185</sup>

While Oliver was technically correct that Rush's sentencing may have exceeded other types of serious crimes, it is not a fair critique as it compares the sentences in a general sense and without context. Rush was on probation at the time of the incident, had attacked four different officers, attempted to take one officer's gun, and had a lengthy criminal history with more than twenty charges on his record.<sup>186</sup> These aggravating factors likely influenced the severity of the sentence for Rush's crimes, creating higher penalty ranges that some child abuse defendants or someone charged with voluntary manslaughter might receive given different circumstances.<sup>187</sup>

Rocco's story received national attention and an outpouring of support.<sup>188</sup> Around 1,200 people attended Rocco's funeral,<sup>189</sup> and thousands of dollars of donations were collected to create a trust for the city's K-9 unit to better equip K-9s with safety equipment like knife- and bullet-resistant vests.<sup>190</sup> Other donations went towards a memorial that was built in honor of Rocco and his

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180. See Kerlik, *supra* note 172.

181. *Id.*

182. "Rush will serve about 3 1/2 to 7 years for killing Rocco and 3 to 7 1/2 years each for stabbing Lerza and punching the other officers." *Id.*

183. See *id.*

184. The sentencing was "applauded by police officers but criticized by some who said killers of people get less time." See *id.*

185. *Id.*

186. *Id.*

187. A man from the same county as Rush was sentenced to a range of two to five years in prison for shooting a home intruder who came in through a window. The defendant had believed that the intruder was there to hurt a woman and child inside the home. See Rich Cholodofsky, *Churchill Man to Serve 2 to 5 Five Years in Prison for Arnold Shooting*, TRIB LIVE (Feb. 7, 2022, 5:36 PM), <https://triblive.com/local/valley-news-dispatch/churchill-man-to-serve-up-2-to-5-years-in-prison-sentence-for-arnold-shooting/> [<https://perma.cc/5B8E-ABAY>].

188. See Kerlik, *supra* note 172.

189. Gov. Corbett signs 'Rocco's Law,' PITTSBURGH'S ACTION NEWS 4 (Jul. 2, 2014, 6:20 PM EDT), <https://www.wtae.com/article/gov-corbett-signs-rocco-s-law/7466868#> (last visited Apr. 17, 2022) [hereinafter *Rocco's Law*].

190. See Kerlik, *supra* note 172.

fellow fallen K-9 officers.<sup>191</sup> Further, Rocco's death inspired state legislators to enact "Rocco's Law," which revised the criminal statutes to make harming or killing a police dog a second-degree felony,<sup>192</sup> increasing the penalty to up to ten years in prison and a \$25,000 fine.<sup>193</sup> This public display of grief, gratitude, and respect shows that our bonds with dogs—even working dogs that are expected to serve us—far exceeds the usual connections we make with chattel property. Much like how human police officers belong to and are a part of their community, K-9s likewise become valued members of their community. The loss of a K-9 affects the public so deeply because, in a sense, the loss is personal.

Pennsylvania is not the only state to have enacted extra protections for their K-9s. By 1999, forty states had laws prohibiting harm to animal officers.<sup>194</sup> Texas joined this list in 2001,<sup>195</sup> and the District of Columbia followed suit in 2015.<sup>196</sup> While each jurisdiction differs in its specific approach, state statutes generally call for criminal misdemeanor or felony penalties for the crime of harming, maiming, or killing a police animal.<sup>197</sup> In some of these jurisdictions, the laws criminalizing harm to K-9s also mention the interference of "duties" undertaken by these dog officers.<sup>198</sup> This wording suggests that dogs have obligations as part of law enforcement operations and are more akin to human officers than tools owned and used by the police department. In New Mexico, for example, interfering with the duties of a police dog includes injuring or killing a police dog performing "its official duties," or maliciously obstructing or harassing the *dog* as it is working.<sup>199</sup> Handlers are conspicuously absent in these sections that address penalties for interfering with the duties of K-9s.<sup>200</sup> If officer dogs are considered property, it is strange that the human

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191. *See id.*

192. *Rocco's Law*, *supra* note 189.

193. *Id.*; *see also* Kerlik, *supra* note 172.

194. Craig Ian Scheiner, *Statutes with Four Legs to Stand on: An Examination of "Cruelty to Police Dog" Laws*, 5 ANIMAL L. 177, 182 (1999).

195. TEX. PENAL CODE ANN. § 38.151 (West, Westlaw through 2021 Reg. Legis. Sess. & Ch. 1-6 of Second Legis. Sess.) (allowing for up to 2nd degree felonies for killing or maiming a police dog, and includes penalties for even feeding the dog without permission).

196. D.C. CODE ANN. § 22-861 (West).

197. *See, e.g.*, NEV. REV. STAT. ANN. § 574.105 (West, Westlaw through 2021 Legis. Sess.) (punishing those who willfully and maliciously "torture, mutilate, injure, poison, disable or kill a police animal" with a category D felony and a fine of up to \$10,000).

198. *See* CONN. GEN. STAT. ANN. § 53-247 (West) ("while such animal is in the performance of its duties under the supervision of a peace officer"); N.M. STAT. ANN. § 30-18-13 (West) ("to injure or prevent the lawful performance of its official duties"); N.Y. PENAL LAW § 195.06-a (McKinney) ("while such dog or horse is in the performance of its duties and under the supervision of a police officer").

199. "Harassment of a police dog . . . consists of a person willfully and maliciously interfering with or obstructing a police dog . . . by frightening, agitating, harassing or hindering the animal." N.M. STAT. ANN. § 30-18-13(F) (West, Westlaw through Ch. 5 of the 2d Spec. Sess. of the 55th Legis., 2021)

200. *See* N.M. STAT. ANN. § 30-18-13(B-H).



who controls the property (in this case, the K-9 handler) is not mentioned there. Guns, for example, are not given official duties, and if a person obstructed the use of an officer's gun, the person obstructed the officer, as the gun is merely a tool that he uses. This suggests that K-9s are unlike property. K-9s not only have duties, but they can perform them independently to some extent, and to interfere with those duties is an offense against the animal officer.

Twenty-two years after the first state statute penalizing cruelty to police dogs was passed, federal law also provided special penalties for the harming of law enforcement animals.<sup>201</sup> In 2000, the Federal Law Enforcement Animal Protection Act ("FLEAPA") created a penalty of up to 10 years' incarceration for "[w]hoever willfully and maliciously harms any police animal . . . or conspires to do so . . ."<sup>202</sup> Senator John Kyl of Arizona, a supporter of the bill, was quoted as saying "[a]nimals that serve in law enforcement shouldn't be treated as mere property."<sup>203</sup>

Over time, legislatures have increased the penalties for harming police animals. Rocco's Law, for instance, established harsher sentences for crimes against officer dogs in Pennsylvania in 2014.<sup>204</sup> New York increased their penalties in 2013 by making it a felony to kill a police animal.<sup>205</sup> In 2018, Connecticut's SB 241 proposed doubling or quadrupling the penalties for harming K-9s, raising the offense classification of harming a K-9 from a Class D felony to a Class C felony and the killing of one from a Class C felony to a Class B felony, carrying upwards of a twenty-year sentence.<sup>206</sup> Further, first-degree manslaughter might have applied if a firearm had been used, permitting a sentence of up to forty years.<sup>207</sup> These penalties were deemed too harsh in Connecticut and were ultimately rejected.<sup>208</sup> Critics of the legislation considered the increased penalties "excessive and disproportionate."<sup>209</sup> In 2018,

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201. Craig Scheiner, "Cruelty to Police Dog" Laws Update, 7 ANIMAL L. 141, 142 (2001).

202. Punishment for harming a federal law enforcement animal ranges from fines for mere "harm" and up to ten years of killing or permanently disabling or disfiguring the animal. 18 U.S.C.A. § 1368; *see also* Scheiner, *supra* note 201.

203. Scheiner, *supra* note 201.

204. *See* Kerlik, *supra* note 172; Togneri, *supra* note 178; Rocco's Law, *supra* note 189.

205. John J. Bonacic, *Senator Bonacic Announces New Law to Increase Penalties for Killing a Police Animal*, N.Y. ST. SENATE (Aug. 09, 2013), <https://www.nysenate.gov/newsroom/press-releases/john-j-bonacic/senator-bonacic-announces-new-law-increase-penalties-killing> (last visited Apr. 17, 2022).

206. Sandra Gomez-Aceves, *Penalties for Intentionally Injuring, Killing Police Dog Increase Under Proposed Bill*, HARTFORD COURANT (Mar. 10, 2018, 6:00 AM), <https://www.courant.com/breaking-news/hc-pol-penalties-for-killing-police-dogs-20180309-story.html> [<https://perma.cc/P3HB-8DHB>].

207. *Id.*

208. The proposed bill's harsher penalties were not enacted, as evidenced by the statutory history of Section 53-247. *See* CONN. GEN. STAT. ANN. § 53-247 (West, Westlaw through 2021 June Spec. Sess.).

209. *See* Gomez-Aceves, *supra* note 206.

Utah, like Connecticut, also sought to drastically increase their penalties for harming police dogs by increasing the charge severity from third-degree felony to a second-degree felony for the killing of the animal.<sup>210</sup> Utah's proposal was criticized by Utah Sen. Todd Weiler, on the grounds that the penalties for killing a police dog might then be worse than the penalty for recklessly killing a person.<sup>211</sup> Much like Oliver's critique of Rocco's Law, Sen. Weiler's complaint compares different crimes with different contexts. Recklessly killing a human being occurs without any intent to kill a person, and is a Class 2 felony in Utah, allowing for a sentence of one to fifteen years;<sup>212</sup> SB 57, however, required a substantially higher mens rea—that of intentional action in the killing of a police dog.<sup>213</sup> In contrast, the intentional killing of a human being in Utah would constitute murder, which carries a sentence of no less than fifteen years, a significantly higher penalty.<sup>214</sup> Pursuant to the penalties proposed in SB 57, the intentional killing of a police animal would generate the same punishment range as an assault on a peace officer with a deadly weapon.<sup>215</sup> SB 57's proposed penalty increase would not raise penalties to the same level as injuring a human in the same manner. It did, however, recognize that K-9 officers, much like their human counterparts, deserved special protections as law enforcement officers.

Unlike Connecticut, the Utah law was passed and signed by the Governor.<sup>216</sup> The House sponsor of the bill, Rep. Lowry Snow, stated “[w]hen someone intentionally takes the life of one of these [K-9s], they are only one step away from intentionally taking the life of one of our law enforcement officers.”<sup>217</sup> The bill had strong support, and Utah law enforcement officers testified in favor of it.<sup>218</sup>

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210. Lee Davidson, *In Utah, Stealing a Police Dog is a More Serious Crime Than Killing One. Lawmakers Are Changing That.*, THE SALT LAKE TRIBUNE (Feb. 23, 2018, 11:13 AM), <https://www.sltrib.com/news/politics/2018/02/13/lawmakers-vote-to-stiffen-penalty-for-killing-police-dogs/> (last visited Apr. 17, 2022).

211. *See id.*; Sen. Todd Weiler argued against the increase, saying “‘It’s not fair to victims, to a human being, who dies or is seriously assaulted, to say that the dog’s life is worth more than a human’s life . . .’” Katelyn Stiles, *SB57: Bill Increasing Penalty for Killing Police Dogs Awaits Governor’s Signature*, THE DAILY UNIVERSE (Mar. 7, 2018), <https://universe.byu.edu/2018/03/07/sb57-bill-increasing-penalty-for-killing-police-dogs-awaits-governors-signature/> (last visited Apr. 17, 2022).

212. *See* UTAH CODE ANN. §§ 76-5-203, 205 (West 2021).

213. *See* UTAH CODE ANN. § 76-9-306 (West 2021).

214. UTAH CODE ANN. § 76-5-203 (West 2021).

215. *See* UTAH CODE ANN. § 76-5-102.4 (West 2021).

216. *See* UTAH CODE ANN. § 76-9-306 (West 2021).

217. *See* Davidson, *supra* note 210.

218. Utah County Sheriff's deputy Mike Graf brought his dog, Tess, to one of the hearings and testified how important the K-9 was. Tess had been shot during an arrest and still carried the bullet in her neck. Other officers testified to the heroic actions of their dogs, which had died in the line of duty. Jessica Miller, *‘These Dogs are a Part of Us,’ Officer Says While Urging Lawmakers to Increase Penalties for Killing a Police Dog*, THE SALT LAKE TRIBUNE (Feb. 23, 2018),

The treatment of officer dogs under the law affords a special insight on the connection and importance of dogs to society. When a dog holds a useful job (e.g., law enforcement officer, visual impairment guide), the public seems more inclined to treat the loss as though a human being had died. Evidence includes the numerous attempts in state legislatures to increase the criminal penalty for harming such dogs and the public mourning and outrage that occurs when these dogs are wrongfully killed. These dogs are said to be “heroic” officers who are “killed in the line of duty,”<sup>219</sup> imbuing them with the mantle of courage that has traditionally been considered a human virtue.<sup>220</sup> In light of how law and society treat dogs in this context, the law of chattel property seems inapposite.

### III. WHY DO WE TREAT DOGS DIFFERENTLY IN SOME WAYS, BUT NOT OTHERS?

So far, this Note has explored the history of canine status under the law and how that status has changed in three different areas. But is there a common reason for why the legal rights of dogs are changing in these areas and not in others? Are there signs that these changes may expand into other areas of the law in the future? And, if so, what could that mean for the future of dogs in America?

#### *A. The Common Denominator: Our Modern Love of Dogs*

Given the strong, almost parental bonds we sometimes share with our canines, the desire to protect them from harm, to ensure their well-being, and to provide the basic guarantee of a happy life seems rational. Rep. Farnsworth, who had spoken against Arizona’s hot car law, nevertheless conceded the difficulty of arguing against people’s love for dogs when he said: “Members, I have no illusion that I’m going to change enough votes, or any votes, because this deals with puppies and children.”<sup>221</sup> This is the common denominator behind why we treat dogs differently in some areas, but not others. The more consequential people’s interactions with dogs are, the more likely they are to seek enhanced legal rights for them.

These bonds also explain the legal strides made for dogs relative to animals such as pigs, which are just as smart and capable of complex emotions

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<https://www.slttrib.com/news/politics/2018/02/13/lawmakers-vote-to-stiffen-penalty-for-killing-police-dogs/> (last visited Apr. 17, 2022).

219. Press Release, Senator Tony Luetkemeyer, *Sen. Tony Luetkemeyer Presents Max’s Law to Increase Penalty for Killing K-9 Officers* (Jan. 18, 2022), <https://www.senate.mo.gov/senator-tony-luetkemeyer-presents-maxs-law-to-increase-penalty-for-killing-k-9-officers/>.

220. Courage is considered a cardinal virtue. See LOUIS P. POJMAN & JAMES FIESER, *ETHICS: DISCOVERING RIGHT AND WRONG* 147 (6th ed. 2009).

221. See ARIZ. LEG., *supra* note 80, at 25:55.

such as empathy.<sup>222</sup> Melanie Joy, a professor of psychology at the University of Massachusetts, Boston, believes that human perception and an unspoken, ingrained belief system causes us to see one animal as food and another as friend.<sup>223</sup> Other commentators believe perceptions of and our relationships with some animals (e.g., dogs) instill a sense of obligation for their care, and the closer that relationship is, the more obligation we feel.<sup>224</sup>

An estimated 68% of American households—a total of about 84 million homes—have a companion animal.<sup>225</sup> We often joke that these animals are our “fur babies,”<sup>226</sup> but science is showing that the connection we share with them may be close to the connection we share with our human children. In one study conducted at Massachusetts General Hospital in 2014, a group of mothers underwent MRI brain scans while shown various pictures that included their children, unfamiliar children, their dogs, and unfamiliar dogs.<sup>227</sup> Researchers found that the mothers displayed similar emotional responses of excitement and pleasantness when viewing their children as when looking at their dogs.<sup>228</sup>

Dog owners are so connected to their companions that they will sometimes risk their own lives rather than leave their dogs. For example, during Hurricane Katrina, thousands of people refused to evacuate New Orleans because doing so meant leaving their pets behind.<sup>229</sup> An untold number of those people drowned, prompting state and federal changes to laws covering disaster evacuation and pets.<sup>230</sup>

222. Ellie Zolfagharifard, *Move Over Lassie: IQ Tests Reveal Pigs Can Outsmart Dogs and Chimpanzees*, DAILY MAIL (June 13, 2015, 07:34 EST), <https://www.dailymail.co.uk/sciencetech/article-3122303/Move-Lassie-IQ-tests-reveal-pigs-outsmart-dogs-chimpanzees.html> [<https://perma.cc/3K2B-3AAA>].

223. See generally TEDx Talks, *Toward Rational, Authentic Food Choices with Melanie Joy*, YOUTUBE (Feb. 5, 2015) <https://www.youtube.com/watch?v=o0VrZPBskpg&t=258s> (last visited Mar. 6, 2022).

224. Grace Clement, “*Pets or Meat*”? *Ethics and Domestic Animals*, 1 J. OF ANIMAL ETHICS 46, 47 (2011).

225. *Companion Animals*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/focus-area/companion-animals/> [<https://perma.cc/8FDD-VUH4>].

226. The term “fur baby” became popular enough that it was added to the online Oxford Dictionary in 2015. See *New Hip Words Land in Oxford Dictionary*, WSJ VIDEO (Aug 27, 2015), <https://on.wsj.com/2Ek77ix> (last visited Jan. 23, 2022).

227. See Nicole Pelletiere, *You Really Love Your Dog Like a Child, Study Says*, ABC NEWS (Oct. 23, 2014, 1:01 PM), <https://abcnews.go.com/Lifestyle/love-dog-child/story?id=26402733> [<https://perma.cc/V9ZN-2EUH>]; Luke E. Stoeckel et al., *Patterns of Brain Activation when Mothers View Their Own Child and Dog: An fMRI Study*, PLOS ONE (Oct. 3, 2014), <https://doi.org/10.1371/journal.pone.0107205> (last visited Jan. 23, 2022).

228. See Pelletiere, *supra* note 227; Stoeckel et al., *supra* note 227.

229. See William Brangham, *How Did Katrina Change How We Evacuate Pets from Disaster?*, PBS (Aug 29, 2015, 1:21 PM EST), <https://www.pbs.org/newshour/nation/hurricane-katrina-change-way-evacuate-pets-devastation> [<https://perma.cc/QD2C-R999>].

230. *Id.*

Science is also revealing that our connection to canines is not just one-way: our dogs are capable of the same feelings towards us. In one MRI study involving unanesthetized, trained, and willing dogs, researchers found that the dogs' brain activity indicated a capacity to have positive emotions.<sup>231</sup> Much like their human counterparts, the ability to experience positive emotions means "that dogs have a level of sentience comparable to that of a human child."<sup>232</sup> Dogs responded positively to hand signals indicating food, but they also had similar affectations when they knew their owners were returning after stepping out of view.<sup>233</sup> The dogs in the study consistently responded more positively to their owner's return than to the promise of a hotdog.<sup>234</sup>

In Japan, researchers found that oxytocin levels in dogs and their owners spike when they look into each other's eyes, and the levels detected were significantly increased for the owners and dogs who had established stronger emotional ties to one another compared to less-established pairings.<sup>235</sup> Oxytocin, often referred to as the "love hormone," has been recognized by researchers as the key to successful maternal bonding in many species, including humans.<sup>236</sup>

Society has often viewed dog ownership as a practice run at parenthood for young adults, with the amount of training and the dog's resulting behavior predicting the quality of the owner's parenting skills.<sup>237</sup> Today, rather than being a stepping-stone on the path to parenthood, dogs are increasingly becoming placeholders or even replacements for children and significant others. Birth rates have plummeted in recent years while pet ownership and spending continue to rise, even during economic recessions.<sup>238</sup> Experts do not believe that dogs are necessarily replacing children for most owners, but young adults are finding alternative companionship in pets as economics and other outside factors push them to delay marriage and starting a family.<sup>239</sup>

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231. Berns, *supra* note 138.

232. *See* Berns, *supra* note 138.

233. *See* Berns, *supra* note 138.

234. Madeline K. Sofia & Brent Baughman, *Does Your Dog Love You? Science Has Some Answers*, NPR, at 4:30 (Aug. 10, 2021), <https://www.npr.org/2021/08/09/1026165600/does-your-dog-love-you-science-has-some-answers> (last visited Apr. 17, 2022).

235. CLIVE D.L. WYNNE, *DOG IS LOVE: WHY AND HOW YOUR DOG LOVES YOU* 109–10 (2019).

236. *See* Virginia Morell, 'Love Hormone' Turns Mothers into Moms, *SCIENCE* (Apr. 15, 2015), <https://www.science.org/content/article/love-hormone-turns-mothers-moms> [<https://perma.cc/J6S9-K6DU>].

237. Kennan Ferguson, *I Heart My Dog*, 32 *POL. THEORY* 373, 377 (2004).

238. Electa Draper, *Decline in Birth Rates Breeds Future Worry, Author Says*, *DENVER POST* (Mar. 10, 2013 2:43 PM), <https://www.denverpost.com/2013/03/10/decline-in-birth-rates-breeds-future-worry-author-says/> [<https://perma.cc/3U2G-8J57>].

239. "In other words, there probably are two separate connections between fertility and pet ownership: rising pet ownership may be replacing single-motherhood to some extent, but more prominently, young people are pushed by many factors to delay marriage, and so spend more years

## 1. Changing the Legal System from the Bottom Up

This deep connection between society and dogs is paving the way for new top-down legal changes, primarily in harm reduction. Other developments also flow up from society; canine rights advocates are affecting what we teach law students and the legal terminology used when referring to our dogs.

“In the last five years or so, [animal welfare has] gone from sort of this very fringe area of the law to very mainstream,” said senior Animal Legal Defense Fund (“ALDF”) staff attorney Tony Eliseuson.<sup>240</sup> ALDF has backed a wide array of efforts for more animal advocacy education, including collaborating with students and school administrators to offer information, mentorship, and even scholarships to law schools.<sup>241</sup>

The next generation of animal welfare lawyers are being trained before they even graduate, through animal law clinics.<sup>242</sup> In 2016, Connecticut was the first state to enact a program that allowed law students to speak on behalf of abused animals in court as an “animal advocate.”<sup>243</sup> Law students, alongside their clinical professors, provide information to courts in animal abuse and neglect cases.<sup>244</sup> For example, in 2019, University of Connecticut law students described to a court the abuses suffered by Hannah, a German shepherd dog who had been abused by a caretaker.<sup>245</sup> The defendant, a first-time offender, could have been eligible for accelerated rehabilitation in which they would pay all veterinary bills and pledge not to work with dogs for at least two years.<sup>246</sup> In exchange, the defendant would avoid a criminal record.<sup>247</sup> However, after hearing the students’ account of Hannah’s suffering while in the defendant’s care, the presiding judge reconsidered whether a criminal history might deter

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in singleness, without reliable companionship. As a result, they invest—often expensively so—in a truly reliable companion: a pet.” See Lyman Stone, *Fewer Babies, More Pets? Parenthood, Marriage, and Pet Ownership in America*, INST. FOR FAM. STUD. (Nov. 15, 2017), <https://ifstudies.org/blog/fewer-babies-more-pets-parenthood-marriage-and-pet-ownership-in-america> [https://perma.cc/C274-3LGX].

240. See Monyak, *supra* note 161.

241. See *Legal Education*, ANIMAL LEGAL DEF. FUND, [https://aldf.org/how\\_we\\_work/legal-education](https://aldf.org/how_we_work/legal-education) [https://perma.cc/AS9U-FJW5].

242. In Connecticut, University of Connecticut law students can now work as legal animal advocates in the courtroom, representing abused animals for credit alongside pro bono lawyers. See Jordan Otero Sisson, *Abused Animals Will Get Voice in Court This Month Thanks to New Law*, HARTFORD COURANT (Apr. 10, 2017, 6:00 AM), <https://www.courant.com/news/connecticut/hc-desmonds-law-animal-advocates-20170331-story.html> [https://perma.cc/TSX2-JE7L].

243. Elaine S. Povich, *Advocates Stand Up in Court for Abused Animals*, PEW (Feb. 22, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/02/22/advocates-stand-up-in-court-for-abused-animals> [https://perma.cc/U6RD-A3HF].

244. See *id.*

245. See *id.*

246. See *id.*

247. See *id.*

other pet owners from entrusting their dogs to the defendant in the future.<sup>248</sup> The judge then declined to grant the defendant rehabilitation.<sup>249</sup>

Legislators in several other states have begun to follow Connecticut's lead, introducing bills to create legal animal advocacy programs.<sup>250</sup> Today, over 160 law schools in North America have offered animal law courses, and dozens of U.S. law schools, including Yale, Michigan, UCLA, and Harvard have active chapters of the Student Animal Legal Defense Fund.<sup>251</sup> Other organizations, such as Michigan's Attorneys for Animals, work independently with law students, lawyers, and legal assistants to help legislators draft and reform animal welfare legislation.<sup>252</sup> Attorneys for Animals was successful in establishing an "Animal Law" section of the Michigan State Bar in 1995.<sup>253</sup>

One legal movement is even looking to change the way we refer to our dogs. This movement, called the "Guardian Campaign" seeks to encourage city and state legislators to exchange the term "owner" in statutes with the term "guardian," and "pets" with the term "animal companions," which many feel better reflects the relationship between dogs and people.<sup>254</sup> The Guardian Campaign has called for this semantic change to reject the idea of dogs as property to be owned or exploited.<sup>255</sup> Over twenty governmental entities in North America, ranging from cities like West Hollywood, California, to states like Wisconsin and Rhode Island, have signed on to the campaign and are changing their statutes to reflect the new "guardian" terminology.<sup>256</sup>

### *B. The Dangers of Recognizing Dogs as Beings*

Although most people welcome enhanced rights for dogs, others are concerned that the law will advance too quickly. Some simply do not want the law to treat dogs as anything other than mere property. If the court in *Strickland* allowed plaintiffs to sue over the sentimental value of their dog, for instance, what unintended consequences might follow? Some of these critics come from the most unexpected places: animal advocates and dog-loving organizations

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248. *See id.*

249. *See* Povich, *supra* note 243..

250. *See id.*

251. The student chapters of the Animal Legal Defense Fund, just like the ALDF, seek to promote animal welfare law and legislation. *See Student Chapters*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/student-chapters/> [<https://perma.cc/44TE-4YED>]; *List of Current Student Chapters*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/list-of-current-student-chapters/> [<https://perma.cc/WYT9-8P3E>].

252. *Who We Are*, ATT'YS FOR ANIMALS, <https://www.attorneysforanimals.org/who-we-are/> [<https://perma.cc/5LJ5-ABRL>].

253. *See id.*

254. *Guardians*, IN DEF. OF ANIMALS, [idausa.org/campaign/guardian/](https://idausa.org/campaign/guardian/) [<https://perma.cc/K3NK-J6D6>].

255. *Id.*

256. *See id.*

such as the American Kennel Club (“AKC”), Cat Fanciers’ Association (“CFA”), and the Texas Veterinary Medical Association (“TVMA”).<sup>257</sup>

The AKC is a well-known organization, probably best known as the governing body for the televised Westminster Kennel Club Dog Show.<sup>258</sup> They have, with some controversy, opposed many animal-welfare bills all across the U.S. over their concerns that the bills were overbroad and prevented responsible owners and breeders from owning and caring for their animals.<sup>259</sup> For example, they opposed a bill in Massachusetts that defined how law enforcement could seize animals in cases of suspected animal cruelty.<sup>260</sup> The organization felt that the possibility of permanently taking dogs away from “owner-defendants who have not been found guilty of any crime” was a government overreach.<sup>261</sup> In *Strickland*, the AKC argued that permitting emotional damages for the negligent death of a dog would encourage pet litigation to become “a cottage industry.”<sup>262</sup> Likewise, the TVMA voiced similar concerns over the “vast unintended consequences” of the court recognizing emotional damages in the death of a dog.<sup>263</sup> The TVMA worried that one such consequence would be that veterinarians would need to carry malpractice insurance against civil suits if owners were allowed to sue for potentially large sums.<sup>264</sup> Veterinary care, they contended, would inevitably exceed reasonable levels, and owners could be priced out of routine veterinary care for their animals, particularly for low-income families.<sup>265</sup> Police organizations also spoke out against the recognition of emotional damages for dogs, pointing out that not all dogs are “good-natured.”<sup>266</sup> Such costly suits might cause officers and animal-service employees to second guess their actions in dangerous situations.<sup>267</sup> Civil litigation, they warned, might cause taxes to rise with litigation costs.<sup>268</sup>

Insurance agencies, too, are concerned with the possible financial liabilities that may arise if courts recognize emotional damages from suits over dogs. Insurance groups “caution that expanded damages would spike the cost of insurance across the board, not just for veterinarians but also for homeowners and automobile drivers.”<sup>269</sup>

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257. See *Strickland v. Medlen*, 397 S.W.3d at 194.

258. Mary Pilon & Susanne Craig, *Safety Concerns Stoke Criticism of Kennel Club*, NY TIMES (Feb. 9, 2013) <https://www.nytimes.com/2013/02/10/sports/many-animal-lovers-now-see-american-kennel-club-as-an-outlier.html> [<https://perma.cc/M9PE-QWCN>].

259. See *id.*

260. See *id.*

261. *Id.*

262. See *Strickland*, 397 S.W.3d at 194.

263. *Id.*

264. See *id.* at 193 n. 60.

265. See *id.* at 194.

266. *Id.*

267. *Id.*

268. *Strickland*, 397 S.W.3d at 194.

269. See *id.*



Other critics have surmised that advancing the legal rights of dogs too far into the realm of personhood would create a judicial drain on an already taxed system. The court in *Travis* felt that treating dogs with rights akin to children in custody battles would be to the detriment of children, saying:

“It is no secret that our courts are overwhelmed with child custody cases, cases in which the happiness and welfare of our most precious commodity, children, are at stake. To allow full-blown dog custody cases, complete with canine forensics and attorneys representing not only the parties but the dog itself, would further burden the courts to the detriment of children. Such a drain of judicial resources is unthinkable.”<sup>270</sup>

However, unlike in *Strickland*, the *Travis* court recognized that dogs deserved at least some additional consideration given their special status as beloved family members. The court allowed a full-day hearing to decide the custody of a dog, stating: “If judicial resources can be devoted to such matters as which party gets to use the Escalade as opposed to the Ferrari, or who gets to stay in the Hamptons house instead of the Aspen chalet, there is certainly room to give real consideration to a case involving a treasured pet.”<sup>271</sup>

The arguments against enhancing rights for dogs have some merit to the extent that new laws could create unintended effects. However, arguments against moving forward, like those brought before the *Strickland* court, are problems that should be *considered* as we move forward, not reasons why legal advancement for dogs *cannot* occur.

#### CONCLUSION

It is the close relationship between people and their dogs that gives rise to special legal recognitions for canines in certain areas of law. Primarily, it is our common interactions with dogs that leads to advancement in some areas (e.g., protection from harm, custody) and not in others. As dogs become a bigger part of our lives, our relationships with them will become more complex, and our interest in them will drive further legal advancements. (Simply put, the more we live with dogs and interact with them, the more our bond with them grows, and thus the more we will want protections and special legal recognition for dogs.)

The doctrine of dogs as chattels is becoming inadequate as our relationship to dogs evolves. The legal system will need to adapt as our modern conception of dogs moves farther away from mere property and into something resembling personhood. Legislatures and courts need to recognize that this paradigm shift is occurring, and they need to stand ready to address it. And while they should be cognizant of potential problems in expanding the legal recognition of dogs,

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270. *Travis v. Murray*, 977 N.Y.S.2d 621, 631 (N.Y. Sup. Ct. 2013).

271. *Id.*

the possibility of negative consequences should not be used an excuse to stagnate on the issue.