

Want to comment? Your input is important. OLAW welcomes [questions and comments](#) from viewers of this recording. OLAW will post the comments, questions, and answers on the OLAW website. Please go to the OLAW [Education Resources](#) page and click on the seminar title for further information.

Note: Text has been edited for clarity.

Contents: **Transcript**
 Additional Questions

Rights, Regulatory Systems and Legal Revolution

Speaker: Margaret Riley, JD, Professor, University of Virginia School of Law

Broadcast Date: September 21, 2017

View Recording: <https://youtu.be/H-Pw1m47jbk> (YouTube)

Slide 1 (Rights, Regulatory Systems and Legal Revolution)

>> *Swapna:* Today is September 21st, 2017. I am Dr. Swapna Mohan, from the Division of Policy and Education, OLAW. For our webinar today, we have with us Professor Margaret (Mimi) Riley, from the University of Virginia (UVA). Professor Riley, teaches animal law, bioethics, regulation of clinical research and public health law. She also serves as the Director of the Animal Law Program at UVA. Mimi received her law degree from Columbia University and her bachelor of arts from Duke University. Her talk today “Rights, Regulatory Systems and Legal Revolution” is about the different notions of rights and legal personhood, especially in the context of animals. Welcome to OLAW, Mimi.

>> *Margaret:* Thank you very much, Swapna. It’s a pleasure to be with all of you, even if it is in the cyberspace.

Slide 2 (Contents)

Today we are going to talk about something that would normally comprise at least three different courses over a semester in a normal law school setting. But I am going to try to combine them in a way that is easier to understand. We will try to understand how a lot of the philosophical and ethical frameworks play out within the regulatory structure both within the United States and in legal systems in other parts of the world. Following that we will discuss:

- (a) notions of legal personhood,
- (b) how those notions have evolved over time,
- (c) how they might play out in the context of animals, and
- (d) how some extensions of them would be revolutionary, should they end up being accepted by the courts.

Slide 3 (Law and Moral Value)

There is a significant difference between laws and moral values, which might be confusing for some people. I believe it's good to think of the law as a reflection of consensus of moral values of that society, within structural constraints of course. In some areas there is relatively little controversy over this concept. For example, almost all societies have rules against murder. You will find no controversies in terms of what the laws regarding murder should be. You may have controversy over what the punishment should be, but not over whether a law forbidding murder should exist.

On the other hand, most global societies are very conflicted about the appropriate moral consideration that we should give to animals. And you will then see similar conflicting reflection in the law. This is one of the reasons that you see differences in laws between countries, and between the various states in the United States. Some of those differences reflect how developed the country is – to some extent legal protections for animals are a luxury. And some of it is reflective of the value that society places on its animals – and that may vary even in countries with similar wealth due to cultural constraints and context.

We also have to pay attention to the fact that laws made in one arena can end up having important consequences for the laws in another arena. For example, law affecting agricultural animals can have unintended consequences on laws in another area, such as in this situation – the biomedical field.

Slide 4 (Modern Philosophical Concepts of Animal Moral Value)

We generally use three different frameworks when we're talking about practical ethics. Two of them, the utilitarian rubrics and the deontological rubrics, may be more familiar to people than virtue ethics, which at this point is relatively less known. The utilitarian rubrics framework is a consequentialist theory that weighs the benefits and costs to all of the individuals – or entities – who are being considered in that rubric. The choice in this framework would be what gives the best overall benefits to all within the rubric. But who is included in that calculus is a fundamental question that determines many of the results. Peter Singer, whom many of you may know about, is a very strict utilitarian philosopher. Peter Singer believes that animals' interests should be fully included in that calculus.

Another philosopher Frey offers a more extreme version of utilitarian rubric in the context of animals because he does not necessarily distinguish between animal and human capabilities and potential. Frey places more value on an animal with significant conscious ability. For example in Frey's utilitarian rubric, a mature chimpanzee would likely be more valuable than a human infant.

And then we have the deontological rubric. In the context of animals, a philosopher many people know about is Tom Regan. In this rubric the idea is that no individual should be a means for others' ends. This idea was first developed primarily by Kant, and in the animal context it has been extended to mean that animals cannot be a means to human ends.

A third way to approach practical ethics is virtue ethics. This can include a number of subspecialties of ethics – and there are some such as an ethic of care – but there are probably fewer famous modern philosophers associated with this in the context of animals. Virtue ethics has its roots in Aristotelian philosophy. In virtue ethics we actually think of the individual who is considering the issue, rather than the individual(s) who are the object of the issue. This individual is aspiring to be a virtuous person, and is therefore seeking moral good and justice for others. In an animal rights context it means that they want to extend the same form of justice to animals as well as to humans.

Slide 5 (Different Results Based on Different Value Paradigms)

You can end up with very different value paradigms, depending on what kind of philosophical framework is used. For example, we can consider stem cells meat, a form of meat developed in a lab and not obtained from a living animal. A utilitarian like Peter Singer will view it as having benefits on both sides; he's described it as a win-win. And this is because we could develop something without harming any animals, and it would seem very much like animal flesh to the consumer – which at least for many consumers is a real benefit. On the other hand some PETA members, not all, might say it's wrong to promote consumption of any kind of animal flesh. Because it would mean using animals as an instrumentality, even though that instrumentality has never truly been an animal.

Similarly, Singer would not hold the view that biomedical animal experimentation should be automatically foreclosed, because he's weighing cost and benefits. Someone like Tom Regan however, would say that it's wrong to use animals for any human ends, even if that can achieve great value for humans.

Slide 6 (The best explanation for the prevalence of a moral judgment will be psycho-social in character.)

We find that most people, and certainly most Americans, don't think about using animals in any systematic philosophical fashion. Instead what they're actually considering are moral judgments that are tied to first principle values. And in that context they often have powerful emotional responses, which often come before the rational reflection. In fact, they often will develop and present reasons post hoc, rather than as part of a rational decision process. People are very highly influenced by who their friends are and what those friends believe. Often moral judgements on animal use is a networked reaction, such as those seen on college campuses where people have formed strong networks. The same kind of philosophical judgments may occur less often when people don't have such networks.

Slide 7 (Cultural Values)

At the same time, cultural values are generally not consistent across an entire population. One cultural value that has been more significant among some of the more radicalized animal rights activists is the idea that nature should be left alone. People who subscribe to this kind of cultural value might believe, for example, that culled elephants from parks

and sanctuaries should be euthanized, rather than having them placed in a zoo and used for human entertainment. The vast majority of Americans, in contrast, adhere to a cultural notion that I sometimes characterize as “dogs and cats are people too.” This actually represents a profound change in our culture. People have come to view their pets as family members. We now spend about 50 billion dollars annually on pet products. The United States is a major market for pet costumes during Halloween time. And because it is legally possible, we now have more than a million pets who are legal beneficiaries of their owners’ wills.

A third kind of cultural notion – and I should add that there are many more than these three that I’m describing here – values animals in terms of their cognitive abilities. Many people see primates differently than other animals because primates have very similar cognitive abilities to humans. Therefore people have different moral values for primates.

Slide 8 (The Declining (Perceived) Value of Science)

One of the difficulties we face in biomedical research is that as people think increasingly of moral values for animals, there is a parallel decline in the perceived value of science in the American public. The American public probably reached the apex of viewing the value of science somewhere in the 60s or early 70s, and it has been declining since then. Some of this is a side effect of the Bayh-Dole Act – and I do have to emphasize that the Bayh-Dole Act has otherwise been a real success in the context of biomedical research. The Bayh-Dole Act made it possible for academic scientists to benefit financially from the products of translational medicine. But it also meant that there was a loss of scientific purity. This loss of purity exacerbated a growing idea among the American public that scientists are in this for financial gain rather than for obtaining the best possible results for society and animals. We have also had a number of scandals in past years that have soured the public’s views on science as well. As we see with climate change and genetically modified organisms, there is a lot of debate in the public on whether science is an opinion or not, and how science should be viewed in a democratic society.

Slide 9 (Does philosophy matter?)

After having spent time on describing what philosophy is, how philosophy is subject to cultural values, and is therefore a post-hoc experience, next comes the question: does philosophy matter at all? I can say that philosophy does matter in a way that is more subtle than what might appear. First of all, our cultural values are founded on philosophical notions that we haven’t explored at their foundations. Typically philosophy is a necessary first step. It requires us to reach a place that is a combination of both philosophy and cultural evolution. One way to think about that is the notion of the power of an idea whose time has come.

Second, lawyers, judges, and to some degree, legislators and administrators, are all trained to some degree in philosophical foundation laws. As we interpret laws and translate policy into law, the philosophical and logical aspects become increasingly important.

Slide 10 (Regulatory systems form the architecture for how law is made)

Next, we need to consider how the regulatory system may form the architecture for how laws are made. We also need to understand how that is going to affect laws evolved in the context of animals. For example, in the United States and Europe many of the interests are the same but the structure of the political system is going to dictate how laws evolve, what kinds of laws evolve, and how quickly they might evolve.

Slide 11 (Policy Making)

In the European Union and Britain, policy is often developed through a parliamentary system. That is quite different than what we experience in the United States. In the United States, the Constitution is designed to slow down legislative action, perhaps too far. We now have reached a point where there's so much legislative blocking that you end up with a gridlock. And so we are much less likely to see legislation in the United States especially in an area with conflicting moral values and views.

On the other hand, legislation will be more likely a track for laws in Europe and Britain because in a parliamentary system, the executive and legislative bodies are controlled by the same parties – and the executive interests are aligned with the legislature.

Slide 12 (Global Aspects)

National rules at the constitutional, legislative, and judicial levels will continue to reflect the legal architecture in which they exist. So what we can expect with law involving animals are greater legislative changes in Europe, more than what we would expect to see in the United States.

Slide 13 (In the United States: Focus on the Courts)

In the United States, the focus is likely not to be on the legislature but on the courts instead. We are seeing quite a bit of action in the courts. To a certain extent, this has to do with the expanding notions of private rights of action that would support animal interests. We are also seeing considerable increase in creative actions in the courts. For example, lawyers are bringing actions that involve novel types of damages claims in the case of loss of animals. These in turn, could lead to new property frameworks. In agriculture we've seen lawsuits based on false claim actions. There have been shareholder suits involving research on chimpanzees against pharmaceutical companies. And different kinds of petitions on agencies that are trying to dictate agency action. Perhaps the most dramatic are the *Habeas corpus* actions on chimpanzees in New York State courts. We will discuss that last one in detail later.

Slide 14 (In the United States, some of the most fundamental focus is on "rights")

In the United States, the most fundamental focus that is going on in the courts is on evolving notions of animal rights.

Slide 15 (What are rights?)

So before we get into that, let's first look into the description of what rights are. These could be animal rights, human rights, or any other types of rights. One way of looking at rights is as entitlements to perform or not to perform certain actions, to be in or not to be in certain states, or for example what others can do certain actions to you or not do. They can be either moral rights or legal rights. And this actually means that many people will end up talking past each other in the context of rights. One good way of thinking about rights, and an example that will set the framework: Is there a right to healthcare? Many people in the United States think that there is a definite moral right to healthcare. On the other hand, you will find that there are limited legal rights to healthcare in the United States. In other countries, they might view those as being completely contiguous, which means that both moral and legal rights in those situations have the same limits. Rights are so often not absolute and may be contingent on other rights, other people's rights, or other entities' rights. And when rights are in direct confrontation with stronger rights, some might argue that such legal rights are merely precatory. That means that they are in the books but are not well enforced.

Slide 16 (Animals as Property)

One of the things that is frequently discussed by people who are asserting a notion of animal rights is that it is inappropriate for animals to be property. This is mentioned partly because it drives the discourse. For many Americans there is an emotional reaction to that notion since it implies that animals are essentially slaves. And we have an automatic repugnancy to that notion and this is based on the idea that the notion of slavery extends to animals. In the legal context though, the notion of animals as property has significant legal consequences. The property designation may have fundamental meaning for what we call legal personhood.

Slide 17 (What exactly is legal personhood?)

Legal personhood is a debate that extends far beyond animal rights. As an example, many of you are probably aware of the discourse of whether a corporation is a legal person. Many people find that repugnant – and in fact, it has been much abused in political contexts. But on the other hand, it is often necessary to designate a corporation as a legal person. Equally and if not more problematic for many people is whether a fetus, embryo, or blastocyst is a legal person. What kind of rights do we give to that fetus in contrast to others, if we view it as a legal person?

Legal personhood of children is area that has evolved considerably in the United States and other countries. And this hasn't always been a linear evolution – it goes back and forth. Not too long ago, children were not legal persons under the law. They were not quite property either, but they did not have legal personhood that we would think of them having today. In the 15th and 16th centuries animals did have a form of legal personhood in that they could be held legally and morally responsible for torts that they had committed. For example, an ox that had gored a human would be subject to a trial similar to a human who might have committed murder.

Slide 18 (Legal Personhood)

It's important to distinguish legal personhood from the notion of having no rights. In many forms of legal personhood, animals have had and do have significant rights. At least since the 19th century most developed countries and all states within the United States have had rules that protect animals from cruelty. Additionally in the United States, animals have the right to food and water. With the Endangered Species Act, some animals have the right to habitat and the right to survival. And as I mentioned a few slides ago, animals can also be beneficiaries to trusts and wills. As such, they can inherit property, perhaps not directly, but through a trust.

This of course goes well beyond animals. Sometimes we give legal personhood to pieces of art. Historic places might have legal personhood as well, within certain constraints. So legal personhood is not just limited to persons. We have to understand it in a broader context and determine what the limits might be.

Slide 19 (The "Non-Human Animal Rights Project")

Steven Wise initiated the [Nonhuman Rights Project]. This has been probably the most fundamental extension of the notion of legal personhood to animals in the United States. It's a change that is not just legal evolution but would be legal revolution. Wise argues for expanded legal rights for animals that are both capable of conscious thought and have significant cognitive abilities, and he includes as such higher nonhuman primates and cetaceans. His legal focus has been with chimpanzees. He has brought a couple of *habeas corpus* actions in New York State arguing that the chimpanzees that are being held, in one instance by Stony Brook and in the other instance by a private citizen, that these animals were essentially being imprisoned and that they had the right to personal liberty.

Slide 20 (Legal Personhood)

We have to think about what that kind of liberty interests mean. A *habeas corpus* interest extends the right to bodily liberty and bodily autonomy to animals, which has normally been extended only to humans.

Interestingly, Steven Wise does not seek complete autonomy and liberty for animals. The remedy he seeks is to move the chimpanzees to a sanctuary. That's a little different than giving a human complete autonomy and bodily liberty. I actually don't understand how he deals with that internal conflict. I should note that it has not yet been accepted in the courts. If, however, it is eventually accepted in the courts, it would be a fundamental change that would probably limit the use of animals – or at least some animals. It would especially limit the use of chimpanzees and higher nonhuman primates in a biomedical context. I've also never quite understood what we would do if the animals didn't like the sanctuary in which they were placed and wanted to leave – or in fact how we would measure whether they liked it or not.

Slide 21 (What would the consequences of legal personhood be?)

The consequences of affording legal personhood to animals would extend beyond biomedical research to veterinary medicine and practice. It might affect the legal relationship veterinarians have with both their patients and with their clients. It's hard to gauge exactly how that might play out in terms of pets and other animals. But there is no question that this would be a fundamental change that goes beyond any notion of animal rights that we have today in the United States.

Slide 22 (Questions?)

And now I am very happy to take any questions that you might have.

>>*Swapna*: Thank you, Mimi. We have received several questions, some of them before the webinar started and I'll read some of those out and we can address them. We also welcome live questions from the audience. Please type them into the questions pane in your control panel. And if you think of a question later after the broadcast, you can send it to OLAW at the email address provided on our website.

[Question 1] The first question we have is: How do you think the debate on legal personhood extends to genetically modified organisms? For example, would an animal with a modification that results in an increase of cognitive abilities be perceived as being closer to personhood? Does this mean that there would be degrees of legal personhood?

>>*Margaret*: I am not sure that I would answer that question in the context of degrees of legal personhood – but rather as types of legal personhood. If the question is whether something like a humanzee – a genetically modified chimpanzee with human cognitive abilities – would have legal personhood – I think the answer is, and that would depend on those cognitive abilities, but the answer would be yes. There are aspects of full legal personhood that assume that one is able to reciprocate and be part of the political and legal process. In other words, you need to understand the moral and legal rules to abide by them. So assuming that the humanzee's cognitive capacities included such social abilities, I think it would be entitled to full legal personhood. I've actually written on this and played with it as a thought experiment in the past. Interestingly, my judgement is that based on what we know of their brains, I'm not sure that a de-extincted Neanderthal – which actually would look more human – would be entitled to full legal autonomy. But a humanzee that looked more like a chimpanzee – might be. Also, keep in mind that just because a being is not entitled to full legal personhood doesn't mean that they don't have rights – they are just different kinds of rights.

>>*Swapna*: Thank you. [Question 2] Our next question is: Can you elaborate on the implications of legal personhood of animals for veterinarians, and by extension, other people who provide health services, such as emergency responders?

>>*Margaret*: For veterinarians, full legal personhood for an animal like a chimpanzee means to me that you'd have a very different kind of "client" relationship. I'm not even

sure you could use a “best interest” of the animal standard. Instead, it would be what this particular animal seems to want, but it’s by no means clear. We do use a best interest standard for children for example. It might also mean that options like euthanasia have to be rethought. And also when those animals’ interests confront human interests, human interests may have less value than previously thought.

>>*Swapna*: Thank you. [Question 3] This next person asks: I am curious to know what you think of the monkey selfie copyright dispute (whether a monkey can have copyright of a photograph that it took), and how it relates to legal personhood of animals. If the notion of legal personhood is accepted by the courts, should we expect to see more of such disputes with respect to biological data, genetic information, and digital data?

>>*Margaret*: In the context of the monkey selfie copyright dispute itself, for me, that case is not so much a legal personhood question – although I think there are aspects of that in there – but more fundamentally what the purpose of copyright law is. And I think that the purpose of copyright is to encourage artistic endeavor. So, in some ways that case seems easier to me – giving the macaque in this case copyright power, doesn’t really further that interest – in fact, you might argue it weakens it. That case recently settled and without any legal compromise. Having said that, it doesn’t mean that macaques aren’t entitled to rights like having their habitat protected. And you might even go further, to the extent that humans exploit their interests, there might be a moral right. That moral right could be explored through other legal means – and those would protect and enhance their interests.

>>*Swapna*: Thank you. [Question 4] An interesting question to consider would be how the Harambe incident at the Cincinnati Zoo (where it was not certain that the gorilla would harm the child that had fallen into its enclosure), would have played out in a world where legal personhood is accepted?

>>*Margaret*: In the Harambe context, you’ll recall that the zoo’s protocol did not consider the gorilla’s interests when a human child was put in danger – or at least maybe it’s better to say those interests could not trump the need to protect the human child and keep it safe at all cost. If a gorilla were to have true legal personhood, I don’t think that could be done as easily. Having said that, nothing in that case was easy, at least in hindsight. You might also argue that if the gorilla had legal personhood, it wouldn’t be in a zoo, so the question wouldn’t even arise. But it does still leave open questions of how to value human life vs animal life, even in wild contexts.

>>*Swapna*: [Question 5] And the next question is a follow up to that: It would be interesting to discuss whether we will go back to holding animals responsible for attacks on humans or other animals.

>>*Margaret*: Well, in some ways that question crystalizes many of the issues for me – responsibility, to me, generally involves intent or the ability to understand consequences.

Animals coexist with us, but they are not players in our legal and political contract. And we, therefore, can't hold them responsible for any obligations that they haven't and cannot agree to have.

>> *Swapna*: Thank you. [Question 6] This next question asks: Does any country grant legal personhood to animals?

>> *Margaret*: It depends how you would define that. So, for example, there are things in the German constitution that might actually be deemed to grant legal personhood to animals, but then when that is defined in the code it's very clear that it's not legal personhood the way the animal rights activists have considered it. There's also some notion of legal personhood, but it's very much tied into cultural aspects that get tied into the law in India. More recently there were some beliefs that legal personhood had been extended through a case in Argentina, but when you actually read the case, that doesn't seem to be the situation.

>> *Swapna*: I see. Thank you. [Question 7] The next question is: Is there a legal definition of a person that enables the extension of personhood to nonhuman primates and cetaceans?

>> *Margaret*: In terms of a legal definition that's in a legal system, no. It would be more how the law would be applied in a specific context.

>> *Swapna*: [Question 8] You described the changing public perceptions of science related to financial gain. How do you see the changing public perceptions related to animal research?

>> *Margaret*: So that varies. Unfortunately I think that for a long time the dialogue was controlled by people who were against animal research, and as a result many people who were not that familiar with the requirements and needs of animal research saw fairly dramatic pictures of the negatives of animal research, and the pain and suffering that might be involved in the animals that were being used. I think that's changing over time. There is more of what I would call a dialogue going on and more understanding, but I think we should not fool ourselves completely as animal rights is becoming more and more something discussed not just in universities, but outside of universities, and I don't think that science has fully entered the dialogue in a way that it has to explain how important animal research is.

>> *Swapna*: Thank you. [Question 9] The next question is: How would extending broader legal rights, including personhood, to animals affect animal-based research aimed at benefiting animals rather than humans? For example, research for the development of veterinary pharmaceutical products.

>> *Margaret*: Well, that's when it would depend on what kind of notions the broader legal rights were dependent on. So for example, if you were using a deontological framework and that's what the basis of that legal change was in, even benefiting other animals could not be done for the benefit by using other animals. On the other hand, on a utilitarian basis you might argue that if it were purely for the benefit of animals, that would be perfectly okay.

>> *Swapna*: [Question 10] The next person says: I'm having a problem with the legal personhood notion. Can you discuss how this might apply to, say, how cows are considered in a Hindu society? Would that be a good example?

>> *Margaret*: I don't think it's a good example because cows are considered a religious object in Hindu society, and the legal treatment of animals – and I should state I'm not an expert in Indian law – but the legal treatment of cows actually tracks the religious framework. So I think that would be quite different than thinking about legal personhood in a United States or European context.

>> *Swapna*: [Question 11] And then this person asks: It sounds like a person with limited mental capacity does not qualify for full legal personhood. Is that actually the case?

>> *Margaret*: It's actually not the case, although it's not the case because that makes us extremely uncomfortable. And that's why I'm hedging a little bit on the responsibility side and obligation. But the way we have done it is, we treat all humans, as long as you are a human, as having the same legal personhood. We theoretically wouldn't have to do that with certain notions of rights, but for obvious reasons that makes us extremely uncomfortable to do so.

>> *Swapna*: [Question 12] Does the law ever take religious considerations into its process or does everything just go back to the constitution and previous enacted law?

>> *Margaret*: Well, those go hand in hand, so religious considerations are actually part of first amendment considerations. So in that context they may certainly be considered.

>> *Swapna*: [Question 13] Where does one draw the line between a moral obligation and a legal right of varying degrees?

>> *Margaret*: I guess the way I would put it is the moral obligation is one that is held by an individual. It may of course be held by societies, but that's slightly different. A legal right has to be determined by a society. You can't have a legal right unless a society decides that that's a legal right it wants to impose or provide.

>> *Swapna*: Thank you. [Question 14] What standard is used currently to determine the rights of a mentally disabled human and how, or if, does this relate to the debate of animals and personhood?

>> *Margaret*: So when we consider the rights of a mentally disabled human, in many context their rights are virtually contiguous with any human. There are situations, though, where we have to try and determine what that individual would want in a certain context. And in that context, we could have varying standards. The most common standard would be to use what we call a "best interest" standard where the person or the court that is making that decision tries to determine what would be the best interest of the individual.

Another standard you might also see used then is, for example, for someone who has lost their cognitive abilities, what that individual wanted or what evidence we have of what that individual wanted in their life prior to becoming incapacitated.

>> *Swapna*: [Question 15] If animals can be given full legal personhood, how can they exercise legal rights without their ability to articulate those choices?

>> *Margaret*: I guess the answer I have for that is, I don't fully know how they would do it. And I guess that Steven Wise would say they don't need to have the capacity to fully exercise it to have it. But some of that doesn't make sense to me.

>> *Swapna*: [Question 16] I have a question. Does this mean that animals can be given full legal personhood as this question states?

>> *Margaret*: I don't understand what that means. In what context?

>> *Swapna*: I'm just reading this person's question and they asked if they were given full legal personhood.

>> *Margaret*: I think it would depend on the context.

>> *Swapna*: I see. Thank you. [Question 17] The next question is: How would recognition of animal rights impact the interests or treatment of animals in commercial settings? For example, large scale animal breeding operations, large scale agricultural farms, balancing cost benefit in animal research. So how would that impact these?

>> *Margaret*: So I guess what you would have to – I'm going to be a little bit quibbly on this and say it would depend on what kind of recognition of rights there were. So I would say in many of those contexts there are at least moral rights for animals and there are – depending on what the context is – some legal rights as well, although agricultural animals have significantly fewer legal rights than animals in a biomedical context, for example.

So then the other piece in answer to that would depend on what kinds of animals were given legal personhood. I don't think you could argue that cattle would have the same cognitive abilities as one might argue for a chimpanzee, although pigs are really smart.

But I don't know whether any of those animals, if the standard – and this is a big if – we can determine rights based on all sorts of attributes, but if it was based on cognitive abilities, I don't think anyone is arguing for full legal personhood in an agricultural context.

>> *Swapna*: [Question 18] Research animal protocols frequently require pathological examination of tissues to complete the scientific merit of the study. So based on personhood would euthanasia be allowed and if so would the species of animals be an influence, such as rodents versus nonhuman primates when they are used as the experimental model?

>> *Margaret*: So I might even go further and say that if you were to give legal personhood to a chimpanzee, I don't even think you could do research with the animal, never mind euthanasia. So I'm not sure that that would play out, although I do think – I could imagine in a veterinary context it becomes very tricky because then you're starting to worry about what that individual animal wants if it's a legal person. Having – the next part of the question was would that change – I think it was essentially would that affect the types of models that we use for research?

>> *Swapna*: Yes, if it was a different experimental model.

>> *Margaret*: And it would definitely mean that we would have to use different models and possibly it could mean that we would not be using the best models.

>> *Swapna*: I see. Thank you. [Question 19] The next question is: Some would argue that synthetic meat will eclipse slaughter in this century. If animals are not used for food, what would you predict will occur in the movement for legal personhood for animals?

>> *Margaret*: Well, that leads to lots of different questions. So if synthetic meat does truly eclipse using animals for food, to a large extent I think that what we would see in this country and in most countries with habitat concerns is that we would not see very many agricultural animals that are typically used for meat now. I think they would actually disappear. And we actually have played with this in my classes and said things like is it better to exist and get eaten than never to exist at all? And that's an interesting question. So I think I forgot the second part of that question and I can't see it on my screen.

>> *Swapna*: Well, they're asking if the animals are not used for food, what would you predict happens for the movement for legal personhood?

>> *Margaret*: You know, there's some times when I think about if we stop using animals at all in any context, we're not going to see very many animals. We've always treated wild animals differently than domestic animals, so there might still be some context of legal personhood for the more cognitively able. And I could even see it extended to things like elephants and higher primates.

>> *Swapna*: [Question 20] If there were a legal definition of a person, would that change the framework for this type of discussion?

>> *Margaret*: Yes, but I'm going to go back to telling you as a reminder that, for example, it's actually important for us to be able to give legal personhood to things that are clearly not persons, like corporations. And so I think there may be complications and unintended consequences with trying to work around it in that context.

>> *Swapna*: [Question 21] Animals have been used in research for many years, and this was formalized in the Nuremberg Code. Is the Code now considered to no longer have a legal application or status?

>> *Margaret*: It has a legal status, but you will also see competing codes, the Helsinki Codes treat animals quite differently than Nuremberg does. And actually, even in the US code if you look at certain things with the food and drug, FDCA, the Food, Drug and Cosmetic Act, you will even see conflicts built into the US structures that people don't expect.

>> *Swapna*: [Question 22] This next person wants to know where they can find more information, and if there are any published papers on these subjects?

>> *Margaret*: There are actually quite a number of published papers. I obviously can't give you citations right off the top of my head. There's an active debate going on both with [Steven] Wise, also Richard Cupp at Pepperdine [University] and to some degree also David Favre at Michigan State [University]. And then in terms of the broader issues, of course, there are hundreds of people participating in these debates at sometimes very sophisticated philosophical levels. And we have people like Rebecca Dresser, Martha Nussbaum and to be perfectly honest, many others. Peter Singer is the one obvious one.

>> *Swapna*: Thank you. [Question 23] If it is proven that an animal can be considered self-aware, would this complicate not allowing personal rights and can this strengthen animal rights for higher mammals like chimpanzees or other nonhuman primates?

>> *Margaret*: So again, that's going to depend on what kinds of rights you're talking about and how far those rights would extend. I do think that as we talk about animals being self-aware, and you will see this discussion sometimes in the context of elephants understanding apparently a notion of death or death within, that one of the elephants in its troupe has died, you start moving towards ideas that that kind of self-awareness should lead to extended rights. How far that should extend and whether those extend beyond moral rights into legal rights is up for debate.

>> *Swapna*: [Question 24] You say that animals currently have rights to have their habitats protected, for example. Couldn't that be defined not as animals having rights, but as we, as humans, having legal responsibility to provide specific care to animals?

>> *Margaret*: In that context I would actually go a little bit further because the Endangered Species Act, which is what I was referring to there, includes a private right of action which extends the notion of having humans obviously bring actions, but on behalf of the animals, which seems to me to imply that the animals themselves have rights.

>> *Swapna*: [Question 25] Is there a legal framework in the US regarding research on human animal chimeras? Research is currently limited to aborting embryos at a certain stage of development, before central nervous system develops. Concerning the debate on legal rights of embryos and fetuses, should this type of research be restricted both here and elsewhere in the world until clear status has been defined?

>> *Margaret*: I think what we see are guidelines on that kind of research and I think there's also in a sense – this wouldn't be a legal framework, but by having funding organizations be uncomfortable with funding such research you do see limits put on it. So I think there actually are restrictions as we're trying to work our way through these issues. It's actually become a bigger issue recently with some of the CRISPR experimentation on human embryos.

>> *Swapna*: [Question 26] The next question is: The debate on a woman's bodily autonomy and rights in the US, and I would say elsewhere in the world, is currently challenged or complicated by an argument about state versus federal law. Are there similar concerns that exist for the definition of legal personhood at the state and federal level?

>> *Margaret*: If you mean in the context of how it would play out for animals, yes. So for example, Steven Wise is now bringing his actions in the state of New York, and should he succeed that would actually affect only the state of New York, but he would then move on to other states. I suppose I could imagine a situation where there would be significant diversity on how the states would treat this.

>> *Swapna*: [Question 27] The next question is: What kind of insertion into animal rights discussion do you think would help the scientific community become more influential in this discussion?

>> *Margaret*: Well, one thing I would say to start with, rather than to insert yourself at the point where there's actual – there isn't true debate, but it's actually advocacy against advocacy, is the scientists need to become more involved in the education process. What I'm seeing is that there is little participation in this kind of debate in the universities by the scientists themselves, and even before university, obviously in high schools and even elementary schools. So I do think scientists need to start making sure that they get

involved in the discourse so that they can show both the values of what they're doing, and also so that they can reduce some of the mythology that has been building.

>> *Swapna*: [Question 28] So the next question is: According to the 3R's of research, specifically replacement, animal researchers would replace one animal over another based on cognitive abilities. Would you consider this philosophy to be in line with giving one animal increased moral right over another?

>> *Margaret*: Yeah. I've actually spoken on that and there are times where I have a little bit of concerns for that. For example, the classic example is using a genetically modified mouse for cystic fibrosis research when a pig is a much better model because the mouse actually isn't going to exhibit the symptoms that you're looking for. So in that instance the 3R's rubric that would give precedence for the animal with higher cognitive ability would actually end up having what I would view as unethical research because it's an inappropriate model.

Slide 24 (OLAW Online Seminars)

>> *Swapna*: Thank you, Mimi. And I think that is all we have time for today. We've now come to the end of our online seminar. I would like to remind the listeners that if you have further questions, you can submit them via the link provided on the OLAW Webinars page or by email at olawdpe@mail.nih.gov. Our speakers will address them and we'll post the answers on the OLAW website. And as another reminder, the webinar materials will be posted on the Education Resources webpage. Thank you to Professor Riley for a wonderful talk. And I thank all of you for participating in our webinar, with special thanks to those who sent in questions.

>> *Margaret*: Thank you, it was my pleasure.

>> *Swapna*: The next webinar is on December 7 on Adverse Events at Research Facilities. Good-bye everyone and thank you for joining us today.

Additional Submitted Questions Not Addressed During the Webinar

[Question 29] If legal personhood was granted to animals, how could one justify it being limited to only certain species that one feels is of a higher status than another. We don't do that with humans. This seems hypocritical. And: [Question 30] It seems like the debate of whether or not to give animals certain rights or "legal personhood" revolves around certain attributes such as intelligence, capacity to communicate, express emotions, etc. This seems like a very slippery slope. One could argue that even insects, such as bees, have a very complex communication system and therefore would be a candidate for inclusion. Where would you draw the line and isn't this approach limited by our limited understanding of animal biology, intelligence, etc.?

>>*Margaret*: These questions do demonstrate a couple of the difficulties with ascribing legal personhood to animals other than humans. We have to draw the line somewhere, and it is of course humans who draw the lines, so the tendency is to draw the lines based on human values. But valuing a characteristic or believing that certain characteristics merit some form of rights is different than legal personhood. It's important also to note that some rights frameworks would distinguish between humans based on capacity. Most don't however, and it's because doing so causes even more problems. I do think, however, that we should be careful of assuming that only a human could have legal personhood. It's only science fiction now, but I could imagine a genetically engineered non-human who would be capable of fully participating in human social, legal and political structures. Many philosophers also believe that corporations also have legal personhood, and that is not just derivative of the human ownership.

###