

## Carbon Copies

Is it ethical to turn animals into science projects? Pet cloning intensifies the issue.

BY LEE HALL

**P**et cloning is fast becoming more than science fiction. The California-based Genetic Savings & Clone now offers the first “consumer grade” clones of household pets.

Genetic Savings clones cats using a proprietary technology called chromatin transfer. This fall it offered a cat-cloning price reduction, so that, for \$32,000, consumers could purchase a genetically engineered kitten with “guaranteed health and resemblance” to their original pet.

Genetic Savings expects to cater to dog owners soon, and it just might: In August, South Korean scientists announced the first successful cloning of a dog, an Afghan hound.

Although U.S. law has traditionally regulated animal use, this sort of retail pet reproduction arrives in a legal limbo. Thus far, efforts to clone pets seem to be viewed with a whimsical sort of let’s-see-if-it-can-be-done attitude.

The issue deserves much more morally serious consideration. The public needs to think hard about the boundaries being crossed in this peculiar legal sphere where property meets personality. It’s time to ask not just whether we *can* clone pets but whether we *should*.

### LAW AND THE LIVING THING

In general, the acceptance of engineered, cloned, and patented animals exists along a path that began with the agreement (among humans) that we can capture, domesticate, commodify, and consume other conscious beings.

The specific road to pet cloning started with much smaller genetic manipulations. The science surrounding genetic modification dates back to 1951, when Rosalind Franklin explained to

an audience at Cambridge University how the discovery of DNA had cracked the code of individuality in each living being. Two decades later, U.S. biochemists were inserting DNA from a toad into an *E. coli* bacterium.

Even as the science of life itself developed, some raised cautions about genetic manipulation. In a 1976 letter to *Science*, Dr. Erwin Chargoff asked, “Have we the right to counteract irreversibly the evolutionary wisdom of millions of years, in order to satisfy the ambition and curiosity of a few scientists?”

Yet these concerns had little effect on the U.S. legal system. In a 5-4 decision in *Diamond v. Chakrabarty* (1980), the Supreme Court decided that a genetically altered bacterium could be patented, as the Patent Act encompasses “anything under the sun that is made by man.” In 1988, Harvard University patented the “OncoMouse,” a rodent susceptible to cancer. And in 1996 a Scottish scientist created the sheep Dolly, the first mammal to be cloned from an adult cell.

Since Dolly, scientists have also cloned cattle, other sheep, mice, goats, pigs, and cats. Such cloning efforts are not always successful. Clones can vary, in looks and temperament, from their originals. As in most experimental processes, setbacks are frequent, and even those cloned animals actually born often do not survive long. The sibling clone of the cloned puppy in Korea survived only three weeks. Scientists at Texas A&M University, who have so far cloned a half-dozen species, say that 95 percent to 99 percent of cloning procedures fail.

Some countries consider the new cloning technology beyond the pale of civilized practice. Even in the United States, the legal landscape varies with regard to animals. While agricultural practice allows for horrifying mistreatment, animal-cruelty laws provide some protection for common pets. And in the preface to the casebook *Wildlife Law* (2002), professors Dale Goble and Eric

Freyfogle observe that environmental law, “once focused on direct threats to human health,” now is also “concerned with assaults on non-human life.”

This suggests some willingness to perceive nonhuman animals as having value unto themselves. Just as our laws have emancipated women from male domination, professor Catherine MacKinnon, in the 2004 essay “Of Mice and Men: A Feminist Fragment on Animal Rights,” called for a parallel discussion in animal law, observing that the primary model of animal rights to date “misses animals on their own terms.”

Taking animals on their own terms would be profoundly significant. It would mean that animals would not only be free from abuse, but that they would be free to live and die on their own terms. (And, of course, it would hardly be possible to meet animals on their own terms as long as we continue to eat them.)

### BORDER CONSTRUCTION

To be sure, proponents of cloning offer promises of its benefits not just for humans but for the animals themselves. Some scientists claim that biotechnology will stave off extinctions of endangered wild animals, citing as visible proof eight young wildcats bred from clones this summer by the Audubon Center for Research of Endangered Species.

Such claims might intuitively appeal to the animal-rights theorist. But this kind of cloning of wild animals still accepts a utilitarian framework, with no appreciation for harm to the individual implicated lives (which will be split between zoo exhibits and laboratories). And since cloning cannot address habitat degradation or other causes of accelerated extinction, it’s possible that wild animals will be “saved” simply to live confined lives little better than those of pets.

Others who favor cloning attempt to set boundaries. Bioethicists who see dog cloning as necessary for research, for example, typically decline to view it as paving the way for human clones.

An ethical borderline between humans and all others seems unclear, however. This summer, an international team of experimenters, adding weight to decades of field observations, reported that nonhuman primates develop distinct cultural traditions—such as food retrieval techniques—which they pass along to members of their groups.

And as reported in *Science* in July 2005, when a panel of 22 scientists, lawyers, and philosophers recently debated the wisdom of inserting human stem cells into monkey brains, the team’s scientists concluded that the science would not let them ethically distinguish humans from other primates. But the panel’s report noted (among other things) the argument from Genesis that humans are set apart by God.

### LEGAL RIGHTS

Any systematic form of domination and control comes with claims of natural or divine prescription. This has been true of all forms of invidious discrimination against which Americans have struggled. And over time our understanding of the Constitution has expanded to protect these formerly oppressed groups.

Could a nonhuman being ever appeal to constitutional

progress? Someday, most likely. The legal building blocks are already being placed for a Constitution that will recognize animal rights.

But today’s haphazard recognition of animal rights isn’t enough. For instance, Laurence Tribe, a prolific proponent of individual rights, has declared in the context of biomedical research on primates that “[n]onhuman animals certainly can be given standing.” But Tribe has also said that “recognizing that a being is entitled to be treated with respect, not wanton cruelty, and an eye to its own flourishing by no means translates into an absolute right, an absolute veto, over any possible use of that entity to save a human life, or achieve a higher goal.”

It is true that the interests of even human rights holders sometimes conflict. But if animals with some legal rights could yet be experimental models for the benefit of humans, then the acquisition of those limited rights would be a hollow victory. A being is either property or person. If nonhuman beings really are entitled to the protection of their fundamental rights, experimentation on them is tantamount to torture.

Finding the best meaning of animal rights begins with identifying, to the extent possible, the fundamental interests of the animals themselves. This means staying out of the business of contriving palliative responses to conditions set up after animals have already been made into objects of study and commerce. It means respecting their interest in living on their own terms.

### LET ALONE

If animal rights, as distinct from traditional charity, have any meaning at all, no words get nearer to their core than “the right to be let alone.”

The idea of the right to be let alone arose in an 1890 *Harvard Law Review* article co-authored by the future Justice Louis Brandeis. Troubled by the suffering caused by intrusive reporters, Brandeis proposed a new tort: the invasion of privacy. His concern was not confined to the idea of trespassing on personal property, but looked more broadly to shield the individual from “popular curiosity” and to respect the “inviolable personality” as “part of the more general right to the immunity of the person.” Almost 40 years later, in an oft-quoted dissent in *Olmstead v. United States* (1928), Justice Brandeis called “the right to be let alone” the most comprehensive of rights.

This most comprehensive of rights should apply not just to humans but to animals with consciousness. And this is why even regulated pet cloning represents the outright antithesis of animal rights.

Some animal welfare groups argue that cloned pets should be covered by the federal Animal Welfare Act. In February the American Anti-Vivisection Society filed a petition to encourage the U.S. Department of Agriculture to regulate pet-cloning companies as research facilities under the federal statute. The act, passed in 1966 to assuage public concern about pets being sold into research, specifies minimum husbandry standards for institutions using animals.

But applying the act to cloning would actually settle the matter to the animals’ detriment. When amending the act in 1985, legislators noted that the law is not meant to impede decisions to conduct experiments; rather, it is simply meant to

ensure humane handling when possible. Because the act takes for granted that any use it codifies is acceptable, U.S. animal-welfare advocates who invoke it concede too much, particularly in light of policies elsewhere. In Britain, the government rejects applications to clone pets. The U.S. government should do the same.

If invoked against pet cloning, animal-cruelty laws would, in all likelihood, be similarly ineffectual at stopping it. Cloning undeniably causes severe suffering in many of the surrogate mothers and in the clones, who face disproportionate risks of severe birth defects and organ failure. But under these laws, the definition of cruelty comes down to an offense against the norm, and a high failure rate in cloning and the subsequent death of many animals are the norm.

And whereas state statutes define animal cruelty largely by barring intentional and malicious acts, Genetic Savings & Clone's specific intent is not to hurt animals. The first cat clone, featured on the company's Web site, lives with cloning pioneer Duane Kraemer, who says of his cloned menagerie, "They're special parts of my life. I revere them."

Moreover, animal-cruelty statutes have traditionally had no bearing on industrially useful practices, no matter how painful. Pet cloning takes place within research settings primarily geared

toward farm animals. When cloned dairy products hit the market, beginning with milk and veal from the cows' offspring, some may inquire about human safety, but cruelty prosecutions will be reserved for unusual cases of gratuitous harm.

Biotechnologists to the world, U.S. producers generate three-fourths of the bioengineered products used in global agribusiness. One of the byproducts of this industry is pet cloning, and perhaps it will be a lucrative one. Vested interests, in short, are strong.

So if current laws are inadequate, what is the answer? Ultimately, law must grant to all animals the basic legal protection—freedom from being commodified objects—given to their human cousins. But before that can happen, we must reach a moral recognition of the value of nonhuman individuals—not as parts of our lives, but on their own terms.

The other animals of the world, like people, have inherent worth and dignity. They are not to be cloned at another's whim or duplicated for human amusement. Ultimately, our law must embrace these moral principles.

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