

A MORAL FRAMEWORK FOR THE PRACTICE OF
COMPANION CANINE VETERINARY MEDICINE

By

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ABSTRACT

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In this dissertation I construct and defend a moral framework for the care and medical treatment of companion canines that recognizes and accommodates the moral implications of the relationships among companion canines, their owners, the communities in which they live, and the veterinary clinicians who care for them. The goal is to bring into equilibrium our considered moral judgments concerning particular canine care practices, the moral principles we use to guide our judgments, the professional ethical standards for veterinary medicine, and the legal protections needed to ensure that obligations are met. I argue that humans have moral obligations to companion canines beyond those due to all sentient animals, *because* of the relationship they have with them. The specification of these obligations is explored using a modified capabilities approach. The result is a list of wellbeing-promoting interests of companion canines that delineates the scope of human responsibilities of care for these animals. Next, I discuss the professional ethical standards and legal protections necessary to ensure that human obligations to companion canines are met. An argument is offered for the establishment of a new category of property, *custodial property*, to include living things that have the morally significant feature of being created and owned in order to form strong, emotional bonds with their owners. Finally, several ethical problems are explored to show that the recognition of obligations generated by relationships, the list of wellbeing-promoting companion canine interests, and the new category of property combine to form a moral framework that can help dog owners, veterinary clinicians, and legislators in mixed-species communities make difficult decisions concerning the care and

medical treatment of some of their most vulnerable members—companion canines.

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This dissertation is dedicated to Donna June Merow:
mother, teacher, pastor, and my bride.

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KEY TO ABBREVIATIONS

ABS	Accredited Breeder Scheme (United Kingdom)
ACCC	American Companion Canine Club
AKC	American Kennel Club
ALDF	Animal Legal Defense Fund
APGAW	Associate Parliamentary Group for Animal Welfare (United Kingdom)
ASPCA	American Society for the Prevention of Cruelty to Animals
AVMA	American Veterinary Medical Association
CCWC	Companion Canine Welfare Commission
CDC	Center for Disease Control and Prevention
COI	Coefficient of Inbreeding
CPF	Custodial Property Framework
CPWC	Custodial Property Welfare Council
HSUS	Humane Society of the United States
KC	Kennel Club (United Kingdom)
LGBTQ	Lesbian Gay Bisexual Transsexual Queer
PETS	Pet Evacuation and Transportation Standards Act
RGRA	Relationships-Generate-Responsibilities Argument
RVC	Royal Veterinary College (United Kingdom)
VCPR	Veterinarian-Client-Patient Relationship
WPICC	Wellbeing-Promoting Interests of Companion Canines

CHAPTER 1: INTRODUCTION

Animals are perpetual “others,” doomed to have
their interests represented to humans by other humans.
Susan D. Jones (2003, 4)

No issue contributes to the stress experienced by veterinary clinicians more than convenience euthanasia (Kay et al. eds. 1988; Verdon 2003; Rohlf and Bennett 2005; Rollin 2006, 2011; Platt et al. 2012; Kahler 2015). Many small animal veterinarians feel that taking the life of healthy but no longer wanted companion animals is inconsistent with their dedication to healing and the moral convictions that led them to pursue a career in veterinary medicine. At a veterinary conference session on dealing with client grief, a practicing veterinarian exclaimed, “I know how to deal with client grief, ... what I need to know is how to deal with *my* grief. I went into veterinary medicine to care for animals, and I am constantly being asked to kill them for trivial reasons” (Rollin 2006, 53).

The social status of dogs has changed dramatically during the past seventy-five years. Today, most dog owners and small-animal veterinarians, like the conference attendee above, consider companion canines to be members of our families and communities. Tragically, however, the attitudes of some dog owners concerning their responsibilities to their dogs, and many of the laws that regulate dog ownership and veterinary medical practice, largely reflect the human/canine relationship and ethical norms of an earlier era. This incongruity leads to unmet needs for companion canines and high levels of stress for many veterinary clinicians.

During the first half of the twentieth century, most dogs lived on the periphery of family life. Many had jobs: hunting, guarding, herding, or controlling vermin. Their sleeping

quarters were likely to be found in the barn, the basement or garage, or in a separate doghouse. Today, dogs have been invited into our homes to serve as friends and companions; most dog owners consider their companion canines to be “a part of the family.” They share our beds, travel with us on vacations, and have sentimental value that far exceeds their market value. They play with our children, provide company for the elderly, visit the sick and infirm in hospitals and nursing homes, and facilitate social interaction between human neighbors. Dogs have become integral members of our communities with their own dog parks, superstores, daycare centers, and groomers (Jones 2003, Katz 2003, Pew Research Center 2006, Wood et al. 2007, Grimm 2014).

For many dog owners and veterinary clinicians, the new social status of dogs has moral implications. They view many long-accepted practices and veterinary procedures—chaining dogs in the backyard, for instance, and “putting down” unwanted dogs—as unethical. But because dogs are legally classified as personal property and many veterinary practices and policies were developed during a time when animals were valued primarily for their economic value, some dog owners feel that they have a right to severely restrict the freedom of their animals and to ask veterinarians to destroy unwanted ones. The result is an alarming level of stress among those who work with animals in shelters and veterinary clinics (Verdon 2003, Rollin 2011, Skipper and Williams 2012). The laws regulating the care of companion canines, the professional ethical standards of the veterinary profession, and the policies of veterinary clinics need to be reevaluated in terms of the new relationship we have with our “best friends.”

The goal of this dissertation is to construct a moral framework for the care and medical treatment of companion canines grounded in a detailed analysis of the

responsibilities of care generated by the relationship we have with them. By bringing into equilibrium our considered moral judgments concerning particular canine care practices, the moral principles we use to guide our judgments, the professional ethical guidelines for veterinary medicine, and the legal structures that govern the care of dogs, the framework I construct and defend provides well-justified moral guidelines for dog owners, small animal veterinarians, legislators, and mixed species communities, and, if adopted, would promote better living conditions for companion canines and alleviate much of the stress experienced by practicing veterinary clinicians.

1.1 The Contributions of the Dissertation

During the past forty-five years much has been written about animal ethics: Peter Singer graphically portrayed our abusive treatment of animals and argued for the equal consideration of human and nonhuman interests (*Animal Liberation*, 1975), Tom Regan argued that some animals are “subjects of a life” and therefore possess moral rights (*The Case for Animal Rights*, 1983), and Clare Palmer expanded the discussion to include the role that relationships play in the responsibilities we have to animals (*Animal Ethics in Context*, 2010). Other authors have suggested possible political paths to higher moral and legal standing for nonhuman animals: Martha Nussbaum argued that governments have a responsibility to ensure that the animals living within their jurisdictions have the opportunity to fulfill their capabilities (*Frontiers of Justice: Disability, Nationality, Species Membership*, 2006), Gary Francione proposed the abolition of the domestication of animals (*Animals as Persons*, 2008), and Sue Donaldson and Will Kymlicka argued that some nonhuman animals should be made citizens (*Zoopolis: A Political Theory of Animal Rights*, 2011). Steps have also been taken to connect recent work in animal ethics to the professions: Bernard Rollin to

veterinary medicine (*An Introduction to Veterinary Medical Ethics: Theory and Cases*, 2nd ed., 2006) and David Favre to animal law (*Animal Law: Welfare, Interests, and Rights*, 2nd ed., 2011).

While I draw heavily on the work of these and other writers, my project is original in several regards. First, I limit my analysis to human responsibilities to companion canines. Domestic animals vary significantly in cognitive ability and in their relationship with humans. Both of these factors are relevant to moral questions concerning the care and medical treatment we provide for them, but have not been sufficiently explored by animal ethicists and do not heavily influence the professional ethical guidelines of the American Veterinary Medical Association (AVMA). Theorists have tended to focus on a single qualifying characteristic for moral consideration—sentience for Singer and being the “subject of a life” for Regan—and have largely ignored further distinctions. By carefully analyzing the inherent characteristics peculiar to dogs and the unique relationship they have with humans, I am able to make and support specific claims about our responsibilities to companion canines, specific enough to provide a functional ethical framework for the care of companion canines and for the practice of companion canine veterinary medicine.

Second, I ground my arguments in the empirical studies of cognitive scientists, physiologists, sociologists, anthropologists, and psychologists. Detailed work concerning the capabilities of dogs and the relationship they have with humans can be found in the literatures of each of these disciplines—work that is, unfortunately, rarely referenced in the philosophical literature. If obligations are generated by relationships, the specific nature of these obligations is surely strongly influenced by the nature of the relationship. As Donna Haraway notes, “The content of any obligation is dependent on the thick and dynamic

particularities of relationships-in-progress” (2008, 1340). My arguments are strengthened by more fully considering what has been learned about dogs and their relationship with humans.

Third, the strong empirical grounding and limited domain of my analysis enable me to construct a compelling argument that the human/companion canine relationship generates extensive responsibilities of care. While I begin with the ideas of Keith Burgess-Jackson (1998) and Palmer (2010), I am able to adapt and strengthen their arguments. Many of the difficulties they encounter do not apply to the human/companion canine case, and the unique nature of the human/companion canine relationship suggests additional reasons in support of the generation of responsibility.

Fourth, while my delineation of the *particular* responsibilities of humans to their canine companions borrows heavily from capabilities theory, I have been able to incorporate many of its advantages such as attention to the multidimensionality of a flourishing life and the importance of individual differences, while avoiding weaknesses such as its questionable use of “dignity” as a ground for entitlements and the many problems encountered when the theory is extended to a wide variety of nonhuman animals. My Relationships-Generate-Responsibilities Argument (RGRA) provides a more compelling case for human responsibilities to companion canines.

Fifth, I recognize a morally salient characteristic of our relationship with companion canines that categorically distinguishes them from other items of personal property, including many other domestic animals, namely, that they were and continue to be deliberately and systematically bred to form strong, emotional attachments with humans. I propose and defend the establishment of a new category of property—custodial property—to include property with this characteristic. Just as the establishment of the category of intellectual

property encouraged lawmakers and courts to recognize and address the differences between physical and nonphysical property, I argue that the new category of property I propose would facilitate the evolution of a legal environment regulating the care and medical treatment of companion canines more consistent with their new role in mixed-species families and communities.

The moral framework I construct in this dissertation—the Custodial Property Framework (CPF)—necessarily requires the synthesis of work from many disciplines. Work on practical questions of applied ethics must begin with an understanding of the historical, sociological, and psychological realities of the society in which the questions arise. One cannot answer the question, “What responsibilities do owners and veterinarians have to companion canines?” without thoroughly understanding the nature of dogs and our relationship with them. Furthermore, the analysis of such questions needs to be extended to the political level for it to have a practical effect. How should society be structured and what laws are required to maximize the good that is sought? In particular, how can we ensure that human responsibilities to companion canines are met? The most significant contribution of this dissertation is the network of bridges forged between disparate lines of thought—empirical studies, relationship arguments, capabilities ideas, legal analyses—in order to construct a coherent moral framework.

1.2 Assumptions and Methodology

In this project, I do not question the morality of keeping domestic animals in general or companion canines in particular. Without domestic animals, veterinary practice as we know it would cease to exist. An ethical framework for the care and medical treatment of companion canines assumes the existence of companion canines. I am familiar with and will

borrow insights from the work of abolitionists like Gary Francione but challenge their arguments only insofar as they apply to companion canines. Given that we have welcomed companion canines into our communities, it is incumbent upon us to explore our responsibilities to them.

Following John Dewey (1922), Owen Flanagan (1991, 2007), and Mark Johnson (2014), I work within a pragmatist process metaphysics in which reality is experienced as a “process of ongoing interactions of organisms with their environments, marked by change and the emergence of new conditions” (Johnson 2014, 194). Because “life is a moving affair,” Dewey claims that morals must be flexible, able to adapt to new conditions “in which old moral truth ceases to apply” (1922, 164). I argue that the changing relationship between humans and dogs demands a rethinking of the moral framework within which we evaluate our obligations to our canine companions.

Within this tradition, moral deliberation is understood to be a form of problem solving, “the reworking of a situation that has become problematic and has inhibited our ability to skillfully, meaningfully, and harmoniously navigate our social space” (Johnson 2014, 160). The moral problem I confront arises from the incongruity between the new social status of dogs and the ethical norms and legal regulations surrounding their care and treatment. This incongruity has two manifestations: (1) many of the needs of dogs, especially social and emotional needs, are often unmet; and (2) animal care workers, including veterinary clinicians and animal shelter workers, are often asked to follow procedures they judge to be unethical, leading to “moral stress.” My solution to this moral problem is a reconstructed moral and legal framework to guide decisions concerning the care and treatment of companion canines designed to promote the flourishing of both species.

I do not contend that the pragmatist naturalistic approach I have adopted provides an explicit method for conducting the moral inquiry that follows. I accept Tom Tomlinson's point that "overcoming a problematic situation ... offers no guidance on what methods the community of inquirers can use to achieve success" (2012, xiv). What ethical naturalism does provide, however, is a perspective that encourages the kind of empirically based inquiry needed to address a moral problem that emerges as a result of changes in complex social and psychological relationships. It is a perspective that is open to the use of whatever methods—principlism, casuistry, narrative ethics, ethics of care, virtue theory—prove to be helpful in solving a moral problem. This is precisely what Tomlinson advocates: an "imaginative flexibility in our understanding and use of these methods that's capable of seeing the opportunity to employ one method or another at the right juncture" (2012, 235).

Advocates of naturalistic approaches to moral deliberation contend that the test of a solution to a moral problem is not the degree to which it conforms to *a priori* moral principles but how well it resolves the problematic situation. Of course, how well a problematic situation has been resolved must be measured against accepted principles. Such principles, however, may be considered to emerge from experience, as "summaries of the collective wisdom of a people, insofar as they indicate considerations that a moral community has found important for guiding their problem solving in the past" (Johnson 2014, 188). While such principles cannot function as categorical imperatives, or provide mechanical procedures to determine proper action, they do have "presumptive weight in our moral deliberations" because of their history of providing useful guidance. My analysis relies heavily on two such principles.

First, *relationships generate responsibilities*. Central to my argument is a comparison

of the relationship between a parent and her adopted child to the relationship between an owner and her rescued dog. The idea that parenthood entails certain responsibilities to the child is widely held in our society and supported by compelling reasons. It has presumptive weight. I show that many of the considerations that lead most to believe that parents have extensive, positive duties of care to their children apply to dog owners and their companion canines.

Second, *wellbeing is the chief aim of ethical behavior*. Following Antonio Damasio, I take the “crux of morality” to be “the regulation of life in a particular environment” as a means of “promoting life and avoiding death and enhancing wellbeing and reducing suffering” (2003, 167). I embrace Chris Cuomo’s call to expand ethical considerations beyond the individual to include collectives with a “commitment to the *flourishing* or well-being, of individuals, species, and communities” (Cuomo 1998, 62). The aim of the moral framework I construct in this project is to promote the wellbeing of companion canines, the owners and veterinary clinicians who care for them, and the communities in which these companion species live.

Throughout this work I am cognizant of Owen Flannigan’s injunction: “Make sure when constructing a moral theory or projecting a moral ideal that the character, decision processing, and behavior are possible or perceived to be possible for creatures like us” (1991, 32). Because I never entirely push aside the realities of human psychology, social and economic forces, the history of the human/canine relationship, and legal precedent, much of the analysis in the chapters that follow exists in the gray zone between moral psychology and normative and meta-ethics. The risk of confusing questions concerning the ethical principles, values, and virtues we hold with the source of the moral authority of those principles, values,

and virtues is always present. Given the practical goal of this project, however, this danger is a necessary one. I take care to avoid *ad populum* arguments, the naturalistic fallacy, and relativism.

Much of the discussion in chapters two and three involves an analysis of the relationship between dog owners and their companion canines. An important dimension of this relationship is the attitude of owners toward their dogs. I use survey results to demonstrate that the majority of dog owners consider their animals to be a part of the family and treat them as such. Critics may charge that by appealing to popular sentiment I commit the *argumentum ad populum* fallacy. My claim, however, is *about* public sentiment. I argue in chapter three that certain kinds of relationships generate responsibilities. Data indicating that many owners consider their dogs to be a “part of the family” and treat them as such counts in favor of the claim that humans and dogs have a relationship that entails responsibilities.

Empirically informed ethical inquiries are often charged with committing the naturalistic fallacy. How is it possible to jump from a review of psychological, sociological, and cognitive science findings to moral claims without attempting to turn “is” statements into “ought” statements? The normative claims made in this work are supported by an analogical argument, the comparison of a relationship widely considered to entail extensive responsibilities of care—the parent/adopted child relationship—with the human/companion canine relationship. Empirical data is used to demonstrate the presence of characteristics in the owner/companion canine relationship that are thought to generate responsibilities in the parent/adopted child relationship, and to support claims for the necessity of particular conditions for a flourishing canine life. There is no “jump” from empirical to normative

claims.

I reject the claim that without absolute foundational moral truths, either from god or universal reason, right and wrong become merely a matter of opinion. One need not choose between absolutism and relativism. While the perspective I have adopted contends that the search for absolute, universally binding moral laws is a fool's errand, it does entertain provisional moral principles, and in its search for the solutions to moral problems, it is subject to the constraints of the environment and of reason. "To ensure that you actually make the situation better through your inquiry," Johnson reminds us, "you need to know about how things work in the natural and cultural worlds you inhabit" (2014, 195). Solutions to moral problems concerning the care and treatment of companion canines fail or succeed according to the degree to which they foster the wellbeing of mixed-species communities. The meaning of "wellbeing," of course, is open to debate (section 4.3). In addition, naturalistic moral claims need to be supported by logical arguments. "What distinguishes ethical attitudes from other preferences is that ethical judgments call for giving reasons" (Tomlinson 2012, 3). The heart of this dissertation consists of arguments for human responsibilities to companion canines, a detailed analysis of what those responsibilities entail, and the professional ethical standards and laws needed to ensure that responsibilities are met.

1.3 The Outline of the Dissertation

David Hume laments the tendency of philosophers to "engage in disputes of words, while they imagine, that they are handling controversies of the deepest importance and concern" (1983, 98). In his *Enquiry Concerning the Principles of Morals* Hume sets out to discover the universal principles on which moral praise and blame are based. He does not

attempt to “mark the precise boundaries of virtues and talents” or enter into a debate over the “distinction between intellectual and moral endowments” (1983, 99). Hume claims that such “disputes of words” written by philosophers for philosophers are merely “speculations in the closet” (1983, 118), discourse whose connections to the experiences of daily life and to the laws and politics that govern that life are all too tenuous. Instead, he seeks to identify the “mental qualities” that are “agreeable or useful” to “ourselves or to others” (1983, 115).

In the chapters that follow I attempt to move beyond mere disputes of words to construct a moral framework that is useful to dog owners, veterinary clinicians, and the wider community by embracing Eva Feder Kittay’s insight that “the personal is philosophical is political.” Kittay, a philosopher and mother of a cognitively disabled daughter, powerfully illustrates the connections among her personal experience with her daughter, the moral status of her daughter, and the legal protections needed to ensure her daughter’s welfare (2009). I begin in chapter two with the *personal*, an account of the interactions between humans and their canine companions in modern, mixed-species communities, and document the incongruity between the personal and the *political*, the failure of public policies and laws to reflect our special relationship with companion canines. In chapters three and four I employ the *philosophical* to create a conceptual bridge between the personal relationships humans have with companion canines explored in chapter two and the political protections required to ensure that they enjoy flourishing lives discussed in chapter five. The result is a coherent moral framework for owner and veterinary care of companion canines in which considered moral judgments concerning their care, the moral principles that guide the provision of care, and the policies and laws that govern care are conceptually consistent. I present reasons to believe that the suggested framework is desirable and achievable.

Specifically, in **chapter two** I review some of the historical, sociological, and experimental work concerning the relationship between humans and companion canines. I present evidence that: (1) dogs have been invited into our homes to serve as friends and companions; (2) the coevolution of dogs and humans and the artificial selection of dogs by humans have equipped both species with the ability to communicate across the species barrier; (3) dogs have the cognitive capacity to form strong, reciprocal, emotional bonds with humans; (4) dogs have become an integral part of mixed human/canine communities; and (5) humans have selected dogs for juvenile characteristics—curiosity, playfulness, a trusting nature—that enable them to function in mixed human/canine communities but also make them vulnerable and dependent. These features provide the foundation for my argument that the human/companion canine relationship generates positive responsibilities of care.

In **chapter three** I defend the central claim upon which the logical coherence of the proposed moral framework depends: the relationship humans have with companion canines generates extensive, positive responsibilities of care. The Relationships-Generate-Responsibilities Argument (RGRA) is an argument by analogy. I begin with a relationship widely recognized as generating responsibilities—the parent/adopted child relationship—and show that the features of this relationship instrumental in generating responsibilities are also present in the owner/companion canine relationship. While differences between the parent/adopted child relationship and the human/companion canine relationship are noted, the analogy is judged to be inductively strong enough to oblige dog owners to attend to the wellbeing-promoting interests of their canine companions.

In **chapter four** I employ a modified capabilities approach to delineate the nature and extent of these obligations. The insights of Amartya Sen and Martha Nussbaum suggest a

fruitful way to investigate the wellbeing-promoting interests of companion canines. In particular, the multidimensionality of their approach and Nussbaum's focus on what animals are able "to do and be" rather than on their overall happiness or the resources available to them are particularly helpful, as is the strong connection the approach makes between the needs of animals and the responsibilities of government. While significant modifications are required to adapt their work for my purposes and to clear up some conceptual problems, the analysis produces a list of wellbeing-promoting companion canine interests that functions analogously to the list of central capabilities in Nussbaum's *Frontiers of Justice* (2006).

Several objections to my analysis and list are considered.

In **chapter five** I argue that the ethical standards of the American Veterinary Medical Association (AVMA) should be modified to support clinical practices that respect the obligations of humans to companion canines delineated in chapter four and strongly condemn those that do not. These strengthened standards should have the backing of legislation that explicitly recognizes the morally salient differences between companion canines and other forms of personal property. An argument is made that a new category of property—custodial property—should be created to highlight these differences and encourage legislators, veterinarians, and dog owners to write, implement, and follow laws that appropriately regulate the care and medical treatment of companion canines. Alternative political/legal approaches to elevating the moral status of animals are considered and rejected.

Finally, in **chapter six** I consider several contentious moral problems concerning the care of companion canines, and demonstrate that the recognition of obligations generated by relationships, the list of wellbeing-promoting interests of companion canines, and the new

category of property combine to form a moral framework that can help dog owners, veterinary clinicians, and legislators in mixed-species communities make difficult decisions concerning the care and medical treatment of companion canines in a way that promotes the interests of both humans and canines and helps to minimize conflict between owners and veterinary clinicians.

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CHAPTER 2: THE “NEW WORK OF DOGS”

We are in a knot of species coshaping one another in layers
of reciprocating complexity all the way down.
Appreciation of the complexity is, of course, invited.
Donna J. Haraway (2008, 42)

Significant changes have occurred in the social status of dogs in the United States and other developed countries during the past seventy-five years. Dogs have been welcomed into our homes where they are treated as family and have become integral members of our communities. These changes have been documented and analyzed in popular publications such as *The New Work of Dogs* by Jon Katz (2003) and *Citizen Canine* by David Grimm (2014), and in academic works such as *Valuing Animals* by Susan D. Jones (2003) and “More Than a Furry Companion: The Ripple Effect of Companion Animals on Neighborhood Interactions and Sense of Community” by Lisa Wood and colleagues (2007).

In spite of their new social status, the moral status and legal status of dogs remain relatively unchanged. The central thesis of this dissertation is that the new social status of dogs, our new relationship with them, has moral implications. We need to accept the responsibilities of care that come with the creation of a class of vulnerable, dependent family and community members. Each of the steps toward a new moral framework for the care and medical treatment of companion canines taken in this dissertation—the argument that we have positive duties to care for our canine companions, the analysis of the scope of those duties, and the recommendations for changes in professional ethical standards and legal protections—is grounded in the details of our relationship with companion canines, the “reciprocating complexity all the way down.” In this chapter I review the work of historians,

sociologists, cognitive scientists, comparative psychologists, and anthropologists to document the inherent characteristics of dogs and the characteristics of the human/companion canine relationship upon which these steps are based, namely (1) dogs have been invited into our homes to serve as friends and companions; (2) the coevolution of dogs and humans and the artificial selection of dogs by humans have equipped both species with the ability to communicate across the species barrier; (3) dogs have the cognitive capacity to form strong, reciprocal, emotional bonds with humans; (4) dogs have become an integral part of mixed human/canine communities; and (5) humans have selected dogs for juvenile characteristics—curiosity, playfulness, a trusting nature—that enable dogs to function in mixed human/canine communities but also make them vulnerable and dependent. “Appreciation of the complexity” of the human/companion canine relationship is not only “invited” but necessary to evaluate the arguments to come.

2.1 The Changing Relationship Between Humans and Dogs

Archaeological evidence indicates that dogs were first domesticated toward the end of the last Ice Age between ten and twenty thousand years ago (Clutton-Brock 1995, 8), while recent genetic work indicates an earlier origin, perhaps as long ago as 50,000 to 100,000 BP (Miklósi 2007, 114). What is important for our purposes, however, is not disputed: the cooperative bond that formed between humans and dogs proved to be mutually beneficial for both species. At first, dogs may have helped hunting parties locate game and alert humans to the presence of dangerous predators and enemies. Later, with the development of agriculture and permanent settlements, dogs became invaluable as guards, herders, and draft animals (Serpell 1995, Miklósi 2007, Grimm 2014).

The origin of the human/canine relationship, while controversial, likely involved

initiatives from both species. Early human settlements led to environmental changes that provided new, easy to exploit food sources for scavenging wild canines. Wolves and humans found themselves in the sort of symbiotic relationship that biologists call “commensalism,” meaning, “eating at the same table” (Coppinger and Coppinger 2016, 133). Thus began a long co-evolution, an interaction between humans and canines that led to adaptive changes in both species (Paxton 2000). Anthropologist Pat Shipman’s characterization of domestication as a “continually negotiated agreement between two species” rather than “the enslavement of one by the other” is perhaps most aptly applied to the human/canine relationship (2015, 5). Some researchers go so far as to claim that the transition from hunters and gatherers to farmers and shepherds would have been impossible without the cooperation of dogs (Larsen et al. 2012).

2.1.1 From Barn and Basement to the Master’s Bedroom

Until the end of the nineteenth century, veterinary practice focused on treating commercially valuable animals, primarily horses used for transportation. As motorized vehicles began to replace horse-drawn plows, wagons, streetcars, stagecoaches, and carriages early in the twentieth century, veterinarians shifted their attention to farm animals. The value owners placed on these animals was, once again, founded on economic interests. Few owners saw the point in spending more on an animal than its replacement value and, therefore, there was little demand for the medical treatment of cats and dogs. While the development of vaccines and flea powders made dogs more acceptable as companions, by the middle of the twentieth century dogs were still on the periphery of family life. The money spent on their veterinary care was usually limited to routine vaccinations (Jones 2003). Most dogs never saw a leash; they slept in the garage or basement or in a backyard doghouse; and they were

fed table scraps, not commercial dog foods specially formulated for their stage in life. Dog trainers, groomers, canine daycare centers, and pet supply megastores were not to be found in midcentury communities. A reference to a dog park or playdate or birthday celebration for one's Labrador retriever would have led to puzzled looks (Katz 2003).

A morally significant shift in the role dogs play in mixed human/canine communities occurred during the second half of the twentieth century when dogs moved from the periphery of family life to its center, from the barn and basement to the master's bedroom. It was then that dogs became primarily friends, companions, and family members. Popular canine heroes in magazine stories, books, and films encouraged the American public to view the dog as "man's best friend," a companion to children and adults who exemplified values we hold dear: loyalty, courage, and intelligence. Baby boomers grew up watching stories on television that focused on the emotional bond between Timmy and Lassie, and the cooperative exploits of Rin-Tin-Tin, Rusty, and the soldiers at Fort Apache. Importantly, this new narrative, this new view of the relationship between humans and dogs, led to a change in the basis by which dogs were valued—sentiment rather than utility became the new foundation for the value of dogs (Jones 2003, 118-9). Many family dogs became "priceless pets" attaining "a humanlike position in the family" (Jones 2003, 137).

This revolution in the valuation of animals presented a challenge to the veterinary profession. Founded to protect the economic interests of clients by caring for their commercially valuable animals, the veterinary profession had a strong inclination to favor the interests of clients over patients, and a strong distaste for sentimentality. While the young, increasingly female, students who began to enter the profession in "appreciable numbers" in the early 1970s (Jones 2003, 140) were largely supportive of the trend toward

welcoming dogs as members of mixed-species families and communities, and tended to view their job as similar to that of a pediatrician, lingering attitudes and, most critically, clinical practices, public policies, and laws often reflect the sensibilities of an earlier era. In section 2.2.2 “Moral Stress,” I discuss the implications of this incongruity.

The elevated social status of dogs led to revolutionary changes in the pet products industry, the profession of veterinary medicine, the role dogs play in mixed communities, and our feelings toward our canine companions. By the end of the twentieth century, a four-billion dollar per year pet food industry had developed; more money was spent in the United States on pet food than baby food (Slovenko 1983, 277). Dog walkers, groomers, sitters, even dog massage therapists and canine daycare centers opened for business. Many dog owners began to expect the same quality of medical care for their companion canines as they did for the human members of their families. Animal hospitals began to look more and more like human hospitals, complete with CAT scan machines and specialists in oncology, internal medicine, ophthalmology, and surgery, servicing clients willing to pay for treatments far in excess of the market values of their animals. Communities built dog parks, hotels changed their regulations to welcome canine guests, and pet cemeteries expanded. Even the names dogs were given changed to reflect their new social status. Gone were “Spot,” “Fido,” “Rover,” and “Champ.” In 1983 Ralph Slovenko noted, “as pets occupy an ever-closer relationship with their masters, people and pets no longer bear distinctly different names as they once did. The new and growing term for a pet is ‘companion,’ and the pet is given a people name” (280). “Max,” “Charlie,” “Sophie,” and “Lucy” are common twenty-first century canine appellations. Research indicates that the feelings of many owners for their canine family members are becoming remarkably similar to those for human family

members. The American Animal Hospital Association's 1999-2000 survey found 55% of pet owners considered themselves to be their pet's "mom or dad," and over half had taken off work to tend to a sick pet. John Archer reports the findings of several studies that indicate that the level of grief experienced by those who have lost a pet dog "were comparable with those suffered after the loss of a human loved one" (1996, 241). Dogs are now considered by many owners to be full-fledged family members.

Bernard Rollin argues that companion canines satisfy an important human need for "love, companionship, and emotional support," and offers a long list of the service roles they fill, from child's playmate, to exercise partner, to primary companion for the elderly (2011, 655). The sociological and psychological data sketched above is consistent with this view. But the fact that dogs are *considered* by many to be family members, and that they are *relied* upon to provide emotional support, does not mean that they can actually function as family members or that reliance on canines for emotional support is effective or healthy. Before we can investigate the moral implications of our relationship with companion canines, we must explore the new role that dogs are playing in our families and communities—what Jon Katz calls the "new work of dogs,"—a little more closely.

2.1.2 Canines as Friends and Family Members

While the history of the initial domestication of wolves is poorly understood, the roles that dogs played in early agricultural communities are well known. There is little confusion about the relationships between shepherds and their sheep dogs, hunters and their hounds, the wealthy and their guard dogs, and farmers and the terriers charged with keeping their barns free of vermin. Surely, some shepherds, hunters, landowners, and farmers grew emotionally attached to their dogs, but primarily, the relationships were utilitarian. What,

however, are we to make of the relationship between twenty-first century urban apartment dwellers and their companion canines? Today, it is common for dog owners to refer to their dogs as their “friends” or as “members of the family.” Are such descriptors justified? In what sense have companion canines become our friends and family members? And, what are the moral implications of this change in status?

In 2002 Joan Silk summarized the research on friendship among nonhuman primates. Silk identified a long list of characteristics of the alliances between primates that lead primatologists to use the term “friendship”: primates provide social support for their partners that enhances their emotional and physical wellbeing, partners participate in cooperative activities, partners share resources, and partners exchange services without the need for immediate reciprocation. While the study of the “friendship” between humans and companion canines is just beginning, Adam Miklósi (2007, 165) notes that the characteristics of primate alliances that lead primatologists to use the term “friendship” also apply to those between humans and dogs. Because the nature of the human/companion canine bond is central to my argument in chapter three that relationships generate responsibilities, we need to explore both the concept of friendship and the characteristics of the human/companion canine relationship that Miklósi thinks qualify these relationships as friendships.

Aristotle’s three categories of friendship, as described in *Nicomachean Ethics*, may be applied in a limited way to the nature of human/companion canine friendships. The first two of Aristotle’s categories of friendship, those pursued for “utility” and “pleasure,” are “incomplete” and “easily dissolved” since a relationship founded on the practical advantages or amusements it provides loses its value when it no longer delivers these benefits (1156a10-15). The third type, “complete friendship,” is the “friendship of good people” (1156b5).

Those involved in a complete friendship wish the best for their friend for their friend's sake, not because of continued practical benefits or because they continue to find them a source of pleasure: "the excellent person labours for his friend" and the friendship endures even if it "leads to costly sacrifice" (1169a15). Today we describe those who enjoy "complete friendships" as "loyal" friends, friends "through thick and thin," and contrast them with "fair-weather friends," those in Aristotle's first two categories. Complete friendships are sought, Aristotle tells us, because we have a need to care as well as a need to be cared for, we need lasting relationships we can count on, for "solitude makes happiness impossible" (1169b15). Friendships of this sort encourage virtue and help us to realize human capacities (1170a10).

In chapter three, I argue that because dogs have been bred to form reciprocal, caring relationships with humans and have been welcomed into our homes, they have come to be valued for more than practical advantage and amusement, and it is unacceptable to discard them when they become inconvenient. Companion canine owners experience pleasure when greeted by their dog after a hard day at work, and may benefit from their dog's instinct to protect her home territory, but many owners also want to be needed, to care for a being who depends upon them. They want to nurture their dogs and their own characters, to develop their capacity to care, to grow as "good people." The human/companion canine relationship is, ideally, analogous to that of "complete friends."

One may object, even before the argument gets off the ground, that dogs do not have the capacity to be "complete friends." After all, Aristotle recognizes that "these kinds of friendships [complete friendships] are likely to be rare, since such people [good people] are few" (1156b250). It is questionable whether dogs, lacking the capability to be motivated by

moral principles, can participate in “complete friendships.” While this is an important objection, it would be premature to settle on this conclusion without looking into the matter more thoroughly. In this chapter I will review some of the research about the capabilities of dogs and how those capabilities enable them to function as companions, friends, family members, and community members. In chapter three we will decide whether Aristotle’s claim that a “man” (or woman!) must “avoid causing pain to his friends,” “share his good fortune,” and “show the proper consideration” in good times and bad to his friends (1171a20-1171b20) ought to apply to canine as well as human friends.

In addition to forming close emotional relationships with individual humans, dogs are able to function as members of mixed human/canine families. By the end of the first decade of the twenty-first century more American households included dogs and cats than human children (Grimm 2014, 12). A recent survey showed that the vast majority of dog owners (85%) consider their animals to be members of the family (Pew Research Center, 2006). Companion canines are included in family celebrations, from weddings to birthday parties. They accompany human family members on their morning jogs, picnics, trips to the store, and on family vacations. Increasingly, hotels, parks, businesses, and even eating establishments recognize that their patrons live in mixed species families and welcome canine as well as human patrons.

While many non-dog owners greet claims of family status for dogs with skepticism, the behavior of dog owners is consistent with their survey responses. The rescue efforts in the aftermath of Hurricane Katrina in 2005 clearly illustrate that dog owners consider their dogs to be family members. Thousands of dog owners failed to follow New Orleans mayor Ray Nagin’s order to evacuate because they did not have cars and their dogs were not

allowed on evacuation buses. One of these owners, Fay Bourg, interviewed on television, explained: “I’ve been through a lot in my life, and the dog’s been there for me, and he’s part of the family” (Grimm 2014, 84).

The willingness of people to risk their lives for their animals was somewhat of a surprise to officials. The role that companion canines played in the lives of individuals, and in the families and communities ravaged by Katrina, was recognized too late. Because evacuation procedures failed to make provisions for canine family members, many lives were lost, both human and canine. Inspired by stories reported in newspapers and the TV news, poignant stories of police officers forcefully ripping little dogs from children’s arms as they made their way to FEMA busses, California democrat Tom Lantos sponsored a bill, the Pet Evacuation and Transportation Standards (PETS) Act. It required all disaster plans to make provisions for pets as well as humans; it became law on October 6, 2006.

We have learned from Katrina that when our society’s regulatory framework—the public policies and laws that govern our society—do not reflect the moral judgments of its citizens, tragedy may result. PETS is an important piece of legislation that has saved both animal and human lives over the past decade. It is a model piece of legislation for this project because it is a step toward bringing the laws governing companion animals into equilibrium with the moral intuitions of pet owners and the moral principles defended in chapter three. In chapter five I build on this example, and suggest several steps we could take to bring veterinary clinical procedures, public policies, and legal regulations in line with our evolving considered moral judgments concerning the care and medical treatment of companion canines.

Across the country, just as in New Orleans, not only do dog owners *say* that they

consider their dogs to be members of the family, they *treat* them like family members, a trend recognized by the business community. Pet insurance, once considered an extravagance, is now the third most requested insurance and is offered by one in three Fortune 500 companies (Grimm 2014, 15). Even the funeral industry has recognized the new status of companion canines in our society. The distinction between pet cemeteries and human cemeteries is fading. Humans can now be buried in many pet cemeteries—in the “family plot.” Studies documenting the growing status of dogs in mixed-species families appear in both social and natural science journals (Archer 1977, Albert and Bulcroft 1988).

2.1.3 Human/Companion Canine Communication

Experimental work in canine cognitive laboratories has demonstrated that dogs are uniquely suited to establish friendships with humans and to adapt to mixed-species family life. During their co-evolution with humans, and as a result of artificial selection, “dogs have evolved specialized skills for reading human social and communicative behavior” that far exceeds that of even our closest relative the chimpanzee (Hare and Tomasello 2005, 439). Their ability to understand human emotions, intentions, and language, and their willingness to take direction from humans has been extensively documented (Soproni et al. 2001, Cooper et al. 2003, Miklósi et al. 2000, Gácsi et al. 2004, Miklósi et al. 2004, Hare and Tomasello 2005, Pilley and Reid 2009, and many others). I will provide a few simple examples of this work.

Experiments have demonstrated that dogs look to humans for direction. If a toy is hidden under one of two cups, dogs will go directly to the toy-containing cup when a human partner points to it. Even a glance on the part of a human experimenter is enough to direct a canine subject. Wolves and chimpanzees, even those raised with humans, show far less

ability to profit from human assistance (Miklósi et al. 2000). In another set of experiments, dogs and cats were taught to retrieve a bowl containing food from under a stool. When the setup was modified so that the animals were unable to pull the bowl out from under the stool, the dogs looked to humans for assistance while the cats kept trying on their own (Miklósi et al. 2005). Evan MacLean, a graduate student at Duke University's Canine Cognitive Lab, notes that dogs are tuned into the "human radio frequency." They have become dependent on us; "we're the only frequency they listen to" (Grimm 2014, 68).

Studies show that dogs can pass many of the tests used to track the development of a "theory of mind" in young human children. When an experimenter turns his back on a dog with whom he is playing "fetch," the dog will run around and drop the ball in front of the experimenter, demonstrating that she has some idea of where the experimenter's attention is focused. In the Miklósi experiments described above, and in many, more elaborate variations, the behavior of canine subjects is consistent with an understanding of the experimenter's intention. Some argue that dogs can not only read our faces, but also our minds (Gácsi et al. 2004). This is important for our purposes because a theory of mind is what enables children to make sense of the actions of others and to become a part of society. When a parent points to an object and says its name, the child understands the connection. Dogs can learn in this manner as well (Pilley and Reid 2009, Kirchhofer et al. 2012). "The reason we're so excited about dogs following pointing is that it's really important for our species," MacLean notes (Grimm 2014, 62). It is one of the abilities that enable dogs to become friends with humans and to function as family members in mixed human/canine families.

Dogs are also emotionally equipped for interactions with humans. Biologist Marc

Bekoff argues that humans and dogs have “similar chemical and neurobiological systems” and, therefore, dogs exhibit the same primary emotions that we do: “fear, anger, surprise, sadness, disgust, and joy” (2007, 10). “To deny this, says Bekoff, is just bad evolutionary biology” (Grimm 2014, 77).

Gregory Berns and colleagues at Emory University trained dogs to sit still in an fMRI machine. They were able to demonstrate that dogs have mirror neurons that respond to human action. Mirror neurons fire in the brains of some animals (including human animals) when they either perform an action or observe another perform the action. Many neurophysiologists argue that mirror neurons, by linking action production with action observation, enable animals to understand the actions of others and, thus, provide a foundation for empathy (Gallese 2001, Decety and Jackson 2004). The Emory researchers were able to show that this mechanism operated when the performer was a human and the observer a dog, and vice versa (Berns, Brooks, and Spivak 2012).

While there is virtually universal agreement concerning the presence of primary emotions in dogs, there is some controversy about secondary emotions such as empathy, jealousy, and guilt. While many dog owners attribute secondary emotions to their canine companions, and Bekoff (2007) has collected evidence to support these claims, some researchers are skeptical. Alexandra Horowitz (2009a) asked owners to place a biscuit within reach of their dogs and firmly forbid them to eat it. The owners were then instructed to leave the room. Some of the dogs ate the biscuit and some did not. If the returning owners scolded their dogs, the dogs behaved in ways that the owners interpreted as an expression of guilt, *whether they had eaten the biscuit or not*. Owners, Horowitz contends, have a need to believe that their companions have the same feelings they do, but, as this experiment demonstrates,

in some cases they do not.

Those who support Horowitz's position argue that it is simply bad science to attribute complex emotions such as empathy to dogs and other nonhuman animals when simpler cognitive mechanisms may be sufficient to explain the observed behaviors. Frans de Waal disagrees. He describes such reasoning as "pre-Darwinian." If two related species act similarly, he argues, then the most parsimonious hypothesis is that the underlying psychology is also similar (1999). Jaak Panksepp agrees: "deep functional homologies in mammalian brains ... arise from a massively shared genetic heritage." He goes on to argue that higher mammals have "emotional feelings akin to those of humans," and notes that "if one accepts an evolutionary point of view, anthropomorphism is not necessarily as big a sin as it has been traditionally made out to be" (2005, 60).

We need not settle this dispute here. We can acknowledge that dog owners are often guilty of unjustified anthropomorphism. As Horowitz clearly demonstrates in her book, *Inside of a Dog* (2009b), dogs experience the world very differently than humans do, and therefore have very different psychologies. The arguments advanced in this dissertation, however, do not rely on a psychological isomorphism between humans and canines, but only on an emotional connection sufficient to support the analogy between the parent/adopted child relationship and the owner/companion canine relationship explored in section 3.2.4. Research clearly indicates that this condition is met. Studies demonstrate that both dogs and humans experience life in deeply emotional ways and that they are attuned to the other's experiences. Research in this area is extensive; I will briefly describe four illustrative examples.

In a meticulously conducted series of experiments, Kun Guo and colleagues (2009)

found that dogs share humans' "left gaze bias." Humans use facial expressions to signal their emotions. Their countenance, however, is not symmetric. Evidence indicates that the right side of the face more accurately reflects emotional states than the left. Because of this, humans have evolved a left gaze bias; when looking at a human face, human subjects gaze first to the left, thus focusing on the right side of the face. Amazingly, dogs behave in the same way. They exhibit this bias when observing human faces but not canine faces or inanimate objects. Canine researchers argue that evolution favored dogs who could "read" human emotions and that as a result, dogs with a left gaze bias had a selective advantage.

Research also indicates that humans are surprisingly adept at understanding emotional signals from dogs. Péter Pongrácz and colleagues (2006) showed that the barks of companion canines carry emotional information that humans can accurately interpret. The vocalizations of dogs were recorded in a number of diverse settings, such as dogs coaxing their owners to play, dogs guarding their territory, and frustrated dogs chained to trees. Then, human subjects listened to the recordings and speculated about the dogs' motivations for their vocalizations. The researchers found that humans could reliably identify six different kinds of barks and could correctly associate them with situations and emotions.

The emotional support that dogs receive from their owners even as adults was demonstrated by experimental work led by David Tuber (1996). The glucocorticoid responses of dogs were monitored during exposure to novel environments. As expected, levels of this stress hormone went up when dogs were placed in unfamiliar situations. When the dogs' owners were present, however, the dogs did not show a stress response. Companion canines are comforted by the presence of their owners in much the same way that children are comforted by the presence of their parents.

And in perhaps the most dramatic demonstration of an emotional connection between humans and canines, Linda Handlin and colleagues (2012) showed that oxytocin levels peaked after petting sessions in both humans and dogs. The oxytocin profiles in the blood of the human and canine subjects were remarkably similar to those of new mothers and their babies after breastfeeding. Oxytocin is a hormone produced in the hypothalamus that influences maternal and prosocial behaviors including trust, generosity, empathy, and intergroup bonding (Shen 2015).

The experimental findings reviewed above are sufficient, I contend, to conclude that humans and companion canines are capable of communicating in significant ways and of establishing strong, reciprocal, emotional bonds. This conclusion adds credibility to the claims made by many dog owners that their animals are “friends and family members.” In section 2.1.5 I provide support for the claim that these capabilities and the related vulnerability and dependency of companion canines have a genetic basis and are the result, in part, of artificial selection. These findings play a prominent role in the forthcoming argument that the human/companion canine relationship generates responsibilities of care.

2.1.4 Canines as Community Members

In 1991 Chase Memorial Nursing Home in upstate New York hired a new medical director, a young, Harvard trained physician named Bill Thomas. Dr. Thomas set out to combat what he referred to as the “three plagues of nursing home existence: boredom, loneliness, and helplessness” (Gawande 2014, 116). His radical plan involved bringing life—plants, animals, children—into the nursing home. It began with a “Big Bang,” the purchase of two dogs, four cats, one hundred parakeets, and hundreds of plants. Overnight, Chase Memorial became a far more “lively” place.

The effect on the residents was dramatic. The nursing home housed eighty patients, half suffering from serious physical disabilities, and most from Alzheimer's or other cognitive impairment. In spite of their limitations the residents quickly connected with the animals. Thomas reported that "people who we had believed weren't able to speak, started speaking. People who had been completely withdrawn and non-ambulatory started coming to the nurses' station and saying, 'I'll take the dog for a walk'" (Gawande 2014, 122). The number of prescriptions written for patients dropped to fifty percent of its pre-Big Bang level and the death rate fell fifteen percent. The residents were responding to the affection that the animals provided and also the opportunity to care for other living beings. The opportunity to participate in caring relationships proved to be extremely beneficial for the mental and physical health of the residents and significantly changed the atmosphere in the nursing home for the better. Residents became more communicative, more interested in their surroundings, and more interactive with the staff and with other residents. Conversations about their interactions with the animals became commonplace. There was a community effect as well as a personal effect on individual patients.

Nel Noddings (1984) reminds us that every member of our species experiences periods of dependence and vulnerability during his or her time on earth, most commonly during infancy, periods of illness, and old age. Our memories of the care provided by parents, spouses, medical providers, pastors, counselors, and friends cause us to see care as a good. The value we assign to care provides the motivation and the need to both receive and give care, to help create a caring environment. The success of the Chase Memorial Big Bang was in part a result of providing residents with an opportunity to care, to provide for the needs of other sentient beings, and to help create a caring community.

The effect of animals on community dynamics is not limited to nursing homes. Journalistic accounts such as Jon Katz's *The New Work of Dogs*, and scientific studies alike, support the claim that companion canines have a positive influence on the interaction of humans in mixed-species communities. The in-depth sociological work of Lisa Wood, et al. (2007) is particularly informative.

Wood and her colleagues studied the association between companion animals and community psychosocial factors in three Australian communities surrounding Perth. They analyzed both qualitative data collected in discussions with twelve focus groups, and quantitative data collected in a random survey of 339 adult residents. Not only were they able to document the positive effects that pets have on the physical, mental, and social wellbeing of their owners, but also community-level effects the animals have on “social interactions and sense of community within neighborhoods” (2007, 44). Wood et al. found companion animals, especially dogs, to be well integrated into the social life of the community. They facilitated social contact with other human and animal residents. The animals fostered a sense of community and “trust and reciprocity among citizens” (2007, 45).

The mechanism by which companion canines affect community dynamics begins with a walk around the block—dogs coax their owners to get “out and about.” Study participants reported meeting “lots of people across the road when ... out walking the dog” (2007, 47). Not only does walking the dog provide owners with an opportunity to meet the neighbors, a dog can be an effective “social lubricant.” June McNicholas and Glyn Collis (2000) found that conversations are much more likely to occur between people passing on the street if one (or both) is accompanied by a dog. Wood and colleagues emphasize that while the presence of a dog serves “as an ice-breaker and a neutral topic of conversation,”

the effect goes well beyond momentary “dog talk.” Kelly Rossbach and John Wilson (1992) have shown that people walking dogs are viewed as being more trustworthy and friendly than those walking alone. Dog walkers often become friends and begin to exchange favors, initially pet related, such as watching each other’s dogs during vacation season. Wood and colleagues found that favor exchanges often moved beyond the care of animals: there was a “ripple effect” in which dogs helped to forge lasting social connections between neighbors (2007, 49). Social contact and reciprocal supportive relationships were not confined to dog owners. Those without dogs also reported benefits from the encounters with neighbors and their companion canines. A retiree reported, “I like to see them as they come past walking the dogs ... there is always somebody out walking the dog and if you’re out they always speak to you” (2007, 48).

Involvement with neighbors encourages broader civic engagement. Those “out and about,” meeting and talking with neighbors, are often motivated to take an active interest in the maintenance of community parks, streetlights, sidewalks, and roads. Participants in the Wood et al. focus groups reported taking the initiative to improve the neighborhood: “I used to go at 8 o’clock at night to the park with the dog and my husband and we’d pick up syringes that have been used. And if they hadn’t been picked up they probably have been there the next morning” (2007, 49). Anecdotes like this were corroborated by the quantitative data that found that “pet owners were 57% more likely to be civically engaged than were non-pet owners” (2007, 50).

Finally, the presence of dogs in a community and the activities and interactions their presence encourages, leads to positive judgments concerning community safety. Dog owners felt safer walking with their dogs than when alone, and non-dog owners “regarded the visible

presence of people ... walking dogs, as a positive marker of community safety” (Wood et al., 2007, 50). A “young single” in one of the groups, for example, found the sight of an “old man with a big dog that keeps a big note pad and runs around checking on everyone” to be very comforting.

Experimental research supports the observations of Wood and colleagues. Studies have shown that the presence of dogs alters peoples’ perception of social situations for the better. For example, when test subjects were presented with pictures of people with and without dogs, those pictured with dogs were judged to be less dangerous and threatening than those without (Rossbach and Wilson 1992).

Not only do canines influence the social dynamics of the communities in which they live, their presence also has a positive effect on the physical health of human community members. Studies show that dogs can lower blood pressure, alleviate loneliness, improve the mental state of the depressed, and reduce the anxiety of children in stressful situations (Friedmann and Son 2009). The statistical link between dog ownership and cardiovascular health is particularly noteworthy. In a well-designed longitudinal study, controlled for social support and disease severity, Erika Friedmann and Sue A. Thomas (1995) found that the one-year survival rate for dog owners who suffered an acute myocardial infarction was 7.6 times greater than those without dogs. Similar work has found a positive influence of companion canines on those suffering from loneliness and anxiety, with the greatest benefit to the “highly stressed and socially isolated” (Friedmann and Son 2009).

It is important to note that these effects are not limited to dog-owning families; many people without dogs benefit from informal encounters, such as the retiree who “likes to see them as they come walking past,” and formally through “pet therapy” programs. Therapy

dogs are usually personal companion dogs that “moonlight” a few times a week in hospitals, nursing homes, libraries, and schools. They provide nonjudgmental “reading partners” for children struggling with reading, and comfort to the ill and elderly. They bring many of the same benefits that dog owners receive on a regular basis.

Dogs, of course, have negative influences on the communities in which they live as well. The statistics on dog bites are alarming (Beck and Katcher 1983, Center for Disease Control 2015), and mixed-species communities must deal with dog waste, zoonoses, nuisance barking, and the mischief of loose dogs. Communities need to write and enforce legislation regulating negative canine behaviors. In this regard, dogs are no different from human community members who also produce waste of numerous sorts, spread disease, hold noisy parties, and commit violent crimes.

In the chapters that follow, I assume that dogs have a net positive influence on community life and that they will be a part of our communities for the foreseeable future. In chapter three I argue that because companion canines foster social interaction, civic engagement, and a sense of safety in mixed-species communities, and because they provide emotional support to children, the elderly, the lonely, and the sick and disabled, they are rightly viewed as valuable members of mixed-species communities. The role that these animals play in the social life of their communities generates a collective responsibility of the community to consider their interests.

2.1.5 Dependent, Vulnerable Community Members

Genetic analysis has demonstrated that all modern dogs are descended from the gray wolf, *Canis lupus*. The genetic relationship is so close that the species designation of the domestic dog has been changed from *Canis familiaris* to *Canis lupus familiaris* (Grimm

2014, 23). The miniature poodle who greets his owner at the door and the wild gray wolf who hunts moose with his pack in the Upper Peninsula of Michigan are both members of the same species.

Recent work in cognitive ethology, however, has shown that even though dogs and wolves share 99.9% of their DNA, the behavior of dogs and wolves differs greatly; tiny genetic differences can result in significant behavioral differences. Research demonstrates that one cannot change a wolf into a dog by raising it like a dog. Wolves, bottle fed from a few days after birth and raised in constant contact with nurturing human surrogate mothers, become aggressive and uncontrollable by the time they are eight weeks old while dogs exhibit an affinity for humans even without extensive socialization, a strong indication that many of the behavioral differences between wolves and dogs are largely genetic (Topál, et al. 2005). Remarkable experiments in Siberia beginning in 1959 demonstrated how small genetic changes can turn ferocious animals into loving companions.

Russian geneticist Dmitry Belyayev began his experiments with wild silver foxes that were fearful of and aggressive toward humans. He selected for one trait, “friendliness,” allowing only those foxes who exhibited the least fear and aggression toward humans to produce the next generation. In a relatively short period of time (thirty-five generations) he was able to create friendly, docile animals that sought human contact and demonstrated many dog-like behaviors: tail wagging, licking of keepers’ hands and faces, and whimpering to attract attention (Trut 1999).

The genetic mechanism that led to the behavioral changes is called neoteny—arresting the development of an organism in a juvenile stage. The young of most species are more inquisitive, less aggressive, more trusting, more playful, and friendlier than adults. By

selecting for friendliness, Belyayev was selecting genes that arrested the development of his foxes, creating perpetual “puppies.”

Neoteny has also likely played a role in the evolutionary transition of wolf to dog. According to many accounts of the first domestication of wolves, the least fearful, least aggressive, friendliest wolves were the ones best able to profit from the food available in human communities. A willingness to approach closer to human settlements and feed in garbage dumps provided the friendliest wolves with an unexploited food source and thus a selective advantage (Coppinger and Coppinger 2001, 2016). As in the Belyayev experiments, juvenile traits became more common. When humans began to control the breeding of dogs, selecting for traits they found useful, the process was accelerated. By retaining juvenile traits—inquisitiveness, friendliness, playfulness, and a trusting nature—dogs became perpetual puppies, interested in exploring new territories, playing games, and meeting new dogs and people. Such dogs more easily adapted to human environments and were better able to satisfy the needs of humans for companionship, love, and affection.

Juvenile traits allow young animals to explore, to quickly learn about their environment, and to accept help from their parents. They also make the young vulnerable to a variety of harms. Curious, trusting, friendly pups are vulnerable to predators, poisons, fast moving rivers, and other hazards. Only the protective care of parents prevents puppies—whether wolf or dog—from meeting an untimely end. Perpetual puppies, however, require perpetual parents.

Humans have created a subspecies of *Canis lupus* that can only survive in mixed human/canine communities. We have created breeds of dogs (e.g. the English bulldog) that often cannot give birth naturally because we have selected for large heads and small hips;

breeds (e.g. the Pekingese) without the size, strength, speed, or jaw and dental anatomy to catch their own prey; and breeds (e.g. Italian greyhound) with coats too thin to protect them from even moderately low temperatures. These animals, deliberately and systematically bred by humans, live in our communities and homes, and form close emotional relationships with their owners. They cannot survive without our care. In chapter three I argue that as the architects of the neotenization process that transformed wolves into vulnerable, dependent companions, we have an obligation to fill the role of caregiver.

2.2 A Troubling Incongruity

Both informal opinion pieces in veterinary journals (Paul 2013) and large-scale statistical surveys demonstrate that the primary motivating factor for students studying veterinary medicine is their “love of animals.” The most popular response to the motivation question on a 2010 survey of veterinary students was “Want to work with animals” (98.9%). In written comments on the same survey students stressed their emotional attachment to animals and their desire to heal them: “Always loved animals and wanted to take care of them” (Tomlin, Brodbelt, and May 2010, 745). As we have seen, many dogs have become canine companions, family members, “priceless pets” who are thought to deserve human-quality medical treatment. When veterinarians and dog owners share a sentiment-based valuation of dogs, and want to provide them with quality care, there is seldom conflict. A minority of owners, however, place little value on their pets, and as a result, conflicts between owners and veterinary healthcare teams can occur.

While many owners view their dogs as friends and companions, some consider them to be mere possessions, useful or not, depending on their needs at the moment. Utility rather than sentiment forms the basis for the value they place on their dogs. This minority view is

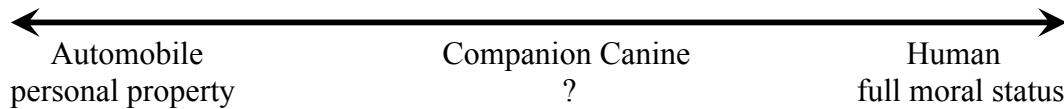
consistent with the current legal classification of dogs as personal property and with nineteenth century attitudes toward animals when veterinary medicine focused on horses and food animals, and dogs played a less important role in family and community life. It is at odds with the moral judgments of most small-animal veterinarians and dog owners today, and with the moral argument presented in the next chapter. As a result, it leads to high levels of stress in veterinary healthcare workers. While it is perfectly legal for a veterinarian to “put down” a young, healthy dog at an owner’s request because the owner is moving to a new apartment that doesn’t allow dogs, such requests are anathema to veterinarians who entered the profession to heal animals, not kill them. The relationship we have with companion canines today is inconsistent with many of the public policies, clinical practices, and laws that regulate our treatment of them. We can reduce the suffering of companion canines and the stress experienced by veterinary clinicians by creating a new moral framework for the practice of veterinary medicine that recognizes the moral implications of the “new work of dogs.”

2.2.1 The Fundamental Question of Veterinary Ethics

According to Bernard Rollin, the fundamental question of veterinary ethics is the following: “Are animals moral objects in themselves, or are they of moral concern only as *someone’s* animals?” (2006b, 27). How one answers this question determines whether a veterinary clinician’s allegiance should be directed primarily toward her patients or her clients. It determines whether veterinarians more closely resemble pediatricians or auto mechanics. Rollin has presented this question as a disjunction, forcing the responder to choose between two possibilities. This is a false dichotomy; the biological and sociological findings presented in this chapter support the claim that companion canines fall somewhere

between objects whose value is derived from their belonging to a human and autonomous beings with full moral status.

Figure 1. The Moral Status Continuum



An automobile is of moral concern if and only if a human owner values it. The car itself has no interests; vandalizing a car can harm the owner but not the car itself. Whether or not a malfunctioning car is “worth” repairing is up to the owner and as a result, the automobile mechanic’s allegiance is to the owner. In contrast, moral concern for a human child is independent of the value the parents place on the child. Children are moral objects in themselves. Consistent with this view, a pediatrician is required by law to report suspected abuse to the police and critically ill and injured human children must be treated whether their parents want them to be or not. A pediatrician’s primary allegiance is to her patients.

The law in the United States classifies companion canines as personal property. As such, owners are free to have sick or injured dogs treated or not, according to whatever criteria they choose. The law only protects dogs from “unnecessary” suffering and cruelty. They may be “humanely” disposed of at the owner’s discretion. This strict “personal property” answer to Rollin’s question fails to recognize the inherent, morally significant characteristics of companion canines that distinguish them from insentient property. Dogs have interests of their own; automobiles do not. It is also inconsistent with the relationships that companion canines have with humans and the role they play in our communities. Humans and companion canines form reciprocal, emotionally laden relationships that, I

argue in the next chapter, generate responsibilities of care. We will see that many veterinarians suffer from stress in large part because of the incongruity between the personal property classification of companion animals and their professional goals and moral sensibilities.

A “full moral status” answer to Rollin’s question is equally problematic. Some animal ethicists, such as Gary Francione (2008), argue that some nonhuman animals are autonomous beings with extensive rights. As such, the only morally defensible relationship between humans and sentient nonhuman animals is completely non-exploitive and separatist; we should not interfere in the lives of animals at all. This position has revolutionary implications: mandatory veganism, an end to all animal agriculture, the closing of zoos, banning the use of animals in medical and scientific research, an end to the practice of keeping companion animals, and the abolishment of the veterinary profession. Theories like Francione’s fail to provide practical, politically feasible direction for animal owners and the veterinary profession; they cannot provide guidance for the care and treatment of companion canines because they contend that companion canines should not exist. They fail theoretically because they fail to recognize significant moral differences between human beings and other animals. Surely the ability of humans to use language, to set goals and make long-term plans, and to be guided by moral principles have implications for moral status. Companion canines are not insentient pieces of personal property, nor are they little furry humans; we need to place them in a moral category and construct a moral framework for their care that recognizes and accommodates their inherent characteristics and the relationship we have with them.

Sometimes the way to move forward is to take small, carefully considered steps. I

hope to take such a step toward a practical, coherent, moral framework for the practice of veterinary medicine that helps to clarify the ambiguity of the moral status of companion canines, and has the potential to reduce the tension that too often develops between client and veterinarian. By limiting the domain of my discussion to the care and treatment of companion canines, I avoid contentious issues such as factory farming, meat eating, recreational hunting, and animal experimentation. Animal rights advocates may object that I have “written off” billions of suffering animals. In defense of my approach I grant that much suffering takes place hidden behind the doors of factory farms, slaughterhouses, and scientific laboratories, but point out that there is also much suffering taking place under our noses, in our homes, backyards, and shelters, where some dogs spend their days in crates as small as those in which breeder sows are confined, or at the end of short chains tied to uninsulated dog houses in frigid weather, or have their lives ended prematurely at the hands of “animal care” workers in “humane society” shelters because their owners grew tired of them. These forms of suffering need to be considered as well, and can be addressed more effectively if the unique characteristics of companion canines and their relationship with human beings are taken into account. I do not aspire to construct a universal theory of animal rights but rather a limited, well-justified argument for the expansion of human responsibilities of care for companion canines that is acceptable to the majority of owners and veterinary clinicians.

My argument in chapter three, that positive obligations to companion canines can be justified based on the special relationship we have with them, unlike the arguments made by animal ethicists for “animal rights” founded exclusively on an inherent characteristic of animals such as sentience (Singer 2002), dignity (Nussbaum 2006), or being the “subject of a

life” (Regan 2004), does not have implications for the care and treatment of farm, laboratory, and wild animals. Therefore, it avoids the controversial issues listed above that have functioned as roadblocks to progress on canine wellbeing concerns. I will argue that certain kinds of relationships generate obligations, and that the relationship between humans and companion canines is such a relationship. One small step.

2.2.2 Moral Stress

Consider the story of Dr. Reamsnyder:

Dr. Karen Reamsnyder remembers the day well. Her client was an angry middle-aged man requesting euthanasia for his dog, a healthy looking small mixed breed.

I remember telling him, “This dog is healthy, and I don’t feel comfortable putting this animal to sleep. Have you tried to place it?”

“I don’t have time for that,” he replied. “I’ll be honest with you. If you refuse to do it now, I’m driving down the street and going to open up the door and kick the dog out on the road” (Verdon 2003).

At the time of this encounter, Dr. Reamsnyder was a young, inexperienced veterinarian. She was afraid of what would happen to the little dog if she refused her client’s request. She performed the euthanasia. Twenty-six years have passed, yet Dr. Reamsnyder thinks of the episode often and deeply regrets her decision.

Rollin argues that stress, like the stress Dr. Reamsnyder experienced, is fundamentally different from the stress of living in a refugee camp, fighting in a horrible but just war, or working overly long hours at a worthwhile occupation. Rollin calls Reamsnyder’s stress “moral stress.” It is the result, he claims, “of the radical conflict between one’s reasons for entering the field of animal work, and what one in fact ends up doing” (2011, 651). It grows from the incongruity between one’s moral convictions and what

one feels one is required to do. Because the causes of moral stress differ from the danger, overwork, and lack of necessities that commonly lead to stress, the standard treatments for stress—meditation, time management classes, exercise—are not effective. To reduce moral stress, one must address the underlying incongruity. The moral stress afflicting veterinary clinicians can be ameliorated by bringing clinical practices, public policies, and legal statutes into balance with the dominant considered moral judgments of veterinarians and the owners of companion canines, moral judgments grounded in the relationship between humans and companion canines. “You can’t devote your life to one purpose and flagrantly violate that on demand without paying a high psychological price” (Rollin as quoted by Verdon 2003).

Not only are veterinarians routinely asked to euthanize healthy dogs, they are also frequently asked to perform cosmetic surgeries, continue futile treatments, and treat behavioral problems with destructive surgeries. Many veterinarians judge all of these practices to be immoral even though they are legal in the United States and are performed in most veterinary clinics. The resulting “long-term, unalleviated stress” leads to the “deterioration of physical and mental health and wellbeing, substance abuse, divorce, and even, as I have encountered on a number of occasions, suicide” (Rollin 2011, 352).

Rollin is not the only researcher pointing a finger at moral stress. Dr. Elizabeth Strand, a psychotherapist and compassion fatigue specialist, lists “handling ethical dilemmas” as the most common cause of “poor wellness in veterinarians” (Kahler 2014). She reported findings to the AVMA Humane Endings Symposium near Chicago on November 4, 2014, indicating that veterinarians find themselves in morally stressful situations three to five times a week and that numerous studies report poor mental health among vets. A review of the literature by Belinda Platt and colleagues (2012) found a link between the depression and

suicidal ideation experienced by veterinary clinicians and their involvement in morally stressful practices, particularly convenience euthanasia. Young, female veterinarians in small animal practices were found to be most affected. In 2015 Randall J. Nett and colleagues reported on a 2014 Center for Disease Control (CDC) study of the psychological distress experienced by 10,254 currently employed veterinarians. The findings support the claims of Rollin, Strand, and Platt: 14.4% of male veterinarians and 19.1% of female veterinarians experienced suicide ideation while in the general population the corresponding numbers were 5.1% and 7.1% (131-132).

2.3 Toward a Coherent Moral Framework

A new moral framework for the practice of companion canine veterinary medicine cannot effectively provide guidance to veterinary clinicians and dog owners if they fail to embrace it; it must be a common morality; it must bring clinical practices, public policies, and legal statutes into balance with the dominant considered moral judgments of veterinarians and the owners of companion canines. Some philosophers have argued that key moral principles have been universally held in all cultures and times (Gert 1998, 2004; Beauchamp 2003); others have argued that such a claim is implausible (Baker 1998, Turner 2003). Carson Strong makes a compelling case that even if the critics are correct, “country-specific common moralities are plausible, and that a country-specific normative common morality could provide the basis for a country’s bioethics” (2008, 1). There is reason to believe that such a limited, group-specific, common morality is achievable for mixed human/canine communities in the United States. We have reviewed evidence for the increasingly common acceptance of companion canines as friends, companions, and members of mixed-species families and communities, and the related changes in the attitudes

of practicing veterinary clinicians. The new role of companion canines, combined with the arguments for human responsibilities generated by this new relationship (chapter three), and an analysis of what those responsibilities entail (chapter four), provide a sound basis for a group-specific common morality.

In order to be efficacious, a group-specific common morality need not be *universally* supported by group members. During the 1960s, changing public attitudes toward members of racial minorities, and the compelling moral arguments that they deserve equal rights, were sufficient to affect a powerful change in social policies and the legal standing of minority citizens. While bigotry was not eradicated, a new common morality was forged, the injustice of discrimination based on race became widely accepted, and legal protections for the rights of minorities were adopted. Similarly, while dog owners who consider their animals to be disposable property, and veterinary clinicians who consider their work to be more closely analogous to that of an automobile mechanic than a pediatrician are still to be found, their numbers are declining. We may have reached a point where the arguments that follow are sufficient to establish a new common morality, a new moral framework for the care of companion canines.

2.3.1 Criteria for a Satisfactory Moral Framework

A functional moral framework for the care and medical treatment of companion canines should provide guidance to owners and veterinary clinicians as they plan, implement, and evaluate care practices, and as they struggle with ethical dilemmas that frequently arise in veterinary practice. It should enable them to make treatment decisions in a coherent, principled, and justifiable manner. To accomplish these goals a moral framework must:

1. Provide a conception of the moral status of companion canines that is acceptable to

the majority of clinicians, dog owners, and the wider community.

2. Protect the wellbeing-promoting interests of vulnerable, dependent companion canines.

3. Give due consideration to the interests of patients, clients, clinicians, and the public. It must provide guidance as to how to make decisions in the face of competing interests.

4. Address problems of distributive justice. While some dogs enjoy the best medical care available, some are left untreated or euthanized even though their conditions could be easily resolved.

5. Recognize and respect the significance of the “human-companion animal bond” (Tannenbaum 1989). As we have seen, the relationship between humans and companion canines is in many ways unique.

6. Provide a vision of the ideal—the state of companion canine health and welfare that veterinarians and their clients should strive to achieve, analogous to the Five Freedoms advocated by the UK Farm Animal Welfare Committee for farm animals (FAWC undated)—but also set minimum standards that can form the basis for legislation and protection.

2.3.2 Guiding Questions

In the chapters that follow I construct and defend a moral framework designed to meet the criteria above by addressing the following three questions:

1. Do humans have obligations to companion canines, beyond those they have to all sentient animals, generated by their relationship with them? My analysis of this question in the next chapter relies heavily on the sociological, psychological, and biological data we have just reviewed. I show that critical features of the human/companion canine relationship

we have explored—reciprocal affection, vulnerability and dependence of the weaker partner, special friend/family social status, group (community) membership, and the voluntary initiation of the relationship by the dominant partner—are features that are commonly thought to generate responsibilities.

2. If obligations are generated by the human/companion canine relationship, specifically what obligations does the relationship entail? This question will be considered in chapter four using a modified capabilities approach. An attempt will be made to identify what companion canines need to “do and be” in order to flourish.

3. What professional guidelines, social policies, and legal protections are required to ensure that human obligations to companion canines are met? Chapter five makes a case for modifications in clinical practices, public policies, and laws, to make them consistent with contemporary human/companion canine relationships, provide protection for companion canines, and reduce the moral stress suffered by many veterinary clinicians.

This project will conclude in chapter six with an analysis, based on the new moral framework, of several of the most pressing ethical issues concerning the care, breeding, and medical treatment of companion canines. Problems discussed include cosmetic surgery, destructive surgery to solve behavioral problems, withholding effective treatments for economic reasons, convenience euthanasia, failure to meet social and psychological needs, breeding for extreme morphological characteristics, and congenital pathologies resulting from inbreeding.

2.4 Conclusion

The role that companion canines play in our society has changed radically during the past seventy-five years. Tannenbaum observes that for increasing numbers of people, “pets

are every bit as important in the most central aspects of their lives as children.” He goes on to claim: “it is difficult to dispute the general principle that animals that are members of a human-companion animal bond come to have *some* moral claims in virtue of their having been in such a relationship” (1989, 128).

The data we have reviewed in this chapter provides a foundation for the argument presented in the next chapter in support of Tannenbaum’s claim. Many of the features of the human/companion canine relationship we have considered are precisely the features commonly thought to generate responsibilities. By inviting dogs into our homes to serve as friends and companions we have established a *special relationship* analogous to the parent/child, teacher/student, and doctor/patient responsibility-laden relationships. Dogs have certain *inherent properties* such as the abilities to suffer and experience joy; to communicate with humans; and to form strong, *affectionate bonds* with humans that are characteristic of human/human relationships that entail responsibilities. As we have seen, companion canines now influence community dynamics and therefore share a common *group membership* with their human neighbors. Because companion canines are artifacts, *deliberately and artificially* bred to exhibit juvenile traits of friendliness, trust, curiosity, and playfulness, they are *dependent and vulnerable* family and community members. Group membership is associated with benefits *and* responsibilities, including responsibilities to the most vulnerable members of the group. In the next chapter I argue that the characteristics of the human/companion canine relationship highlighted above ground the moral claims that our canine companions have on us.

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CHAPTER 3: RELATIONSHIPS GENERATE RESPONSIBILITIES

What makes our fellow beings entitled to basic considerations
is surely not intellectual capacity but emotional fellowship.
Mary Midgley (2003, 169)

In chapter two I documented the dramatic changes that have occurred in the relationship between humans and their dogs over the past seventy-five years. Prior to World War II, the majority of dogs were working dogs, charged with herding sheep, hunting wild game, catching rats in the barn, or guarding the estate. Most lived outdoors and few owners referred to their dog as a “part of the family.” The dog food industry was in its infancy; there were no PetSmart stores, dog parks, professional groomers, or dog walkers; and most veterinarians worked with farm animals. In contrast, today the “new work of dogs” is to be our friends and companions. Many live in our homes, accompany us on our morning runs, ride in our cars, are included in family vacations, and have their own health insurance. Hotels and apartment complexes capitalize on being “pet friendly,” pet supply chains flourish, and the majority of veterinarians earn their living treating companion animals. Dogs now play an important role in our economic, community, and family lives.

The new role that dogs play in American society has led some dog owners and veterinarians to question the morality of many practices that were once widely accepted, such as chaining dogs in backyards, docking tails and cropping ears, and “putting down” unwanted dogs. As a result, the moral intuitions of many dog owners and veterinarians are inconsistent with long-standing practices and policies of the veterinary profession and the legal framework that regulates the treatment of dogs. This inconsistency contributes to the

“moral stress” experienced by many veterinary clinicians. Chapter two ended with three questions concerning the implications of the new role of dogs for our obligations to these animals. In addressing these questions, we will move toward a new equilibrium where the considered moral judgments of owners and veterinarians concerning the care and treatment of companion canines, the moral principles that guide the provision of care, and the policies and laws that govern care are conceptually consistent.

In this chapter I address the question, “Do humans have obligations to companion canines, beyond those due to all sentient animals, generated by their relationship with them?” I argue that humans have a *prima facie* obligation to provide companion canines with the physical, social, and psychological conditions they require to flourish. Responsibility for the wellbeing of companion canines is held both by individuals who decide to acquire a dog and welcome her into their family, and by mixed-species communities that make provisions for the incorporation of dogs into the life of the community. Separate arguments for individual and collective responsibilities are provided. Obligations to companion canines are grounded on their inherent characteristics and in the human/companion-canine relationship.

I begin in section 3.1 with a review of attempts to enhance the moral status of animals based solely on their inherent properties. These theories are found to be unsatisfactory because they are unable to distinguish between farm animals, wild animals, laboratory animals, and companion animals, and as a result miss responsibilities generated by the special relationship humans have with companion animals. In section 3.2 I introduce the efforts of Clare Palmer and Keith Burgess-Jackson to ground human responsibilities to animals on relationships. The success of Burgess-Jackson’s argument depends on the acceptance of an analogy between the human parent/child relationship and the

owner/companion animal relationship. I defend this analogy by exploring the characteristics of the human parent/adopted child relationship thought by many to generate responsibilities of care, and by showing that the same characteristics apply to the owner/companion canine relationship. I also extend the Burgess-Jackson argument to include collective responsibilities and provide an argument that the responsibilities of humans to companion canines go well beyond the prevention of cruelty to include positive duties to provide the conditions companion canines need to flourish. In sections 3.3 through 3.5 I consider and respond to several objections to relationship-grounded arguments.

3.1 Obligations Grounded on Inherent Properties

Most attempts to bring nonhuman animals into the moral community have relied on simple, single-principle foundations for human obligations to animals based on the inherent properties of animals. From Peter Singer to Tom Regan to Martha Nussbaum, ethicists have argued that animals are due moral consideration because of their sentience, “inherent value,” or “dignity.” I argue that the moral universe is not so simple; moral considerability is affected by many factors. Surely, the ability to suffer, as Jeremy Bentham pointed out long ago, is sufficient to ground some level of moral consideration, and yet, it is plausible that more advanced capabilities—the capacities to have beliefs, desires, memories, feelings, an emotional life, a sense of one’s future, an ability to initiate action to pursue goals—expand the list of moral considerations some animals are due. And just as we recognize moral obligations grounded on relationships among humans, such as those generated by friendship, parenthood, and citizenship, so should we be open to similar obligations to other species based on relationships. Furthermore, history and context count. Neither humans nor companion canines exist as isolated individuals. We are social beings who flourish or fail to

flourish, in part, as a result of the virtues our society embraces. Our treatment of vulnerable members of our communities needs to reflect the virtues inherent in an ethics of care. My approach to an analysis of human obligations to companion canines will consider a plurality of reasons for moral consideration, those based on capacities, relationships, and virtues.

In this section I briefly describe the two dominant modern approaches to animal ethics, the utilitarian-grounded theory advocated by Peter Singer in *Animal Liberation* (2002) and the rights-based approach represented by Tom Regan's *The Case for Animal Rights* (2004), and a more recent attempt to ground justice claims for nonhuman animals, the capabilities approach as developed by Martha Nussbaum in *Frontiers of Justice* (2006). While each of these theories has contributed to our awareness of the moral considerations that nonhuman animals are due, their exclusive reliance on inherent properties is a serious shortcoming. I argue that because these theories ignore relationships, they fail to identify the true extent of our obligations to companion canines and, as a result, are ineffective in providing guidance to dog owners and veterinary clinicians as they make decisions concerning the care of companion canines. Furthermore, theories founded *exclusively* on inherent properties necessarily attribute similar entitlements to animals with similar inherent characteristics. They are, therefore, ineffective in building political support for more extensive protections for companion canines, as these protections would also apply to some wild and farm animals, restricting hunting and animal agriculture in ways that are unacceptable to most voters.

3.1.1 The Utilitarians and Sentience

Singer combines two longstanding claims to extend moral consideration to nonhuman animals. He draws from the founder of modern utilitarianism, Jeremy Bentham, to argue that

all sentient animals deserve moral consideration. He agrees with Bentham's often quoted line, "The question is not, Can they reason? Nor, Can they talk? But, Can they suffer?" (2007, 307). Animals with the ability to suffer or to experience pleasure, Singer claims, have an interest in avoiding suffering and enjoying pleasurable experiences. The interests of all sentient beings need to be entered into the utilitarian calculus. Here he connects with another frequently referenced line from nineteenth century ethicist Henry Sidgwick: "The good of any one individual is of no more importance, from the point of view ... of the Universe, than the good of any other" (quoted by Singer 1990, 5). There is no reason, according to Singer, to give similar interests of some individuals more weight than others, be those individuals human or nonhuman animals. If a dog's suffering is as severe as a human's, then both are of equal moral importance.

The important point for our discussion is that moral status for Singer is ultimately grounded on sentience, an inherent property of some living beings. External factors (including relationships) do not affect moral status. Neither geographical distance—a starving child in Africa vs. a starving child in one's back yard—nor emotional distance—one's own sick daughter vs. the neighbor girl—should affect one's responsibility to assist. It is the inherent property of sentience and the interests that derive from it that qualifies animals for moral consideration.

3.1.2 The Rights Advocates: "Subjects of a Life"

While Singer is interested in maximizing the preference satisfaction of all sentient beings, human and nonhuman alike, Regan takes a deontological approach. Unlike Singer, he is unwilling to sacrifice the interests of individual animals—in laboratory experiments for example—for the greater good of all concerned. Regan argues that some animals, certainly

mammals over the age of one year, are “subjects of a life.” Such animals demonstrate a suite of cognitive properties sufficient to protect them from being treated solely as a means:

Individuals are subjects-of-a-life if they have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference and welfare interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else’s interests (2004, 243).

Subjects-of-a-life, according to Regan, have “inherent value.” Inherent value is a “categorical concept” (2004, 240), a value that is held equally by all who have it; one is either a subject-of-a-life or one is not. Inherent value is not dependent on the quality of the experiences of the animal but simply on the fact that the animal is a “subject of a life”; they are valuable in themselves. As such, subjects-of-a-life deserve respect, and this respect entails being treated as ends in themselves. Thus, for Regan as with Singer, the moral status of animals depends on their inherent properties. All adult mammals, and likely other animals as well, are due the same moral consideration whether they be laboratory mice, dairy cows, wild bats, or companion canines.

Before moving on to a third approach to animal ethics based on inherent properties, I want to introduce another animal rights advocate whose views will be considered more carefully in chapter five—Gary Francione. Francione, like Regan, works within a deontological framework and insists that animals should be treated as ends. According to Francione, all use of animals must stop: “The principle problem is not *how* we use animals but *that* we use them” (2008, 10). He differs from Regan in that he focuses sharply on the status of animals as property. Francione argues that the only right that animals need is the right to be emancipated, to be freed from exploitation by humans. While modern animal

welfare laws prohibit cruelty and *unnecessary* harm to animals, as long as animals are the property of human beings, Francione contends, human interests will trump animal interests; “necessary” will be defined by human owners. I consider Francione’s views more carefully in my discussion of the legal protections needed to enforce our obligations to companion canines in chapter five.

3.1.3 The Capabilities Approach and Dignity

Palmer (2010) convincingly argues that the more recently developed “capabilities approach” to animal ethics is also grounded on the inherent properties of animals. I devote much of the next chapter to a discussion of the capabilities approach, and use a modified version of it to delineate specific obligations humans have to companion canines. At this point I need to say just enough about the theory to show that it is, as Palmer shows, based on the inherent properties of animals and therefore necessarily suffers from the limitations of such theories. I discuss these limitations in the next section.

The capabilities approach, as developed and used by Nussbaum (2006) to explain the obligations of humans to nonhuman animals, begins with the observation that animals are “active beings who have a good.” Animals, she explains, just like humans, can live lives of “dignity” when opportunities to behave (“to be and do”) in ways that correspond to their inner nature are available to them. Nussbaum uses the term “capabilities” for such opportunities. For Nussbaum, then, animals are sentient beings with an inner nature that defines what they need to flourish. Furthermore, she claims that “they are entitled to pursue that good” and this entitlement gives us a duty to protect and develop the capabilities they need to flourish. For our current purposes, we only need to understand that her theory, like the utilitarian and rights accounts of animal ethics, is founded on the inherent properties of

animals, their “inner natures.”

3.1.4 Wild Animals, Farm Animals, and Companion Animals

The arguments of Singer, Regan, Francione, and Nussbaum provide support for the claim that we have moral responsibilities to complex animals because of their inherent cognitive properties. Most would agree that suffering is bad and that sentient beings should not be caused to suffer needlessly. But questions concerning whether and when suffering is acceptable in order to further other ends, under what circumstances a duty to aid suffering beings exists, and the limits of those duties are matters of dispute. Inherent properties do not tell the whole story.

Inherent property theories miss an important grounding of moral responsibility—relationships. In human affairs, responsibilities are generated by special relationships such as doctor/patient, police officer/citizen, and parent/child. In part, these relationships are defined in terms of the responsibilities they entail. The fabric of our society is held together by responsibility-laden relationships. In section 3.2 I argue that the owner/companion canine relationship is analogous to the parent/adoptive child relationship and that humans have extensive responsibilities of care for companion canines generated by this relationship.

Ignoring the responsibility-generating role of relationships has practical consequences. Inherent property theories of animals cannot distinguish between companion animals, laboratory animals, farm animals, and wild animals. If the moral consideration an animal is due is based solely on its cognitive capacity, then all animals with similar capacities must be afforded the same consideration. According to inherent property theories we have the same obligations to wild raccoons, breeding sows in industrial swine operations, and companion canines. As a result, these theories lead to conclusions that demand

revolutionary changes in our relationship with animals: it is morally necessary to refuse “to buy or eat the flesh or other products of animals who have been reared in modern factory farms” (Singer 2002, 170), “hunting and trapping are wrong” and should be outlawed (Regan 2004, 353), we must “stop producing and facilitating the production of domestic animals altogether” (Francione, in Francione and Garner 2010, 22), “where we can protect gazelles [from tigers] ... perhaps we should do so,” and “any nonviolent method of population control (for example by sterilization) is to be preferred” (Nussbaum 2006, 379-80). Such conclusions, judged by many to be implausible, provide a basis for *reductio ad absurdum* attacks. Theories of animal ethics that have implications that are widely considered to be impractical are unlikely to significantly influence public attitudes, professional ethical standards, and legal protections for companion animals. If progress is to be made on the ethical issues facing companion canines, at least in the near future, we must look beyond the inherent capabilities of animals. What is needed is a theory that can protect companion canine interests within the economic, social, and political reality of twenty-first century America. The obligation-generating characteristics of the owner/companion canine relationship can provide the basis for a conceptually sound argument for the heightened protection of companion canines without the implications for the treatment of laboratory, farm, and wild animals that have prevented earlier theories from having wider influence.

3.2 The Relationships-Generate-Responsibilities Argument (RGRA)

This section builds on the extensive research reviewed in chapter two concerning the human/companion canine relationship. Beginning with the work of Palmer and Burgess-Jackson, I argue that humans have extensive responsibilities of care for the companion canines they have invited into their homes and communities because of the relationship they

have with them. These responsibilities are grounded on specific characteristics that the parent/adopted child and the human/companion canine relationships have in common.

3.2.1 Palmer: *Animal Ethics in Context*

Palmer makes important contributions to our understanding of the responsibility-generating power of relationships in her book, *Animal Ethics in Context* (2010). She begins with a description of the public responses to two news stories concerning animal suffering. The first involves the death of thousands of wildebeests as they attempted to cross Kenya's Mara River at a particularly dangerous location in 2007. The second describes the plight of 114 neglected domestic horses suffering from infections, worm infestations, and lack of food and water. Even though the cognitive capabilities of horses and wildebeests are roughly equivalent, the public appeared to accept the suffering and death of the wildebeests but was appalled by the mistreatment of the horses. While, as Palmer notes, the owners of the horses have a legal responsibility to care for their animals, and no one holds a legal responsibility to assist the wildebeests, the public's condemnation of the horse owners was not based on legal concerns, but rather, on an intuition that humans have a moral responsibility to care for the horses that they don't have for the wildebeests. If this intuition is correct, it must be grounded on relational factors, since the inherent capabilities of the animals are similar.

Palmer calls this attitude the "*laissez-faire intuition*," the notion that we ought to leave wild animals alone but have a responsibility to assist domestic animals, and claims that it is justified based on the differences in our relationships with wild and domestic animals. "When humans create sentient animals that are vulnerable and dependent," Palmer argues, "special obligations to care for or assist these animals are generated" (2010, 6). Most domestic animals, including the cattle in feedlots, laying hens in battery cages, companion

canines confined to domestic homes and yards, and the neglected horses described above, are completely dependent on their human owners for the provision of food, water, and shelter. Because the dependency of domestic animals is a result of human actions, humans have an obligation to assist. In contrast, there is no such obligation to assist wild animals because they are capable of satisfying their own needs. Wild animals and their habitats appear to do quite well as long as humans leave them alone.

Some of the animal ethicists interested in the link between relationships and responsibilities think that there is little need to make distinctions among the relationships humans have with animals beyond the wild/domestic distinction. Fine distinctions among domestic animals are unnecessary, they contend, as there are but small differences among human relationships with farm animals, laboratory animals, and companion animals. Stuart Spencer and colleagues claim that “pets are ‘used’ for human ends in much the same way as laboratory and farm animals” and, therefore, are due the same moral considerations (2006, 17).

While I agree with many of the similarities they identify, I think they miss a significant moral difference in the human/farm animal relationship and the human/companion canine relationship. While few industrial pig farmers would claim to have an affectionate, personal relationship with any of the thousands of pigs that pass through their sheds, many dog owners describe their relationship with their dog as “loving.” Nor is a pig farmer likely to feel that his pigs are a part of his family or community. While the wild/domestic distinction is morally significant, there are equally significant differences between the human/farm animal and the human/companion animal relationships.

In an important way, the relationship between a modern farmer and his hogs is closer

to that between a primitive hunter and his wild prey than it is to the human/companion canine relationship. Both farmer and hunter exploit animals as a source of food; the animals are valued instrumentally. In both cases humans attend to the needs of animals in order to prudently manage a resource. To prevent populations of prey animals from declining, successful hunting societies refrain from killing pregnant animals, preserve habitat, and limit their harvests. Likewise, those who raise animals for food attend to the welfare of their animals in order to insure a steady supply of meat, eggs, and milk.

The relationship between humans and companion animals is fundamentally different; it is sought for its own sake; it has inherent value. Companion canines are bred in order to form strong emotional bonds with their owners; their value is based on sentiment rather than on economics. As we saw in chapter two, dogs are brought into our homes, they are given names, and they interact with human family members in loving ways. “Using” companion canines “as a conduit for affection,” as Spencer, et al. put it, is hardly morally equivalent to eating them. There is reciprocity inherent in the affectionate bond between humans and their canine companions that is absent in the human/farm animal relationship.

Palmer was not the first to argue for responsibilities to animals grounded on relationships; similar arguments were published as early as the nineteenth century (Salt 1892). In 1998 Burgess-Jackson presented a compelling, relationship-based argument for human responsibilities to companion animals in his paper, “Doing Right by Our Animal Companions.” Burgess-Jackson’s paper is important for this project because he focuses more sharply on human relationships with companion animals. In the sections that follow I review Burgess-Jackson’s paper and modify his argument to stress the differences between human relationships with companion canines and other domestic animals, more fully recognize all

of the responsibility-generating characteristics of the human/companion canine relationship, and extend his argument to include collective responsibilities as well as individual ones.

3.2.2 Burgess-Jackson: Taking Animals into Custody

Burgess-Jackson claims “human beings have special responsibilities to the animals they voluntarily bring into their lives—precisely because they bring them into their lives” (1998, 161). When one takes “an animal into one’s home” one takes on the responsibility to “provide for its needs” (1998, 159). His argument rests on the premise that humans are responsible for the foreseeable consequences of their actions. He notes that domestic animals have needs that they cannot satisfy without human assistance because of the manmade environment in which they are forced to live. By “taking custody” of animals, humans have closed off other opportunities they may have had to satisfy their needs. Because their dependence is a result of human actions, humans are responsible for their wellbeing.

Burgess-Jackson insists that we ought not consider animals as an “undifferentiated mass” (1998, 159); variations in our relationships with animals lead to variations in our responsibilities to them. His focus is on companion animals and the particular responsibilities “*individual* humans” have to “*individual* animals” (1998, 164) as a result of “taking custody.” By “taking custody” he seems to have in mind a human bringing a companion animal into her home rather than a stock man taking custody of a new shipment of beef cattle. And, importantly, he briefly suggests an analogy between the parent/child relationship and the owner/companion animal relationship that needs to be explored more thoroughly.

In sections 3.2.3 through 3.2.5 I develop Burgess-Jackson’s ideas as they apply to companion canines. First, I note that inherent characteristics remain important even in relationship-based theories of responsibility. Second, I explore in detail the analogy between

the parent/adopted child relationship and the owner/companion canine relationship. And, third, I extend Burgess-Jackson's analysis to include collective responsibilities.

3.2.3 The Importance of Inherent Properties

As we construct a relationship-based theory of responsibility it is important to remember that the nature of relationships is affected by the inherent characteristics of the relating beings. Relationship generated responsibilities can only apply to beings with appropriate inherent characteristics. Suppose one bought a potted African violet from a local greenhouse. Further suppose that this cultivar had been selectively bred to thrive in conditions commonly found in human homes and could no longer survive in the wild. If one substitutes "African violet" for "animal" in the Burgess-Jackson argument above, the conclusion becomes: Because the dependence of African violets is a result of human actions, humans are responsible for their welfare.

Something is wrong. While humans certainly are responsible for the vulnerable, dependent condition of African violets, few would claim that an owner who fails to water his plant has failed to discharge a *moral* obligation. While the neglectful horticulturist may be responsible for his plant's death in the sense that his actions were a causal factor in the plant's untimely demise, there is no moral failure because African violets are not the sort of things that have interests, that have a sense of whether their lives are going well or badly.

The arguments for human obligations to companion canines that I offer in the next two sections rely on many of the inherent properties of companion canines documented in chapter two—properties that African violets lack. The relationship that humans and companion canines share is made possible by the unique inherent properties of dogs: the ability of dogs to communicate with humans, their retention of juvenile traits throughout

their lives, and their proclivity to form strong emotional bonds with humans. These properties contribute to the responsibility-generating power of the human/companion canine relationship. To fully understand our responsibilities to companion canines we need to understand their inherent properties *and* our relationship with them.

3.2.4 The Central Analogy

Burgess-Jackson notes that “things can go well or poorly for [dogs and other animals] in the same sense and in many of the same ways in which things can go well or poorly for you, me, or a human infant” (1998, 169). He feels that the “parallel between animals and human infants” is central to his argument. While he does not develop this analogy, he does contend that “if you believe that a parent is responsible for his or her children, then, by parity of reasoning, you should believe that humans are responsible for the animals they bring into their lives,” and “if you do *not* believe that a parent is responsible for his or her children, then my argument will not persuade you” (1998, 170-171).

In this section I explore this analogy in detail. My goal is to identify the characteristics of the parent/adopted child relationship that lead most people to conclude that it entails responsibilities of care, and to explore the extent to which these characteristics apply to the owner/companion canine relationship. If the two relationships are found to share important responsibility-generating characteristics, and one accepts the parent/adopted child relationship as sufficient to ground special responsibilities, then by analogy one should be inclined to accept the human/companion canine relationship as sufficient ground for special responsibilities.

MR. AND MRS. WESLEY ADOPT JEFFREY: Jeffrey’s entry into the world was filled with pain and tragedy. Difficulties during labor led to periods of anoxia for Jeffrey and

complications for his single mother that resulted in her death. Jeffrey's oxygen-starved brain was permanently damaged. Now, just past his fourth birthday, Jeffrey is toilet-trained, can feed himself with a little help, and can say a few words, but doctors are quite certain that he will never learn to read or do simple arithmetic. In many ways, Jeffrey will remain a child for the duration of his life, dependent on others for his care.

During his first four years, Jeffrey lived in a series of foster homes where his basic physical needs were met but where opportunities to form long-lasting emotional relationships were limited. Fortunately for Jeffrey, the county child placement service was able to match him with a childless couple who were interested in adoption and could offer him the love and care he needed.

Martha and Peter Wesley have been married for fifteen years. During the early years of their marriage they repeatedly tried to have a child. After two unsuccessful rounds of *in vitro* fertilization they visited a local adoption agency to explore other options. Now in their early forties, the Wesleys own a comfortable home and are financially secure. Their adoption counselor was heartened to learn that they did not want to limit their search to infants and that they were interested in special needs children. Peter had volunteered at a special needs summer camp during his high school and college years and had enjoyed working with mentally challenged children. The Wesleys felt that they were well suited to take on the added responsibilities that parenting a special needs child entails.

Looking through a book filled with the pictures and biographies of adoptable children, Martha recognized one of the boys—she had gone to school with Jeffrey's mother. Later that week Martha and Peter were introduced to Jeffrey. They were able to spend time with him in his foster home and take him for ice cream at the local Dairy Queen. After much

discussion, they decided to begin the formal adoption process. For several months, their days were filled with interviews, a home study, the completion of forms and more forms, and the payment of bills: attorney's fees, agency fees, payments to the government, and to the furniture store where they purchased a bed and dresser for Jeffrey's new room.

Jeffrey had some difficulty adjusting to his new life. He was terrified of the lights shining in his window at night, the new sounds of an unfamiliar house, and the two apparently loving but strange people who now took care of him. With time, counseling, and tender care, Jeffrey came to love his new home and parents. He was able to attend the neighborhood public school, spending much of his day in a resource room with other children who shared some of his challenges and with teachers with special education training. Jeffrey was mainstreamed for music—for which he had an unusual talent, and for assemblies and lunch. The Wesleys established a trust fund for Jeffrey to insure he would be taken care of when they grew old and were unable to care for him themselves.

OBLIGATIONS TO JEFFREY: Most readers are likely to accept the claim that by adopting Jeffrey the Wesleys took on significant responsibilities. My goal in this section is not to delineate the obligations that the Wesleys have to Jeffrey, but rather to suggest eight reasons *why* common morality holds the Wesleys responsible for Jeffrey's wellbeing. I argue that these reasons are compelling and that they also apply to the relationship between humans and companion canines. The particular obligations that humans have to companion canines will be explored in chapter four.

1. *Inherent Properties*. It is commonly believed that certain inherent properties of a being are sufficient to ground moral considerability. Sentience, the ability to experience pleasure and pain, is most frequently cited. Jeffrey is a sentient being whose life can go well

or badly from his point of view. While Jeffrey's mental disability limits his capacity to make plans for the future and to take on complex projects, he does have interests in avoiding pain and discomfort, enjoying good food and comfortable surroundings, participating in social events, helping with household chores, giving and receiving love, and in new, mentally stimulating experiences. Jeffrey is capable of suffering and of experiencing pleasure. As such, Jeffrey deserves moral consideration. Because Martha and Peter live with Jeffrey, interacting with him extensively on a daily basis, they have an obligation to consider the implications of their actions on his experiential life.

2. *Group Membership.* Jeffrey, Martha, and Peter share group membership. Martha knew Jeffrey's mother and Jeffrey lived in a foster home in the Wesleys' city. Jeffrey, Martha, and Peter are members of the same community, a community that flourishes, in part, as a result of the mutual aid that members give to one another. The Wesleys have a connection to Jeffrey based on this commonality and feel that they have responsibilities to their community that can be partially discharged by adopting and caring for Jeffrey.

3. *Special Relationship.* There are certain "special relationships" that are defined in part by the responsibilities they involve. Part of what it means to be a doctor is that one has responsibilities to one's patients. A physician who abandons a patient at a critical time in order to catch a plane has violated a fundamental responsibility that comes with being a doctor. Likewise, what it means to be a parent involves the nurturing of offspring. Parenthood for humans (and many other species) entails far more than having intercourse and giving birth. The entry for "parent" in an illustrated dictionary is likely to picture a mother and father caring for their children, that is, in the act of parenting. To be a parent is to care for children. Responsibilities come with the role. In part, responsibilities define the role.

4. *Dependence and Vulnerability.* Jeffrey is dependent and vulnerable. Vulnerability and dependence are thought to ground responsibility in a wide variety of relationships, including those between professionals and their clients, scientists and their experimental subjects, and parents and their children. This claim is expressed in religious scriptures, ethical doctrines, and political documents. The Belmont Report, for example, recognizes that vulnerability and dependence create special obligations. The involvement of vulnerable subjects, such as children, orphans, and the mentally challenged, in research studies raises justice concerns. The report specifically addresses “dependent status” and a “compromised capacity for consent.” Our society recognizes the responsibility to protect and care for its vulnerable members and holds particular individuals—professionals, scientists, and parents—responsible for particular vulnerable members.

The power differential within a parent/child relationship, and the unique position to provide for the weaker member in which the more powerful member often finds herself, generates an obligation to assist. Because Jeffrey is unable to care for himself, and because social services have turned over the responsibility to care for Jeffrey to the Wesleys, they are obliged to provide for him.

5. *Affection.* Jeffrey will emotionally bond with Martha and Peter. He will come to trust them, to love them, and they in turn will come to cherish Jeffrey. This bond is powerful and not easily broken. Jeffrey will become a Wesley, and as a result of the mutual love and trust, no other individuals will be able to provide for Jeffrey as well as Peter and Martha. A failure of the Wesleys to care for Jeffrey would be viewed from his perspective as a violation of his trust and inconsistent with the love he has come to expect from his parents. Consistently offered love and affection build trust, and with trust come responsibilities.

6. *Contract-Like Aspects.* The Wesleys' adoption of Jeffrey has many contract-like aspects. During the formal adoption process, the Wesleys were required to provide personal references, and were interviewed by agency and county officials. The Office of Children and Youth needed to determine whether or not the Wesleys were ready to become parents. In addition, a home study was conducted to ensure that the Wesleys' home would provide Jeffrey with an environment in which he could thrive. As part of this process the Wesleys were given a document, "Expectations, Roles, and Responsibilities of Adoptive Parents," which clearly enumerated their obligations to Jeffrey such as to provide him with unconditional love, to nurture and guide his development, and to foster his cultural connections. After Jeffrey had lived with Martha and Peter for six months, they met with their attorney, the social worker assigned to the case, and a judge for the "finalization," the formal process that makes Jeffrey legally their child. The judge's job was to review the Wesleys' paperwork, the results of their home study, and question the Wesleys to determine if they were prepared for the challenge they proposed to undertake. The adoption decree issued by the judge turned guardianship of Jeffrey over to the Wesleys with the understanding that they were committed to providing him with the love and support that the community deems necessary. This understanding and the legal procedures that led up to it represent an agreement between the Wesleys and the county, an agreement in which the county legally turns over responsibility for Jeffrey in return for the Wesleys' pledge to endeavor to meet the "responsibilities of adoptive parents."

7. *Voluntary Action.* The Wesleys made a decision to become parents, and in making that decision took on *self-assumed* obligations. Tom Regan distinguishes unacquired duties from acquired duties (2004, 273). He uses the term "unacquired duties" to identify those

duties John Rawls refers to as “natural duties,” those that “apply to us without regard to our voluntary acts” (Rawls 1999a, 98). We have acquired duties, Regan explains, “because of our voluntary acts or our place in institutional arrangements” (2004, 273). According to this view, the Wesleys have an acquired duty to care for Jeffrey because they voluntarily sought and accepted the role of parent. Voluntarism is thought by some to be a necessary requirement for obligations. As Judith Jarvis Thomson asserts, “Surely we do not have any such ‘special responsibility’ for a person unless we have assumed it” (1971, 65).

8. *Causality*. Not only was the Wesleys’ decision to adopt Jeffrey made voluntarily, it was also an important component in the causal chain that created Jeffrey’s current life situation. The quality of Jeffrey’s life was causally affected by his adoption and continues to be affected by the actions of the Wesleys. Individual moral agents are thought to be responsible for the foreseeable consequences of their actions.

MS. WOOD AND ARGOS: For the past few years Ms. Sophia Wood has enjoyed a long run each morning in the city park. After several reports of attacks on young women runners, however, Sophia decided to purchase and carry a “stun gun” for protection. As the weeks passed, she questioned her willingness to physically confront an attacker with the little plastic device and decided that a large dog would be a more effective deterrent. She contacted a local rescue group and adopted a young, male Doberman named Argos to accompany her on her morning runs. Sophia felt much safer with Argos than she had with the stun gun.

Sophia considers Argos to be a substitute for the stun gun. She feeds the dog and gives him a place to sleep for the same reason that she recharged the batteries in her stun gun—to keep him/it functioning. Argos has instrumental value to Sophia; he is a piece of

property. She considered herself free to sell or discard the stun gun when she felt that it did not effectively serve its function, and feels the same way toward her dog. Is Sophia justified in comparing Argos to her stun gun, or, is her relationship with Argos more closely analogous to the Wesleys' relationship with Jeffrey? Does the owner/companion canine relationship have the responsibility-generating characteristics found in the parent/child relationship?

1. *Inherent Properties.* The inherent properties of Argos more closely parallel those of Jeffrey than those of the inanimate stun gun. Jeffrey and Argos are both sentient beings whose lives can go well or badly from their point of view. Both share interests in the avoidance of pain, good food, social interaction, play, and mental stimulation. The stun gun has no interests at all.

2. *Group Membership.* As we saw in chapter two, companion canines are members of mixed-species communities. They live and interact with human members on a personal level. They are uniquely adapted to reading human intentions; to communicating with humans; and to participating in activities where human and animal share a common purpose such as hunting, protecting property, finding drugs and explosives, completing an agility course in record time, playing "fetch" in the backyard, or curling up on the sofa with a homebound elderly owner. Because companion canines are integral members of mixed communities, community members have a responsibility to foster their wellbeing.

3. *Special Relationship.* If a community member were to find a dog tied to a tree without water or food or protection from the elements, their first question would likely be, "Who owns this dog?" Clearly, someone has neglected his responsibility for the care and protection of the dog, and that someone is widely understood to be the owner. The

human/companion canine relationship, like the parent/child relationship, is necessarily a custodial one. James Rachels argues that parenthood is a “role” that entails certain responsibilities. To take on the role is to accept the responsibilities (1989, 50). In an analogous way, the role of dog owner entails responsibilities: in both parent/child and owner/companion canine relationships, the superordinate party has obligations to care for the subordinate party—the obligations come with the role.

4. *Dependence and Vulnerability.* When Sophia adopted Argos, she cut off his support from the rescue group that had been caring for him. Argos is unable to care for himself and is thus completely dependent on Sophia. As the more powerful member in the relationship, Sophia has an obligation to assist her weaker partner.

5. *Affection.* Domestic dogs have been artificially selected to bond with humans. They form strong, trusting, long-lasting, affectionate relationships with humans. As in the case of parents and children, there is a responsibility not to violate that trust.

6. *Contract-Like Aspects.* When Sophia visited the rescue center, she discovered that adopting a dog was not as easy as she thought. She was required to provide the center with a letter from a veterinarian attesting to her plans for Argos’s healthcare, information about her previous experience with dogs, and her reasons for wanting to adopt at the present time. After a home study was conducted, Sophia was informed that she would need to fence her backyard before she could adopt Argos. Finally, after making the necessary home improvements, she signed an “Adoption Contract” in which she agreed to a long list of care provisions and to return Argos to the center should the relationship not work out.

7. *Voluntary Action.* Just as the Wesleys voluntarily decided to adopt Jeffrey, so did Ms. Wood voluntarily decide to adopt Argos. The obligations that come with the role of dog

owner were self-assumed, “acquired duties” according to the Rawls/Regan taxonomy.

8. *Causality*. Sophia’s adoption of Argos causally affected his welfare, as do her continued care practices. Like the Wesleys, Ms. Wood is responsible for the foreseeable consequences of her actions.

The analysis above demonstrates the strength of the analogy between the parent/adopted child relationship and the owner/companion canine relationship, and supports Burgess-Jackson’s contention that “if you believe that a parent is responsible for his or her children, then ... you should believe that humans are responsible for the animals they bring into their lives.”

Before proposing a modified version of Burgess-Jackson’s argument, however, I need to clarify his use of “human beings” in his claim that “human beings have special responsibilities to the animals they voluntarily bring into their lives.” Burgess-Jackson is using the term “human beings” to refer to the individuals who form “a bond or relationship with a particular sentient being” (1998, 163). His argument is strictly limited to the responsibilities of individual humans to individual animals. We saw that Jeffrey had a responsibility-generating relationship with his adoptive parents and also with the collective, the community in which he lived. Responsibility for Jeffrey was turned over from child services to the Wesleys during the “finalization” meeting. Based on this observation and related justice concerns I offer two arguments, one for the responsibilities of individual owners to their canine companions and one for the responsibilities of mixed species communities to their canine members. In the “individual argument” below, I replace “human beings” with “human individuals” to make this distinction clear.

The Individual Argument:

1. Human individuals are morally responsible for the foreseeable consequences of their actions.
2. Companion canines are sentient, social beings, whose physical, social, and emotional needs can be satisfied only with human assistance.
3. When an individual takes custody of a companion canine, the dog becomes the individual's property and becomes dependent on the owner for the satisfaction of her needs. The dog cannot care for herself, and opportunities for care from other buyers, adopters, animal shelters, or rescue groups are severely limited by the rights of the owner.
4. Because the vulnerable, dependent situation of such dogs is a result of owner actions, owners are obliged to satisfy the needs of their dogs.

By limiting his analysis to individual responsibilities, Burgess-Jackson leaves many justice questions unanswered. What about ownerless dogs—strays? Do communities bear any responsibility for the ownerless dogs in their midst? And what is to be done for dogs whose owners cannot afford necessary veterinary care? Should the legal system protect the canines as well as the humans living within its jurisdiction? I address these questions in the next section.

3.2.5 Justice Concerns

One of the advantages of grounding moral considerations for animals on their inherent properties and only on their inherent properties is that in doing so one avoids some troubling justice difficulties. Suppose that Balto, a littermate of Argos, lives as a stray with a loosely defined “pack” of dogs on the outskirts of a city. According to the advocates of relationship-generated responsibilities, critics might charge, Balto and Argos have vastly

different entitlements. It is Sophia's responsibility to supply Argos with food and shelter, veterinary care, and a fenced yard, while Balto can lay claim to none of these in spite of the fact that he is nearly identical to his littermate in terms of his capabilities and needs. The entitlements of the two dogs, they might argue, should not depend on contingent events beyond their control. Relational responsibilities lead to injustice.

It is important to note that the state of affairs that exists when a canine companion is brought into a human home is the result of human decisions at two levels. First, there is the long history of decisions made by breeders to produce animals that can only flourish in mixed human/canine communities, and decisions made by community members concerning the role of companion canines in the community. Dogs, Michael Fox reminds us, are "our own creation" (1978, 262). Second, there is the decision of the new owner to acquire a canine companion.

Obligations are generated by the decisions made at both levels. Not only have individual dogs been invited into individual homes, dogs as a class have been invited into human communities. Humans have individual relationships with dogs, and human society has a relationship with dogs through various institutions such as the SPCA, businesses such as PetSmart, public spaces such as dog parks, programs such as Therapy Dogs International's reading program, and the legal system that regulates dog ownership and provides dogs with protections against cruel treatment. A collective responsibility is generated by this collective relationship. The argument for the responsibility of companion canine owners to their dogs can be modified to address the responsibility of mixed species communities to their canine members.

The Collective Argument:

1. Just as individual moral agents are thought to be responsible for the foreseeable consequences of their actions, so are human collectives: nations are held responsible for aggressive acts and forced to pay retributions, corporations are held responsible for damage to the environment and are required to pay fines, and fraternities are censored and sometimes disbanded for violating student rights or university regulations.

2. Human collectives—nations, communities, kennel clubs—have “taken custody” of companion canines in several senses, both as individuals and as canine collectives: many dogs are held in shelters administered by municipalities and welfare organizations, entire breeds are restricted by laws requiring special fencing and the use of muzzles, and breeding practices are controlled by clubs such as the AKC. Dogs held in shelters, confined by fences, and bred for extreme, non-adaptive characteristics cannot satisfy their needs without human assistance.

3. The vulnerable, dependent situation in which companion canines find themselves is, in part, a result of the actions of human collectives. For example, capability-limiting physical traits have become more extreme and more common in many populations (breeds) as a result of breed standards promoted by the American Kennel Club (AKC).

4. Therefore, human collectives have responsibilities to companion canines as individuals and as groups.

The recognition of the responsibility of human collectives for companion canines is critical for this project. It provides a foundation for addressing the justice issues raised above and creates a bridge to the capabilities theory’s support for governmental responsibility discussed in chapter four and the arguments for legal reform advanced in chapter five. Of

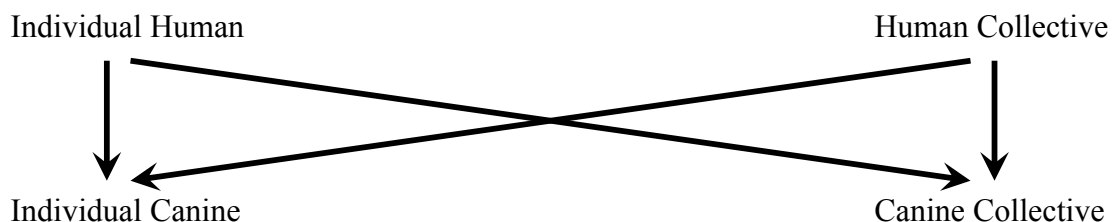
course, it must be noted that while the collective responsibility of communities for their canine members provides a much-needed safety net for homeless dogs, just as parental care for children is preferable to the collective care of welfare agencies and institutions, so is owner-provided care for companion canines to be preferred to community care. In both cases, the needs of the dependent partner, especially the need for affection and a sense of belonging, are more easily provided by dedicated individuals, parents, or owners.

In light of the discussion above, it may be useful to think of the responsibilities of humans to companion canines as falling into four categories:

1. Individual human to individual canine. Example: the responsibilities of an individual who adopts a companion canine, such as Sophia's responsibilities to Argos.
2. Individual human to canine collective. Example: the responsibility of an individual community member to support the local animal shelter.
3. Human collective to individual canine. Example: the responsibility of a community animal shelter to rescue a homeless dog.
4. Human collective to canine collective. Example: the responsibility of the American Kennel Club and state legislatures to regulate the inbreeding of "purebred" dogs.

The map of responsibility vectors diagrammed below will prove to be useful in answering concerns raised by the non-identity problem in the next chapter.

Figure 2. Four Responsibility Vectors



The eight factors I have suggested as common morality's grounds for attributing responsibility for Jeffrey to the Wesleys, and which I also claim apply to Ms. Wood and Argos, also play a role in assigning responsibility to collectives. Some of the factors give credence to the claim that *someone* should take responsibility for Jeffrey, such as "inherent characteristics" and "vulnerability," while others such as "voluntarism" and "special relationships" assign responsibility to particular individuals. Just as the community took responsibility for Jeffrey until a loving family could be found for him, so does a community that has welcomed dogs into its midst need to take responsibility for homeless dogs. While most of the needs of children (and dogs) are best met within a caring home environment, institutional safety nets should be provided for children (and dogs) who do not enjoy such a relationship. Justice concerns can be effectively addressed by recognizing collective as well as individual responsibilities.

3.2.6 Beyond the Prevention of Cruelty

Establishing that a dog's interests ought to be taken into account when one is making decisions that affect those interests tells us little if anything about the weight of those considerations. Just how much should a dog's interest in avoiding pain after surgery count when an owner is deciding whether or not to spend her hard-earned cash on an analgesic prescribed by a veterinarian? Historically, not only have human interests almost always taken precedence over the interests of animals, human duties toward animals have been primarily negative, anti-cruelty statutes (Favre 2010, 1027-1032). In this section I show that the analogy between the parent/adopted child relationships and the owner/companion canine relationship supports the claim that human obligations to companion canines go beyond the prevention of cruelty to include positive duties to attend to the physical, social, and

emotional needs of dogs.

1. *Inherent Properties.* Argos, like Jeffrey, has the capability to suffer *and* to experience pleasure. To respect the sentience of a being is to recognize and consider both positive and negative experiences. Those responsible for the care of dependent vulnerable beings, whether canine or human, have a responsibility to create conditions conducive to positive experiences.

The wellbeing of complex, social animals, such as humans and dogs, requires more than the absence of physical pain. Both humans and dogs need social interaction, mental stimulation, purposeful activities, and personal relationships. Refraining from physically abusing Argos, the “prevention of cruelty,” is not sufficient. Neither is the provision of minimal requirements of food and shelter. Just as Jeffrey needs opportunities to develop his cognitive abilities and to interact with other children, so Argos needs opportunities to challenge his mind and to develop social skills.

2. *Group Membership.* Social groups are formed to foster the wellbeing of their members. This goal includes more than the protection from harm and the provision of the minimal requirements for life. Communities build schools, recreation centers, churches, amusement parks, and theaters to enhance the intellectual, social, spiritual, and recreational aspects of their members’ lives. In like manner, mixed communities should build dog parks, organize obedience classes, and run agility competitions to enhance the quality of life experienced by their canine members. Parents read to their children, teach them how to play baseball, and take them to the movies. Likewise, dog owners need to take their dogs for walks, play “fetch” or Frisbee with them, and include them in family life.

3. *Special Relationships.* Just as parents are expected to “do the best they can” for

their children, so the owner of a companion canine ought to strive to provide a rich life for her dog. Of course, in both cases competing demands for time and resources must be considered. The viewpoint of the virtue ethicist is useful here. One can ask, “What would a good parent do?” Or, “What would a good owner do?” The answer to these questions depends on how one conceives of the role of parent and dog owner. My claim is that both of these roles, these “special relationships,” entail a concern for the vulnerable partners that goes beyond freedom from harm.

It is important to remember that companion canines were created by humans so that we could enter into personal, caring relationships with them. They are artifacts, sentient artifacts whose lives can be joyful or miserable depending on the care and consideration they receive from their creators. It strikes me as extremely perverse to create a being to be a friend and companion, a being with all the emotional and social needs that such a being requires to bond with humans, and then to ignore those emotional and social needs. Like Palmer (2012) and Hill (2007), I question the “dispositions of the human agents involved in [such] troubling actions” (Palmer 2012, 164), dispositions that societies interested in justice would do well to discourage. I think it is clear what “good owners” would do: foster the social and emotional dimensions of the lives of their canine companions.

4. *Dependence and Vulnerability.* There is a striking power differential in both the parent/child relationship and the human/companion canine relationship. The vulnerability of the weaker party grounds positive duties of assistance on the part of the stronger party. Duties of assistance are positive duties, obligations to promote the wellbeing of the weaker member, not simply to refrain from harming the weaker party. The Wesleys are responsible for Jeffrey’s education and healthcare; they have a responsibility to provide him with social

experiences, to include him in family activities, and to make him feel loved. For similar reasons, Ms. Wood has a responsibility to spend time with Argos, to provide him with opportunities to develop his capabilities, to become socialized, and to exercise. The quality of Argos's life is dependent on the care he receives from Ms. Wood.

5. *Affection*. According to David Hume, the "final sentence" on morality "depends on some internal sense of feeling" that motivates us to behave in an ethical manner; it is what makes morality an "active virtue" (1983, 15). Like Hume, Nel Noddings, writing from an ethics of care perspective, "locate[s] the very wellspring of ethical behavior in the human affective response" (1984, 3). She carefully develops this idea, describing how the affectionate feelings that are part of the parent/child relationship produce mutually supportive and beneficial parent/child interactions. "A caring relationship," Noddings suggests, "requires the engrossment and motivational displacement of the one-caring" (1984, 78). The mother enters the reality of her child, and begins to perceive the world from the child's point of view as well as her own. This dual perspective "displaces" her motivation; she now wants things to turn out for the best from the child's point of view as well as from her own; she is genuinely concerned about the child's wellbeing and strives to provide opportunities for the child to flourish.

Strong affectionate bonds are a part of human/companion canine relationships as well as parent/child relationships. Companion canines were created by humans so that they could be friends and companions. They have been selected for traits that enable them to form strong emotional attachments to humans, to give and receive affection. As in the parent/child relationship, the feelings of affection the one-caring (owner) has for her companion canine lead to "engrossment" and "motivational displacement." The owner is motivated to behave in

such a way that things go well from the dog's point of view, that the dog is provided with the conditions he needs to flourish physically and emotionally.

“What if the ‘feeling’ is not present?” a critic might ask. What if the owner is not interested in establishing a “caring relationship” with her dog? What if, like Argos, the dog was acquired to perform a well-defined function, period? The answer, I think, is that such an owner has acquired the wrong sort of thing. The owner has made a mistake, a category mistake. Ms. Wood's first purchase—the stun gun—was appropriate; her second—a sentient being with emotional needs—was not.

6. *Contract-Like Aspects.* The responsibilities of adoptive parents and dog owners are formally spelled out by the social agencies and legal statutes created by society to protect the wellbeing of orphans and companion canines. While child welfare agencies and animal rescue groups work hard to protect children and dogs from abuse, they are equally concerned about the quality of the physical and social environment in which children and dogs live. Just as publications by children's agencies focus on educational opportunities, unconditional love, and exposure to cultural heritage, so breed rescue groups insist on opportunities for socialization and exercise, obedience training, and medical care. In both cases, the goal is not simply to prevent abuse, but to ensure that children and dogs enjoy homes that provide the opportunities they require to develop their innate abilities and lead happy, contented lives.

7. *Voluntary Action.* Both the Wesleys and Ms. Wood voluntarily took on a care-taking relationship. The nature of the relationships they *assumed* involve more than protection from harm. They “volunteered” to promote the wellbeing of their charges, not to simply refrain from harming them.

8. *Causality.* Not only do the actions of adoptive parents and companion canine

owners causally affect their charge's freedom from abuse, but also the quality of their lives.

A dog who lives a boring life devoid of social interaction, exercise, and affection does so as a result of his owner's actions.

The considerations above strongly support the claim that the central analogy is sufficient to establish extensive, positive duties of owners to satisfy their canine companions' physical, social, and emotional needs. I next consider an important objection.

3.3 “It’s Only a Dog” Objection

Some readers may agree that adopting parents have extensive obligations to their adopted children, and agree that there are similarities between the parent/child relationship and the human/companion canine relationship, yet remain unconvinced that the human/companion canine relationship generates analogous obligations of care. “Dogs are one thing,” they may argue, “and humans are another.”

Arguments by analogy are notoriously weak (Vaughn 2013, 294-300). Even if it is granted that the main subject of an analogical argument, in this case the human/companion-canine relationship, and the analog, the parent/adopted-child relationship, have eight properties in common (P1-P8), and the analog has another property of interest, namely, extensive obligations of care (P9), it may still be logically claimed that the main subject does not have P9. After all, in addition to shared properties, the main subject and the analog differ in many ways; perhaps they differ with regard to P9.

The strength of an analogical argument depends on the number and relevance of the properties that the main subject and the analog share, and the number and relevance of the properties in which they differ. In the argument under discussion, it is important to note that the eight properties shared by the main subject and the analog were identified not by

searching for similarities, but by exploring the reasons why it is commonly believed that parents have obligations of care to their adopted children. While the list is not claimed to be exhaustive, it is believed to identify the most important properties thought to generate responsibility. The similarities are numerous and highly relevant and, therefore, contribute to the inductive strength of the argument.

What about the differences? Perhaps there is another property of the parent/adopted-child relationship that is driving our intuition about obligations of care that is not a property of the human/companion canine relationship. In particular, while there are superficial similarities in the inherent characteristics of human children and companion canines, there are significant differences; one can't equate dogs and humans. Dogs may not be the kind of things to which one can have extensive obligations of care. In its strong form, this objection amounts to the claim that obligations of care can only exist between human beings. In a weaker form, it may recognize the possibility of obligations to other animals but claim that the inherent properties of dogs are sufficient to support only minimal positive obligations. I consider each of these forms in turn.

3.3.1 The Strong Objection

The idea that moral obligations apply only to human beings is grounded on the claim that humans are different in kind from other animals. This notion has been held as a seldom-questioned truth in Western society for millennia. The first book of the Hebrew Bible clearly sets humans apart as the only living beings made in the image of God. What's more, these Godlike human beings are explicitly given "dominion ... over every living thing that moves upon the earth" (Genesis 1: 28). While some classical Greeks, notably Pythagoras, argued for the moral consideration of non-human animals, the Aristotelian view proved to be the most

influential: nature made “animals for the sake of man” (Aristotle 1943, 259). The Medieval fathers of the church embraced the Biblical/Aristotelian view; Aquinas tells us, “There is no sin in using a thing for the purpose for which it is. ... All animals are for man” (2007, 125). Many modern philosophers fell into step and strongly supported the idea of a gulf between “man” and “animal.” Descartes argued for a dualistic theory of substance in which the structure and actions of nonhuman animals could be completely explained in terms of the properties of *res extensa*, the physical matter of the universe. In his view, animals were simply mechanical automatons. In contrast, Descartes found in himself a thinking substance, *res cogitans*, immaterial and independent of matter, which placed him and other humans in an entirely separate ontological category apart from the non-human animals. Other modern philosophers focused on cognitive differences; Kant, for example, claimed that animals were not self-conscious and could not act according to duty, therefore, they are not moral agents but “merely ... a means to an end. That end is man” (1963, 240).

Today, one still finds frequent reference to the “soul of man” and our similarities to the gods. Leon Kass, while serving as the chairman of the President’s Council on Bioethics in 2007, informed his audience, “the human being has special dignity because he shares *godlike* powers of reason, freedom, judgment, and moral concern, and, as a result, lives a life freighted with moral self-consciousness above the plan of a *merely animal existence*” (my emphasis) (Kass 2007). There are good reasons, however, to abandon claims of human exceptionality: data collected over the past few centuries indicate that the perceived gulf between human and non-human animals is not as great as once believed. Advances in astronomy and physics have led us to abandon the Ptolemaic model of the universe with the celestial bodies revolving around the home of man and replace it with a Copernican model

that reduces our home planet to an undistinguished speck in space. Evidence from biology and geology overwhelmingly supports the Darwinian view that we were created by the same natural processes as the other animals and share many of their characteristics. Modern research in neurophysiology has strengthened the insight of Voltaire: “You discover in him [the non-human animal] all the same organs of feeling as in yourself. Answer me, mechanist, has Nature arranged all the springs of feeling in this animal to the end that he might not feel?” (1962, 113). To the gross anatomical similarities discovered by the vivisectionists that Voltaire referred to have been added striking similarities in the operation of neurotransmitters and patterns of brain activity under similar circumstances (Odendaal and Meintjes 2003; Berns, Brooks, and Spivak 2012). The findings of ethologists, comparative psychologists, and anthrozoologists have provided further evidence that the similarities of human and non-human animals are greater than their differences. There is mounting evidence for complex systems of communication, tool use, altruistic behavior, problem solving abilities, and emotional bonding in nonhuman animals (Gácsi, et al. 2004, King 2013). The view that membership in the human species alone is sufficient to justify differential moral consideration, the view Singer (2002) calls “speciesism,” is under fire. The differences between human and non-human animals now appear to be a matter of degree; the strong version of the “It’s Only a Dog” objection no longer seems plausible.

3.3.2 The Weak Objection

While *Homo sapiens* may be more akin to other mammals than to the gods, there are striking differences between the capabilities of human and non-human animals. Perhaps Singer’s criterion of “sentience” is insufficient to support extensive positive duties of care. Perhaps being the “subject of a life” is insufficient as well, or perhaps companion canines do

not enjoy the long list of attributes needed to be classified as a “subject-of-a-life.” Perhaps the capabilities of dogs are sufficient to support only very limited claims on their human owners, freedom from cruel treatment and little else.

Kenneth Goodpaster (1978) makes a distinction between *moral considerability* and *moral significance* that is helpful in addressing these questions. Whether or not companion canines deserve *any* moral consideration is a separate question from whether the consideration they are due is equivalent to that of an adopted child. The first question is one of moral considerability, the second, one of moral significance. Judgments concerning moral significance are required to assess the relative weight of moral responsibilities and to make decisions when confronted with competing duties. Let us grant that companion canines are sentient and that sentience is sufficient to justify some level of moral considerability. Let us also grant that companion canines enjoy cognitive capabilities that go beyond mere sentience to include the less controversial characteristics Regan requires to qualify as a “subject of a life”: perceptions and memory, “preference and welfare interests,” an emotional life, the “ability to initiate action in pursuit of their desires and goals,” and an “experiential life that fares well or ill for them” (Regan 2004, 243). It seems plausible to assume that these attributes contribute to moral significance. While a goldfish has sense organs and appears to be able to experience pain (Allen 2004), it does not exhibit the emotional repertoire commonly observed in dogs. Because of its limited emotional life relative to that of a dog, a goldfish does not require the same moral considerations that a dog does. Its moral significance may not be as great.

Regan does not claim to know, precisely, which animals meet his criteria for being a “subject of a life” and which do not. He is quite sure, however, that “normal mammalian

animals, aged one or more,” meet the criteria (2004, 247). Other philosophers and scientists are not as certain: Donald Davidson (2001) questions whether dogs have “beliefs,” Francis and Norman (1978) doubt that dogs have a “sense of the future, including their own future,” and many doubt that dogs experience a “psychological identity over time.” It is also generally agreed upon that even the most devoted, highly trained service dogs are not moral agents in the Kantian sense—they do not act out of respect for moral duty, nor do they have the ability to enter into agreements with humans, the paramount concern of contractarians such as Jan Narveson (1986) and John Rawls. Clearly, normal adult human beings have many characteristics that appear to be relevant to questions of moral significance that companion canines lack.

Some biologists, including Raymond Coppinger and Mark Feinstein, question the current trend toward attributing human-like cognitive abilities to dogs. They point to a study of the “retrieve motor pattern” of a border collie bitch responding to a taped “lost call” (2015, 108-109). Young puppies exhibit a distinctive cry, the “lost call,” when separated from their mother and littermates. Bitches respond immediately to this cry with a motor pattern ethologists refer to as the “retrieve pattern.” When a taped “lost call” was played for the study subject, she left her “nest,” even though all her puppies were present, and retrieved the metal and plastic tape recorder and placed it in the nest with her squirming puppies. This study clearly brings into question our inclination to attribute feelings of “maternal concern and care” to bitches, similar to those of human mothers. While recent work in the biology of canines demonstrates that dogs are not the purely mechanical structures Descartes envisioned, neither are they little furry humans. Their biology supports a moral status somewhere between that of insentient property and human moral agent.

Even the staunchest advocate of animal rights backs down when the interests of humans and animals conflict. Regan imagines a lifeboat carrying five survivors, four humans and a dog, outfitted to sustain the life of a maximum of four. “One must be thrown overboard or else all will perish,” he observes, and asks, “Whom [sic] should it be” (2004, 285). After considering various means of selecting the one to be sacrificed, he concludes that “no reasonable person would deny that the death of any of the four humans would be a greater *prima facie* harm, than would be true in the case of the dog,” and because the greater harm to an individual must be avoided whenever possible according to his “worse-off principle,” the dog should be sacrificed (2004, 324). But why does any one of the humans have more to lose than the dog, if all five have equal “inherent value” as Regan claims? The answer is that Regan recognizes that the lives enjoyed by humans and those of nonhuman animals differ in significant ways; more is lost when a human life is lost. While he does not delineate the critical value-enhancing characteristics of human life, he likely has in mind the traits Singer mentions (in a chapter entitled “All Animals Are Equal”) when forced to acknowledge that “there are certain features of certain beings that make their lives more valuable than those of other beings.” Singer includes such features as “a higher degree of self-awareness and a greater capacity for meaningful relations with others” (2002, 19). While researchers have provided us with clear evidence that dogs, chimpanzees, dolphins, and parrots have cognitive capabilities long thought to be found only in humans, it is a mistake to conclude that there are no morally significant differences between human and non-human animals. The linguistic, analytic, and artistic capabilities of humans far exceed those of non-human animals. The rich inner lives and the complex interpersonal relationships that such capabilities make possible surely have moral significance. Any of the four humans in

Regan's thought experiment *do* have more to lose than the dog. Like the dog, they are terrified by their circumstances, but unlike the dog, they fear for their dependents at home (who will take care of them?) and fear that they will not be able to achieve what they had planned for the future. A human who loses her life at sea is unable to say goodbye to her children, to apologize for previous mistakes, and express her love. And, in the face of death, all these concerns would likely come to mind.

While the strong version of the "It's Only a Dog" argument (speciesism) must be rejected given the data on comparative brain function and behavior in human and non-human animals, the weak version cannot be summarily dismissed. The inherent properties of companion canines clearly distinguish them from nonliving property but differ in morally significant ways from the inherent properties of humans.

3.4 Back to the Central Analogy

Where does that leave us? How are we to determine the moral *significance* of companion canines? Given that there are identifiable differences between dogs and human children, thought by many to be morally significant, just how strong is the central analogy? How do human responsibilities of care to companion canines and human children compare? Should Argos be granted the same moral status as Jeffrey? A second look at the similarities and differences between the parent/adopted child and the owner/companion canine relationships may be helpful.

In the next two sections, I return to the central analogy, specifically the similarities and differences between the parent/adopted child relationship and the owner/companion canine relationship in an effort to understand more clearly the moral significance of companion canines and the extent of our obligations to them.

3.4.1 Properties Held in Common

We must remember that the central analogy involves a human (Jeffrey) with compromised cognitive capabilities, who is, nonetheless, judged to have moral significance similar to that of the other members of his family. The inductive strength of the central analogy can be supported, while acknowledging the significant differences between the cognitive abilities of normal adult humans and dogs, by showing that the abilities of dogs are more extensive than once thought and by showing how the abilities dogs *do* have are sufficient to bring them into the moral community in much the same way that mentally disabled humans are included.

As we saw in chapter two, recent studies at canine cognitive labs around the world have discovered that dogs have far more ability than once thought. Psychology professor John Pilley has demonstrated that some dogs can learn over one thousand words, that they have a combinatorial understanding of separate meanings for nouns and verbs, can make generalizations concerning categories, and have the ability to learn by exclusion (Pilley and Reid, 2009). John S. Watson and colleagues (2001) demonstrated that dogs' understanding of object permanence rivals that of children, and Ádam Miklósi and Krisztina Soproni (2006) found that dogs were better than chimpanzees at communicating nonverbally with humans. Findings such as these indicate that the cognitive abilities of companion canines fall within the range of mentally disabled children who function as loving members of families and communities.

Robert Bogdan and Steven Taylor (1989) studied the interactions between non-disabled and disabled family members in an attempt to discover how and why disabled members are accepted into the moral community. The researchers found that nondisabled

family members recognize that disabled members are *individuals* with unique personalities and well-defined preferences, and with feelings as sensitive and important as their own. Family members also come to understand that disabled members are *thinking beings*. While, typically, the disabled children in the study were unable to communicate verbally, family members learned to interpret their gestures, sounds, and expressions, and interpreted them as being indicative of a mental life. Family members regularly talked to disabled members and felt that they were able to understand much of what was said. The ability to communicate was seen as sufficient to enable disabled children to participate in social interaction, to give and receive expressions of love, to enjoy family celebrations and outings, and to participate in the daily rituals of family life—meals, entertainment, and bedtime routines. Disabled family members were considered to be *integral members of the family*. An important component of this status was the perceived ability to *reciprocate*. The disabled were not seen as passive recipients of the physical, emotional, and social benefits of life in the family; they were seen as contributing as much as they received. And, certainly, thinking beings who contribute emotionally and socially to family life deserve the same level of moral significance as other members of the family.

Sociologist Clinton R. Sanders spent several years studying families that included companion canines. He noted many of the same attitudes and behaviors that Bogdan and Taylor found in families with disabled children. Dog owners were eager to discuss the particular personalities of their dogs, pointing out likes and dislikes, capabilities and sensitivities that distinguished their dogs from others they have owned or met. Dog owners saw their dogs as *individuals*. Owners also consider their dogs to be *thinking beings*. While almost all were quick to admit that their dog's thought processes were quite different from

those of humans, “wordless” and primarily “emotional,” and that they were not “Rhodes Scholars,” owners were able to recount clear examples of learning, problem solving, and evidence of emotional intelligence, the remarkable sensitivity of their dogs to the emotional state of their family (Sanders 1993). Because of this sensitivity, owners found their dogs capable of taking part in family life, of learning and adapting to daily routines involving meals, recreation, and sleep. Dogs were also regularly included in holiday celebrations—including their own birthdays—and often taken on family vacations. In 1983, Alan Beck and Aaron Katcher reported that 70% of owners considered their dogs to be “authentic family members.” By 2006, the Pew Research Center survey found that 85% of dog owners considered their dog to be a “member of the family.” Finally, just as families considered their relationships with their disabled members to be *reciprocal*, so dog owners judged their relationships with their dogs to involve a similar give and take. “Owners,” Sanders reports, “saw their relationship with their dogs as premised on intersubjectivity and shared emotion” (1993, 70). Many dog owners felt that they received significant emotional support from their dogs.

The similar attitudes and family dynamics observed as disabled members and companion canines are incorporated into family life, and the moral status attributed to both as a result of their perceived individuality, mental life, family membership, and reciprocity, further strengthens the central analogy. The sociological data indicates that the eight factors thought to generate obligations, and thus moral status, do in fact operate within families. Family members attribute similar *inherent characteristics* to both human and canines including unique personalities and mental lives. They recognize the *vulnerability and dependence* of humans and canines alike, and because of the *special affectionate*

relationships that develop among *members of a common family group*, they accept obligations of care toward their dependent members. And because family relationships with disabled members and companion canines are seen to be reciprocal, family members are inclined to *voluntarily* assume custodial duties for the good of the disabled, the dogs, and for the good of their families and themselves. An understanding, an implicit agreement with *contract-like aspects*, develops within families to assign responsibility and ensure the welfare of all.

3.4.2 Properties Not Held in Common

One may wonder, however, to what extent sociological similarities in family dynamics are relevant to the philosophical project of justifying obligations to companion canines. Dogs and disabled children function within families in *similar* ways but not in *identical* ways. Perhaps there are characteristics of the adoptive parent/child relationship that ground extensive parental responsibilities of care that do not exist in the owner/companion canine relationship. Some philosophers think that there are.

Eva Feder Kittay is a philosopher and the mother of Sesha, a physically and cognitively disabled young woman. Kittay's personal experience with Sesha makes it difficult for her to engage with philosophers, such as Singer and Jeff McMahon, who argue that there are no "morally significant psychological capacities" that distinguish the severely mentally handicapped from "pigs and dogs or animals of that sort" (Kittay 2009, 621). When pressed by Singer at a conference at Stony Brook University to provide a list of capacities that separate her daughter from non-human animals, Kittay responded: "There is *so much* to being human. There is touch, there is feel, there is the hug, there is the smile, ... there are so many ways of interacting" (2009, 621). After the conference Kittay realized that her response

was emotional and incomplete but, importantly, it was expressed in relational terms. Kittay did not give Singer the “list of capacities” he requested, but did gesture toward *relational* differences. She flatly stated that “what it is to be human is not a bundle of capacities,” and argued that the “special relation between mother and daughter,” a relationship that is “morally and objectively more significant” than the relationship of a “pet owner with his beloved pet” (2009, 623), justifies the high level of moral significance she attributes to her daughter. She pointed to many of the reasons for moral inclusion that Bogdan and Taylor observed in families with disabled members (and Sanders observed in families with companion canines) to illustrate the depth and significance of her relationship with Sesha, but steadfastly held to her claim that they functioned on a different level between mother and daughter than between owner and “pet.”

Kittay argues that one needs first-hand experience with disabled humans to understand the difference. In her 2009 paper, Kittay emphasizes the need for “epistemic responsibility.” She accuses Singer and McMahon of ignorance of the relationships that the severely cognitively disabled have with their families and caretakers. She supports her accusation by pointing to the confusion in Singer’s thought experiment in which he describes a compound housing a group of captive chimpanzees as a “special institution for the retarded in the Netherlands” (Kittay 2009, 614). Kittay points out that an impaired human is not equivalent to a healthy chimpanzee. Singer, according to Kittay, needs to get out into the field and spend some time with the disabled to learn about their capabilities and challenges, and the kinds of relationships they have with others. The acquisition of such an empirical background is the “epistemic responsibility” of any scholar writing about the severely cognitively disabled.

Kittay is certainly correct in pointing out that “an impaired human is not equivalent to a healthy chimp” or, for that matter, a healthy companion canine. But just how do the relationships between humans and disabled children differ from the relationships between owners and companion canines, and how do these differences justify different obligations of care?

Leslie Francis and Richard Norman (1978) challenge Singer’s claim that there are no properties held by humans, and only humans, to justify giving preference to their interests over the interests of other animals. They argue that the mistake Singer makes is to limit his consideration to inherent characteristics, “non-relational properties.” They “suggest that what are important are the *relations* in which human beings stand to one another, and that with *few exceptions* they do not stand in the same relations to animals” (my emphasis) (1978, 518). Francis and Norman argue that there are communicative, economic, political and familial relations that interact in a positive synergistic manner to yield a “human community,” which justifies humans in favoring the interests of other humans (community members) over those of animals.

Francis and Norman make a strong case that the ability to communicate, especially verbally, and participation in organizations for mutual benefit—economic, political, and familial—enable humans to form relationships that justify favoring the interests of humans. In many cases the purpose of a human relationship is to provide mutual support; responsibilities of care come with the relationship. It may be, however, that companion canines are one of the “few exceptions” to their general claim that humans do not have similar relations with animals. Francis and Norman admit, for example, that communication does occur between “individuals and their pets,” that there is economic cooperation between

“the shepherd and his sheepdog,” and that animals are brought into homes and, in some cases, considered to be “family members.” Chapter two included a review of research demonstrating the unique ability of dogs to understand humans, and documented the new role they play in our homes and communities. While the degree to which companion canines can communicate with their owners, and the degree to which they can participate in economic, political, and familial relationships, may be “rudimentary,” as Francis and Norman suggest, they are far more extensive than previously thought, and plausibly sufficient to generate extensive obligations of care. The relational differences that they discuss do not appear to me to significantly differentiate the adoptive parent/disabled child relationship and the owner/companion canine relationship. The ability of some disabled children to communicate and participate in economic, political, and familial relations is also “rudimentary.”

It is not clear, however, that Francis and Norman have captured what Kittay had in mind when she responded to Singer. The “touch,” “feel,” “hug,” and “smile,” the “ways of interacting” Kittay referred to, suggest a shared way of being, a shared way of expressing oneself, a shared humanness. While Sessa’s capabilities superficially appear to resemble those of companion canines, they are, arguably, worlds apart. Kittay recognizes in her daughter, familiar responses to stimuli, familiar expressions of feelings, familiar ways of experiencing the world. As Thomas Nagel so convincingly demonstrated, the “objective ascription of experience is possible only for someone sufficiently similar to the object of ascription to be able to adopt his point of view” (1974, 442). Kittay’s reaction to Singer’s challenge seems to be based on the conviction that she can identify with her daughter’s way of being in the world in a way that no dog owner can with “his beloved pet,” for who knows

“what it is like to be a [dog].” Sesha’s capabilities may be limited, but they are limited *human* capabilities and, thus, not completely foreign to her mother. A dog’s experiences, however, are generated from within an “Umwelt” that is foreign to the dog’s owner, not a different point of view, but, as psychologist Alexandra Horowitz (2009) calls it, a “point of nose.” A dog’s world is dominated by olfactory sense data, and is likely as different from ours as is that of Nagel’s bat.

The fact that Kittay and Sesha share a human way of being in the world, while a dog owner and his pet do not, may be a significant disanalogy, a difference that affects some of the eight factors thought to generate responsibilities, such as the strength of the bonds of affection, the degree to which disabled children and companion canines can be considered to be “members of the family” (group membership), and the significance of the “special relationship” that develops between the partners. Subtle differences between the inherent properties of mentally disabled humans and companion canines, and subtle differences between the parent/adopted child relationship and the owner/companion canine relationship, need to be studied further. These differences may prove to be significant as we attempt to delineate the limits of our obligations to companion canines.

Given our present knowledge of canine capabilities and the human/companion canine bond, however, it is reasonable to conclude that humans have responsibilities of care to companion canines that go well beyond those currently protected by law. It is important to recognize that our options are not limited to classifying dogs as possessions with instrumental value only, or as “persons” with full moral status. The Kantian question, “Are [dogs] persons or things?” is a false dichotomy. There are intermediate possibilities. Even if, as Kittay insists, the relationship she shares with Sesha is “morally and objectively more

significant” than the relationship dog owners have with their animals, the similarities ought to justify similar responsibilities. The central analogy is sufficient to justify elevating the moral status of companion canines to a category between persons and property, a category of beings deserving of reciprocal, symbiotic relationships in which their interests are considered and in which benefits rendered are repaid in kind. In chapter four I employ insights from the capabilities approach to delineate the responsibilities humans have to their canine companions in some detail, and in chapter five I consider the policy changes and legislation needed to ensure that these responsibilities are met.

3.5 General Objections to Grounding Obligations on Relationships

In addition to specific concerns about the central analogy, some critics may have more general concerns about grounding arguments for obligations on relationships. Before moving on to the next chapter and an analysis of the conditions necessary for a flourishing canine life, I briefly consider and respond to three such objections.

3.5.1 Ethics Requires Impartiality

Some may object to the grounding of obligations on relationships by claiming that it entails a violation of one of the most fundamental requirements of ethics, impartiality. One’s entitlements ought not depend on who one knows or on special favors. There is, surely, something morally objectionable about a junior league football coach choosing his son as starting quarterback for every game even though other boys on the team are more capable and would like to have an opportunity to call the plays. “Ethics requires,” Peter Singer (following Rawls) claims, that we “go beyond the ‘I’ and ‘you’ to the universal law, the universalizable judgment, the standpoint of the impartial spectator or ideal observer” (Singer 1993, 12). The coach’s relationship with his son cannot justify the son’s preferential access

to the quarterback position.

Most would agree that the coach's behavior is indefensible. The reason, however, is because *in his capacity as coach*, his special relationship with his son is irrelevant. Human beings have multiple roles and, as James Rachels (1989, 50) has argued, obligations are attached to these roles. The coach, *as coach*, has responsibilities to the members of his team, and *as father* has responsibilities to his son. When he is functioning as a coach his son should not receive special treatment. When he is functioning as father, however, it is his duty to favor his son with special attention. As Judith Jarvis Thomson noted, "A father who says, 'I'm no more concerned about my children's lives than about anyone else's life,' is just flatly a defective parent" (as quoted in Singer 2009, 135). The difficulty, of course, is in teasing apart the two roles and determining which one ought to be dominant in a given situation—a topic for another day.

In the case of a human and her companion canine, assuming that the human is justifiably functioning in the role of owner, responsibilities founded on the relationship *can* be expressed as a universal law: "If person X adopts canine Y, then person X is responsible for providing for canine Y's needs." In specifying the conditions under which the responsibilities are in effect, the statement loses a measure of generality, not universality.

3.5.2 Ethics Should Be Founded on Reason

Another concern about obligations based on relationships is that they are founded on emotion rather than reason. Both Singer and Regan make a point of emphasizing that their arguments for the moral consideration of animals are based solely on reason; emotional attachment is not a factor. It is "reason—not sentiment," Regan tells us, "that compels us to recognize ... their equal right to be treated with respect" (1985, 24). Just as clearly, Singer

distances himself from sentimental considerations. He informs us in the preface to *Animal Liberation* that he does not own any pets, is not “inordinately fond of dogs, cats, or horses,” and simply wants them “treated as [the] independent sentient beings that they are ... as demanded by reason, not emotion” (2002, xxi-xxii). For both Regan and Singer, the emotional attachment that an owner may or may not have with her companion animal is irrelevant to the moral consideration the animal is due.

While Regan and Singer are quite right to insist that an expansion of the moral consideration extended to nonhuman animals needs to be supported with rational arguments, they have gone too far in avoiding consideration of the relationship between humans and their companion canines (the “human/companion animal bond”) and the emotional factors fundamental to it. They seem to fear “that to associate the animal rights cause with ‘womanish’ sentiment is to trivialize it” (Donovan 1990, 351). Far from trivializing an analysis of our obligations to companion canines, consideration of the emotional relationship that exists between many owners and their dogs addresses what it means to be a companion animal and is, therefore, critical to an understanding of the obligations of owners.

As we saw in chapter two, relatively few dogs today are employed primarily as sheep dogs, hunting dogs, guard dogs, or draft animals. Most are kept as companions and are in the business of “life, love, and family” (Katz 2003). The point of acquiring a companion animal is to form a bond with the animal. Jerrold Tannenbaum describes the human-companion animal bond as

a continuous, bidirectional relationship between a human and an animal that brings a significant benefit to a central aspect of the lives of each, which is in a sense voluntary, and in which each party treats the other not just as something entitled to respect and benefit in its own right, but also as an object of admiration, trust, devotion, and love (1989, 125).

While some dog owners may feel that this description goes well beyond what they had in mind when they brought a puppy home for the kids, my point is that for most dog owners there is an emotional component to their relationship with their animals that was, in fact, what they sought when they acquired the animal. The human/companion animal bond needs to be considered when exploring the obligations humans have to companion canines. “What makes our fellow beings entitled to basic considerations,” Mary Midgley contends, “is surely not intellectual capacity but emotional fellowship” (1983, 60). A consideration of the emotional attachment between humans and their canine companions is a necessary component of the analysis of the obligations of care generated by the owner/companion canine relationship.

3.5.3 Abandoning the Animals Most in Need of Protection

A third objection to the relationship approach to grounding responsibility is that it may focus too narrowly on one group while ignoring the welfare of others. For example, a theory of human obligations to companion canines grounded on relationships protects companion canines while turning a blind eye to the suffering in feedlots, breeding pens, and battery cages.

I do not deny the serious ethical problems that arise from industrial agricultural practices. The theory I outline in this dissertation is not ideal in that it is sensitive—perhaps too sensitive—to the political and economic realities of modern America, and it is not comprehensive in that it fails to address the majority of animals whose welfare is controlled by humans. As Robert Garner notes, however, a theory must “be judged in relation to its feasibility, how far it is practically possible to achieve” (2013, 10). A partial, nonideal theory

of animal ethics can be a helpful step in working toward a more comprehensive theory.

John Rawls lists three criteria that such nonideal theories must meet. An acceptable theory, according to Rawls, “looks for courses of action that are morally permissible and politically possible as well as likely to be effective” (1999b, 89). A relationship-based theory for the ethical treatment of companion canines could provide a solid foundation for a patient-centered ethical framework that could help practicing small animal veterinarians make difficult ethical decisions. It could also guide human citizens and legislators to craft appropriate legal protections for companion canines. While a consensus concerning the place of food animals in our society is currently beyond reach, the veterinarians who care for companion animals and the public who own and interact with them are ready to recognize that companion canines deserve a moral status that goes well beyond that of personal property. Adopting a theory of obligations to companion canines based on our relationship with them is a step in the right direction.

3.6 Conclusion

The claim that humans have positive obligations to the animals dependent on them is not a new one. In 1892, Henry S. Salt wrote in *Animals' Rights Considered in Relation to Social Progress*,

Apart from the universal rights they possess in common with all intelligent beings, domestic animals have a special claim on man's courtesy and sense of fairness, inasmuch as they are not his fellow-creatures only, but his fellow-workers, his dependents, and in many cases the familiar associates and trusted inmates of his home (43-44).

What is new is the level of intimacy between humans and their canine companions. During the second half of the twentieth century, the relationship between humans and dogs evolved in a direction that accentuated the characteristics Salt identified as grounding the

“special claims” domestic animals have on their human partners. More and more dogs live in their owners’ homes as “trusted inmates,” where they act as companions and friends, “familiar associates” who provide love and affection for their human partners. As demonstrated in this chapter, the new role that companion canines have in modern American society allows for an inductively strong analogy between the responsibilities of parents for their adopted children and the responsibilities of owners for their companion canines that supports companion canine entitlements to human assistance.

While significant differences between human children and companion canines are recognized, the central analogy is strong enough to support the claim that the obligations of humans to their canine companions go beyond the prevention of cruelty. The human/companion canine relationship generates extensive, positive responsibilities of care. Dog owners are obliged to attend to the wellbeing-promoting interests of their canine companions. The interests of companion canines, of course, compete with the interests of other animals, both human and nonhuman, in mixed-species communities. In the next chapter I will borrow ideas from the capabilities approach as developed by Amartya Sen and Martha Nussbaum to construct a detailed list of the interests of companion canines and to suggest ways to balance these interests with those of human community members.

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CHAPTER 4: RESPONSIBILITIES OF CARE

The various attainments in human functioning that we may value are very diverse, varying from being well nourished or avoiding premature mortality to taking part in the life of the community.
Amartya Sen (2009, 233)

If we accept the conclusion of chapter three, that “the human/companion canine relationship generates extensive, positive responsibilities of care,” our next step is to understand specifically what those responsibilities entail. A well-defined list of the wellbeing-promoting interests of companion canines is needed to provide a foundation for the construction of a functional set of ethical guidelines for dog owners and veterinarians. We must answer a number of challenging questions: What are the interests of companion canines? Which of these interests promote wellbeing? What is morally required when the interests of dogs conflict with the interests of humans? How far do our obligations go?

I begin this chapter with a description of the capabilities approach to human welfare and development, advocated by Amartya Sen and Martha Nussbaum. Many of the insights of the capabilities approach—the multidimensionality of a flourishing life, the importance of individual differences, the need to focus on what individuals are “able to do and be,” and the need to have a strong connection between theory and practice—will be helpful in our attempt to identify the interests of companion canines and to understand our responsibilities of care. Other aspects of the capabilities approach—its emphasis on practical reason and self-determination, its insistence on the primacy of capabilities over functionings, and its use of human (and animal) dignity as a justification for governmental responsibility—are

problematic for this project. After describing the capabilities approach, I justify my selective adoption of its tenets for the construction of a moral framework for the care and medical treatment of companion canines.

4.1 The Capabilities Approach

Human welfare problems have traditionally been analyzed using simplistic measures of available resources such as gross domestic product (GDP) per capita. While the welfare of human populations is affected by the GDP of their country, a far more detailed and relevant analysis is needed to determine how individuals are faring. The economist Amartya Sen developed an approach for analyzing problems of human welfare and development that went beyond a consideration of resources. According to Sen, the focus should be on capabilities, “what a person is able to do or be” (2005, 153). There are many factors that contribute to human welfare in addition to physical resources such as opportunities for education, social interaction, rewarding employment, and emotional support. Surely, the wellbeing of companion canines, like that of their human partners, involves more than adequate food and shelter, and freedom from cruelty. The multidimensional nature of Sen’s “capabilities approach” makes it a promising place for us to begin our analysis of the wellbeing-promoting interests of companion canines.

4.1.1 Sen: Capabilities to Do or Be

The capabilities approach is a theoretical framework used to analyze problems of welfare, justice, and development. While some of the ideas central to the capabilities approach have a long history, it appeared in its modern form when developed by Sen as an alternative approach to problems in welfare economics, designed to improve upon analyses based on simple resource statistics. Sen argues that statistical indicators of a nation’s

economic output such as the GDP provide little information about the quality of life enjoyed by individual citizens. A nation's wealth, for example, could be concentrated in the hands of a few while the majority of citizens suffer in poverty. Furthermore, one's "standard of living" entails far more than the quantity of physical resources at one's disposal. Material things have instrumental value, not intrinsic value: they make activities possible. A person's wellbeing is a function of what she is able to "do or be," by the opportunities she has to lead a fully functioning life. Wellbeing requires sufficient resources to acquire an adequate supply of food, clothing, and shelter, but also opportunities for education, fulfilling employment, participation in political decisions, social and emotional relationships, and recreational activities. A woman, barred from higher education, with severely restricted opportunities for social interaction outside her family, and denied a political voice, cannot be said to have a high standard of living even if her family's income is more than adequate. Human beings have intellectual, social, and emotional needs as well as physical needs, all of which must be satisfied in order to achieve a state of wellbeing.

By considering a set of basic resources or "primary goods," and focusing on the status of the individuals who are the "worst off" with regard to these goods, John Rawls is able to avoid some of the problems mentioned above (Rawls 1999). Rawls's list, however, is relatively short and fails to fully capture the full range of factors necessary for a flourishing life. Sen also notes that individuals can have radically different needs. "Handicaps, such as age or disability or illness, reduce one's ability to earn an income. But they also make it harder to convert income into capability" (1999, 88). The old or disabled or sick may require *more* resources than the young and healthy to achieve the *same* level of function. If wellbeing is determined by a person's ability to achieve and accomplish, and the ability to

achieve and accomplish is influenced by a host of individual conditions such as age, health, physical ability, and intelligence, as Sen contends, then a community whose aim is to improve the wellbeing of its members must attend to individual differences. As we work toward the specification of the conditions dogs need to flourish, we need to keep in mind individual differences as well as the multiplicity of factors affecting their wellbeing.

Sen claims that utilitarian attempts to assess quality of life in terms of preference satisfaction also fail to provide a useful guide for public policy and law. While efforts to capture the quality of life in terms of utility can consider a wide range of preferences and needs, they involve averaging across populations and, therefore, fail to respect what Bernard Williams calls the “separateness of individuals.” Just as with the use of statistical resource indices, the suffering of individuals due to distribution problems can be overlooked. In addition, utilitarian theories do not recognize “that there are irreducibly plural goods that figure in a human life” (Nussbaum 1997, 281). An abundance of food does not make up for a lack of educational opportunities; any attempt to combine an analysis of a variety of preference satisfactions into a measure of “utility” is likely to miss important welfare problems. And, finally, Sen points out that preference satisfaction often fails to adequately reflect quality of life due to the effects of environmental influences on individual preferences. Women, for example, born and raised in a homogeneous community where educational opportunities are denied to women, may come to accept or even “prefer” their severely limited role. Attention to what women are able to “do or be” avoids this problem of “adaptive preferences.”

Sen is careful to distinguish capabilities from functionings in order to fully respect individual freedom and choice. The actual “beings and doings,” the things we accomplish or

achieve, Sen calls “functionings.” Reading a book, working at a job, and eating a healthy diet are functionings. Capabilities are practical opportunities to achieve functionings, and a person’s “capability set” is the array of opportunities from which the person can choose. Sen argues that societies should be structured so as to supply each of their citizens with a complete capability set, a set which includes all the opportunities necessary to live a “fully functioning life.” Society must not force citizens to avail themselves of these opportunities, however. While citizens should have the *opportunity* to eat nourishing meals (a capability), for example, they should not be forced to choose to do so (achieve the functioning). They should be free to choose to fast or eat junk food. Freedom and choice are central to Sen’s approach. In section 4.2.5 “Capabilities and Functionings,” I question whether the degree of choice advocated by Sen is in the best interest of companion canines living in human-designed environments filled with dangers they are unprepared to handle. I argue that in most situations dog owners and veterinary clinicians need to adopt a more paternalistic approach to ensure that the canines under their care achieve certain functionings.

4.1.2 Nussbaum: A Partial Theory of Justice

Martha Nussbaum uses Sen’s insights to construct a “partial theory of justice” whose aim is to justify threshold levels of basic entitlements to the “central requirements of a life of dignity.” Her project is not “intended to provide a complete account of social justice” in that it makes no attempt to address inequalities above the thresholds (2006, 281). She “begin[s] with a conception of the dignity of the human being, and of a life worthy of that dignity” (2006, 74). Throughout Nussbaum’s writing, dignity is associated with two characteristics of human beings: their neediness and their multiple abilities. The “basic moral intuition” of the capabilities approach, Nussbaum explains, “concerns the dignity of a form of life that

possesses both abilities and deep needs” (2006, 346). We are *all* “needy temporal beings”—we begin life as helpless babies and many of us end life in much the same condition. Those who are fortunate to enjoy periods of secure, active, fulfilling living, do so through the cooperation of others. We need to recognize our vulnerability and respect the “dignity of our human need, itself” (2006, 160). To respect our fundamental neediness is to recognize that “the purpose of social cooperation is not to gain an advantage [as many contract theorists contend]; it is to foster the dignity and well-being of each and every citizen” (2006, 202).

In addition to being needy beings, we are also “wondrous beings,” marvelously fashioned beings with multiple capabilities. Nussbaum quotes Aristotle’s entreaty to his students to recognize the wonder and dignity of all complex organisms (2006, 94), echoed later in Locke’s description of “man” as a “curious and wonderful” piece of “workmanship” (Nussbaum 2006, 44). Nussbaum argues that a life of dignity requires opportunities for the satisfaction of what Marx referred to as “the need of a totality of human life-activities” (2006, 74). We can identify with beings who often, at the height of their development, can satisfy many of their multiple needs—physical, social, emotional—by utilizing their “wondrous” abilities. We respect the abilities of others because we value our own. We understand their desire to satisfy their needs, because we feel the tug of our own desires. We recognize in the young a need to grow into their developing abilities, to perfect them and express them. In adults compromised by age, disease, or misfortune, we recognize a need to maintain the practices of capable beings, that is, to maintain a way of life that enables them to express the capabilities they have enjoyed throughout life. We are all part of a fellowship of “needy enmattered being[s]” (2006, 278) whose only chance for a flourishing life depends on mutual respect and aid.

Complex beings have abilities that need to be expressed. There is something tragic about a bright woman in a repressive society that offers her no avenue to develop and use her talents. A flourishing life requires freedoms and opportunities to grow and achieve. Human dignity, Nussbaum tells us, is a concept intimately entwined with capabilities, opportunities for the expression of abilities. “The capabilities are not understood as instrumental to a life with human dignity: they are understood, instead, as ways of realizing a life with dignity, in different areas of life with which human beings typically engage” (2006, 161).

Nussbaum claims that “dignity is a legitimate source of entitlement” (2006, 44); our shared dignity grounds our entitlement to the freedoms necessary for a flourishing life. Entitlement to food and housing, political influence, opportunities to play, control of one’s environment, and bodily integrity do not have to be earned; they were ours from birth because we need them in order to live lives of dignity. Nussbaum’s capabilities approach aims to provide a partial theory of justice that, if adopted and incorporated into the constitutions of the world’s nations, would allow more people to achieve “truly human functioning.” By this expression, Nussbaum appears to mean a life of integrity, completeness, and unity, a life with the freedom to utilize one’s abilities and participate in the full range of human life.

Nussbaum identified ten central capabilities “informed by an intuitive idea of a life that is worthy of the dignity of human beings” (2006, 70). Her claim is that a necessary condition for a life of dignity is the opportunity to achieve a minimum threshold for each of the central capabilities, including such things as “life,” “bodily health,” and “affiliation.” Nussbaum describes each central capability in some detail. Bodily integrity, for example, involves “being able to move freely from place to place; to be secure against violent assault,

including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction” (2006, 70). While humans exhibit a wide range of metaphysical, religious, and cultural beliefs, Nussbaum argues that there is an “overlapping consensus” that the capabilities on her list are necessary for a life of human dignity. In societies that do not provide their citizens with such opportunities, Nussbaum tells us, “truly human functioning is not available” (2006, 71). Therefore, governments have a responsibility to incorporate these capabilities into their constitutions and make a commitment to bring every citizen up to the minimum threshold for each capability.

Nussbaum argues that the central capabilities are irreducibly heterogeneous; an abundance of opportunities to satisfy one capability cannot make up for deficiencies in another. Extensive opportunities to achieve “bodily health,” for example, cannot make up for a lack of opportunity for “affiliation.” Nussbaum thinks that the presence of a “conflict between one capability and another is a sign that society has gone wrong somewhere” (2006, 401). For example, a society in which a parent must decide whether to spend limited family funds on food or the education of her children has not made adequate provisions to ensure that the minimum thresholds for the central capabilities of “bodily health” and “senses, imagination, and thought” are met for all its citizens.

Nussbaum retained Sen’s insistence on the need to promote capabilities rather than functionings: The capabilities approach “is *focused on choice or freedom*, holding that the crucial good societies should be promoting for their people is a set of opportunities, or substantial freedoms, which people then may or may not exercise in action: the choice is theirs” (2011, 18). She repeatedly emphasizes the approach’s “commitment” and “respect” for “people’s powers of self-determination” (2011, 18). The power of self-determination

assumes higher order cognitive skills. Because of this, Nussbaum places special emphasis on the capability of practical reason. There are two capabilities, Nussbaum contends, that “appear to play a distinctive *architectonic* role [in human lives]: they organize and pervade the others. These two are affiliation and practical reason” (2011, 39). While her emphasis on affiliation connects seamlessly with the Relationships-Generate-Responsibilities Argument (RGRA) of chapter three by focusing attention on the importance of relationships, her emphasis on practical reason raises problems for the extension of the capabilities approach to nonhuman animals. I argue that companion canines do not have the cognitive skills needed to successfully navigate life in the complex, dangerous, human-made environment in which they live. Like human children, companion canines benefit from some assistance with “practical reasoning” from caring adult humans. This topic will be explored further in section 4.2.2 “Self-Determination and Companion Canines.”

Nussbaum’s delineation of specific capabilities and her insistence that societies have a responsibility to ensure that none of its citizens slip below minimum capability thresholds, allows her theory to connect in a direct and effective way with public policy discussions and the legislative process. For example, the second capability on her list—bodily health—includes such things as adequate nourishment and shelter. The homeless in New York, Philadelphia, Boston, and other northern cities are often exposed to extreme temperatures. Many sleep on hard surfaces unprotected from rain and snow, and are unlikely to have access to healthy meals. These challenges to their health make a life “worthy of human dignity” impossible, and therefore, Nussbaum contends, governments are obligated to provide opportunities for homeless people to achieve the minimum threshold for the bodily health capability. Programs to provide shelter, food, addiction counseling, and job training should

be discussed, financed, and implemented. In chapters five and six, I rely on the fundamental connection that the capabilities approach makes between individual needs (central capabilities), and public policies and laws, to recommend veterinary clinic practices, professional ethical standards, and laws governing the treatment of companion canines consistent with the responsibilities humans have to their canine companions.

Nussbaum argues that the capabilities approach has significant advantages over competing theories of justice. Unlike the Rawlsian “justice as fairness” account, the capabilities approach is “outcome-oriented rather than a procedural approach.” Rawls begins with a procedure, the selection of political rules by “free, equal, and independent” individuals in the “original position” behind a “veil of ignorance,” who come together to create a political structure that offers advantages to all. He assumes that the rules that result from this procedure will be just because of the procedure followed. In contrast, Nussbaum begins with an end in mind, a “life of dignity,” and asks what needs to be provided to ensure that individuals have the opportunity to realize this beneficial end. This approach has the advantage, Nussbaum contends, of building on humankind’s benevolent virtues from the start. Rather than relying exclusively on mutual advantage as the motivation for cooperation, as the Rawlsian and other social contract theories do, “the benefits and aims of social cooperation [are] moralized, and socialized.” The capabilities approach “envisages human beings as cooperating out of a wide range of motives, including love of justice itself” and “compassion for those who have less than they need to lead decent and dignified lives” (2006, 156-7). This recognition of moral and emotional motivational factors makes the capabilities approach ideally suited for our purposes. We have seen that humans have a need to be cared for and to care for others, and that for some this need can be satisfied, in part, by

their relationships with companion canines. We breed companion canines to be our friends and companions, to be members of our families and communities, to form strong emotional bonds with us. The central analogy of the last chapter grounds our responsibilities to our canine companions in part by considering these factors. The outcomes sought by the capabilities approach, and the motivational domain it considers, are consistent with our analysis of the human/companion canine relationship and the responsibilities it generates.

Nussbaum carefully avoids some of the problems of utilitarian theories. She agrees with Bernard Williams that utilitarianism neglects the “separateness of persons.” In utilitarian accounts the welfare of an individual may be sacrificed to maximize overall welfare (1997, 281). In contrast, the capabilities approach focuses on the individual, working to ensure that each individual has the capabilities necessary to live a life of dignity. Following Sen, Nussbaum is also critical of the utilitarian commitment to the commensurability of value. She recognizes that there are a multiplicity of goods (capabilities) necessary for a life of dignity and that a just society must attend to them all. Again, these advantages of the capabilities approach are particularly valuable to us as we construct a moral framework for the care and medical treatment of canine companions.

4.1.3 Nussbaum: *Frontiers of Justice*

In *Frontiers of Justice* (2006) Nussbaum argues that the capabilities approach can address the needs of human and nonhuman animals who do not meet the Rawlsian standard of “fully cooperating members of society.” The expanded domain is made possible by the realization that those who establish the principles of justice need not be the same set of individuals who are governed by the principles. While mentally disabled individuals, citizens of foreign countries, and nonhuman animals may not be able to participate in the formulation

of the rules of justice, they are the sorts of beings for whom justice is due and, therefore, should be afforded positive opportunities to flourish.

Nussbaum uses the concept of dignity to justify the entitlement of nonhuman animals to opportunities to achieve minimal threshold levels of the central capabilities in the same manner that she does for humans. Her aim is to use the capabilities approach to secure a dignified life for as many beings as possible. She conducts her discussion of nonhuman animals within the Aristotelian perspective that all animals are “natural and wonderful.” Nonhuman animals, no less than humans, she tells us, can live a life of dignity. Each form of life has its own kind of dignity; all are “active beings who have a good.” This “naturally leads us,” Nussbaum claims, “to the further thought that they are entitled to pursue that good” (2006, 337). Their entitlement gives us a duty to protect and develop the capabilities they need to flourish.

The capabilities approach provides better guidance toward this end than do competing approaches to animal justice, according to Nussbaum. It is sensitive to different “types of dignity” appropriate to different species. It seeks to identify the capabilities necessary for each type of animal to enjoy a life of dignity, and is committed to supporting fundamental entitlements for all. “No sentient animal should be cut off from the chance of a flourishing life,” Nussbaum declares (2006, 351).

Just as in the human case, Nussbaum’s focus is on the individual. “There is waste and tragedy when a living creature with the innate or ‘basic’ capability for some functions that are evaluated as important and good never gets the opportunity to perform those functions” (2006, 346-7). For Nussbaum, a border collie who never has the opportunity to develop her innate herding excellence is analogous to a bright, female, human child languishing in a

society that does not educate women. The capabilities of each individual being—human or nonhuman—should be protected.

Nussbaum suggests a “highly tentative” list of central capabilities for nonhuman animals that contains the same ten entries she listed for humans: (1) Life, (2) Bodily Health, (3) Bodily Integrity, (4) Senses, Imagination, and Thought, (5) Emotions, (6) Practical Reason, (7) Affiliation, (8) Other Species, (9) Play, and (10) Control over One’s Environment (2006, 393-400). She notes that the interpretation of the general capabilities will be different than it was for humans and, in fact, it must be species-specific. The innate potential for affiliation, for example, varies greatly from species to species, as do needs for food and shelter. The goal is to support members of a wide range of species.

As in the human case, Nussbaum wants to set a minimum threshold for each of the central capabilities. The minimum for each capability is the level of nutrition, affiliation, play, etc., required for the animal to live a life of dignity. And, once again, as in the human case, numerous opportunities in one area cannot compensate for a deficiency in another. Access to plentiful and nutritious food cannot make up for inadequate shelter.

4.2 Problems with the Capabilities Approach

While the fundamental insights of Sen and Nussbaum concerning the nature of wellbeing and the responsibilities of a just society to foster wellbeing are invaluable to this project, I do not adopt the capabilities approach in its entirety as it includes several problematic features. In her attempt to apply the capabilities approach to dogs and sheep, gazelles and lions, and rats and pigeons, Nussbaum has strayed from the theory’s roots, and may have stretched it a bit too far. Several difficulties need to be addressed. First, the theory’s emphasis on choice, practical reason, and self-determination brings its applicability

to nonhuman animals into question. Second, the related issue of the primacy of capabilities over functionings needs to be addressed. And third, Nussbaum's use of the "dignity" of animals to justify her claim that humans have an obligation to ensure that they enjoy at least threshold levels of the central capabilities is questionable. I argue that the RGRA provides a more compelling grounding for human responsibilities to their canine companions than an appeal to their dignity. I discuss each of these difficulties after a short treatment of the criticisms of the capabilities approach found in the literature.

4.2.1 Problems Raised by Critics

FOUNDATIONAL ISSUES: Nussbaum uses human dignity to justify her claim that every individual is entitled to at least threshold levels of each of the central capabilities: "Dignity is a legitimate source of entitlement" (Nussbaum 2006, 44). Her desire to extend the domain of the capabilities approach to include nonhuman animals in *Frontiers* (2006) necessitates an argument that they have dignity as well. "Before we can perform this extension [to nonhuman animals] with any hope of success," Nussbaum tells us, "we need to articulate an adequate theoretical approach" (2006, 327). Just as the dignity of humans comes from their neediness and wondrousness, so does the dignity of nonhuman animals. She grounds her extension in the Aristotelian view that all natural organisms are "wonderful and worthy of awe" (2006, 94). She quotes from Aristotle's *Parts of Animals*, where he exhorts his students to put aside their "childish disgust" for the study of the "less exalted animals" and to approach the study of all with wonder (2006, 348).

Ramona Ilea (2008) finds this foundation inadequate. She points out that Aristotle is only encouraging his students to study the "less exalted animals," not to extend justice considerations to them. Furthermore, it is the sentient animals that Nussbaum claims to have

an entitlement to opportunities to flourish, yet, as Ilea points out: “Many people have less awe and wonder looking at rats than at the complex web of a spider” (2008, 549). It is a huge step from “awe and wonder” to justice entitlements: “While the kind of scientific observation that Aristotle urges us to conduct might show that animals *can* flourish, it is not enough to persuade us that they *should* flourish” (2008, 549). I will have much more to say in section 4.2.3 about Nussbaum’s use of dignity to move from “can” to “should.” I reject dignity as the ground for entitlements and rely on the inherent cognitive properties of canines and on their relationship with humans.

AN OVERLAPPING CONSENSUS: The capabilities approach, Nussbaum contends, is not founded on metaphysical theories but on the potential for an “overlapping consensus” among citizens who represent a range of “comprehensive views.” Nussbaum claims that in spite of different religious, cultural, and metaphysical beliefs, citizens can agree on the necessity of the ten basic capabilities for a life of dignity. The political policies enacted to secure these capabilities for all citizens derive their legitimacy, in part, from the overlapping consensus.

As we have seen, Nussbaum’s argument for entitlements for nonhuman animals closely parallels her argument for human entitlements. The lives of both human and nonhuman animals can go well or not so well. Both have an interest in flourishing and, therefore, both are entitled to have the opportunity to flourish. Nussbaum assumes that an “overlapping consensus” concerning an entitlement to the basic capabilities exists for nonhuman animals as it does for humans.

John P. Clark (2008), Ramona Ilea (2008), and Elizabeth Cripps (2010) all question this assumption. Ilea notes that while most people recognize the importance of capabilities

such as life, practical reason, affiliation, and bodily integrity for humans, many do not think that these capabilities are important to nonhuman animals. While most people feel that the premature death of a human neighbor is a tragedy (ending the capability of “life”), few mourn the death of the hog that provided the bacon they had for breakfast. And few of those who are outraged when they learn of the Tuskegee syphilis experiments on human subjects question the use of laboratory rats for similar purposes. While many people oppose cruelty toward animals, Ilea contends that few see the need for political structures to ensure that nonhuman animals enjoy the opportunities included in the ten central capabilities (Ilea 2008, 552).

CONCERNS ABOUT WILD ANIMALS: Much of the criticism of Nussbaum’s extension of the capabilities approach to nonhuman animals focuses on her treatment of wild animals. Since the domain of my project is limited to companion canines, these issues are of lesser interest. I will simply note the two most common complaints for completeness. First, the focus of the capabilities approach on the individual is problematic when applied to wild populations. As Cripps observes, “The very functioning of ‘natural’ societies, or ecosystems ... revolves around the sacrifice of the individual” for the good of the population (2010, 14). And, as Clark observes, monitoring the wellbeing of billions of individual wild animals is an impossibility. Second, Nussbaum struggles with the behavior of predators. How can the capability of “life” of both prey and predator species be respected? Nussbaum attempts to equate the behavior of predator species with human war and aggression, human capabilities that should not be supported, and considers taking “vulnerable animals” under “protective custody” (2006, 379). Critics view this line of thought as ecologically naïve and unworkable. David Schlosberg, for example, argues: “to be food for others is the essence of functioning

for some beings” (2007, 151). After reviewing the criticisms of Nussbaum’s application of the capabilities approach to animals, Cripps concludes that the natural world is “outside the circumstances of justice” and, therefore, Nussbaum’s attempt to extend the capabilities approach to nonhuman animals was doomed from the start.

Perhaps Cripps is correct. One of the most fundamental characteristics of our planet’s biosphere is the complex food web that necessarily involves animals eating other animals. If the extension of the capabilities approach is limited to companion canines, however, the objections of Nussbaum’s critics can be answered.

First, an argument to extend the capabilities approach to companion canines need not be grounded on the concept of dignity and the Aristotelian claim that all animals are objects of wonder. As we saw in chapters two and three, the special relationship between humans and companion canines provides adequate justification for positive obligations of care. Companion canines have been welcomed as friends, companions, and family and community members. Justice concerns should be extended to them because of the relationship we have with them.

Second, given the prevalence of meat eating, and the support the public gives to medical research using laboratory animals, Ilea is correct in questioning the existence of the “overlapping consensus” Nussbaum deems possible. With regard to companion canines, however, we have extensive data (chapters two and three) to show that most dog owners and most small-animal veterinarians believe companion canines are entitled to the conditions they need to thrive. We can, therefore, safely push aside the concerns of Clark, Ilea, and Cripps; Nussbaum’s capabilities list for animals, when limited to companion canines, resonates with the goals of veterinary clinicians, animal welfare organizations, recent court

decisions, and the views of a growing fraction of the public. Furthermore, while I recognize the political and practical significance of public opinion in a democratic state, and I am mindful of prevailing attitudes during my discussion of public policy and animal law, the moral legitimacy of the public policies and laws I recommend in chapters five and six are grounded on the relationships-generate-responsibilities argument of chapter three, not on public opinion.

Third, the concerns about wild animals do not apply to companion canines. Cripps's claim that the sacrifice of individuals is necessary for the functioning of natural ecosystems does not apply to the artificial breeding of companion animals. While in nature, deleterious genetic variations are eliminated by the death of individual animals before they reach reproductive age, the genetic health of dogs and cats can be maintained by artificial selection. Breeders have a large measure of control over which genes are passed to the next generation. While individual dogs and cats may be prevented from breeding, they can still be flourishing, valued members of our mixed-species society.

Clark is surely correct in pointing out that we do not have the resources to protect individual animals in the wild. We do, however, have the capability to protect companion animals. Again, a problem with extending the capabilities approach to all nonhuman sentient animals does not apply to an extension to companion canines.

While dogs are predators, with few exceptions their source of food is similar to that of their human partners. There are many ethical issues raised by the consumption of meat by humans, factory farming practices, and the diversion of food to pets while many human children go to bed hungry. These important issues are beyond the scope of this project. My claim is simply that the family dog is supplied with food by much the same process as are her

human partners. The commercial kibble that fills her bowl is produced from grain, soy, and meat byproducts that come from the same industrial farming practices that feed the human population. With regard to companion canines, there is no concern about the protein sources in their diet that does not apply equally to human animals.

4.2.2 Self-Determination and Companion Canines

Advocates of political liberalism contend that citizens ought to be able to define their own notion of the good and plan a strategy to pursue it. Nussbaum is committed to this tradition and, therefore, fashions her partial theory of justice in such a way that it does not favor a particular account of value. She accomplishes this by emphasizing the “architectonic” role of “practical reason” in the capabilities approach. Nussbaum understands practical reason to involve “being able to form a conception of the good and to engage in critical reflection about the planning of one’s life” (2000, 79). She reminds us again and again of the “centrality of choice in the whole notion of capability as freedom” (2011, 39) and insists that practical reason must “organize and pervade” (2006, 398) the other central capabilities.

The status of practical reason as an “architectonic” capability becomes highly problematic when capabilities theory is applied to nonhuman animals. Even the most ardent champions of canine cognitive abilities do not claim that dogs can “form a conception of the good and to engage in critical reflection about the planning of one’s life.” Most all agree that dogs “live in the moment.” And as has been noted, the human-made environment in which dogs live poses many dangers from which they need to be protected. Like young human children, canine choices need to be limited. For these reasons, practical reason will not play the organizing role in my list of “wellbeing-promoting interests” that it does in Nussbaum’s central capabilities list.

It should be noted, however, that the cognitive and emotional wellbeing of companion canines requires the freedom to make *some* choices. Just as a young child benefits from choosing a bedtime story, selecting a flavor of ice cream for her birthday party, or participating in self-directed (but supervised) play with other youngsters, so a dog benefits from the freedom to explore a fenced yard—investigating smells, chasing squirrels, and running or sunning as she is inclined. Dogs, like human children, must be protected from traffic, toxic substances, and poor food choices, but they need a measure of freedom to develop mentally and emotionally. These needs can be accommodated under several of the headings in the “wellbeing-promoting interests” list I supply in section 4.3.2, most notably, “cognitive life,” “social life,” and “limited ability to control one’s environment.”

4.2.3 Capabilities or Functionings?

Nussbaum’s focus on capabilities rather than functionings follows from her commitment to practical reason. Because humans should be free to form a conception of the good and to choose to pursue that good as they judge best, a just society must provide humans with capabilities, *opportunities* to follow their plans, rather than directives to achieve particular functionings. “In contrasting capabilities and functionings,” Nussbaum explains, “we should bear in mind that capability means opportunity to select. The notion of freedom to choose is thus built into the notion of capability” (2011, 25).

Nussbaum is aware, however, that her emphasis on capabilities and the “freedom to choose” that capabilities entail are problematic for certain populations. She discusses the need to focus on functionings for certain classes of human and nonhuman animals. “For children,” she notes, “functioning may be made the goal in many areas” (2006, 172). She argues that compulsory functioning is justified in the case of children because of their

“cognitive immaturity” and the importance of certain functionings to their future welfare. For example, children should not be allowed to choose whether or not to take advantage of the opportunity to spend their days in a classroom. Nussbaum also recognizes that attention to functionings rather than capabilities is necessary for adults whose welfare depends on caretakers, such as the mentally disabled and elderly Alzheimer’s patients. And, for nonhuman animals she leaves the door open for a shift in emphasis from capabilities to functionings. “Although choice is favored whenever the creature has a capacity for choice, a focus on functioning (a kind of sensitive paternalism) will be more appropriate in this case than in the human case” (2011, 162). She ends her discussion of animals in her 2011 book, however, with a clear commitment to capabilities: “The main conclusion of my approach is that all animals are entitled to a threshold level of *opportunity* [my emphasis] for a life characteristic of their kind” (162).

The vulnerable, dependent nature of companion canines was documented in chapter two. Domestic dogs are “perpetual puppies” whose welfare depends on the care they receive from humans. As such, the observations that Nussbaum makes concerning the appropriateness of shifting the emphasis from capabilities to functionings for children apply even more strongly to companion canines. Providing *opportunities* (capabilities) for companion canines rather than insisting that they achieve certain functionings is likely to lead to poor outcomes. Dogs rely on their human companions for food, shelter, medical care, and companionship. They live in a complex world structured by adult humans that is to a large extent beyond their comprehension. In such an environment, they certainly do not have the level of cognitive development sufficient to direct their own lives by choosing from a capability set, the “available opportunities for valuable functionings.” The miniature poodle

who decides to celebrate Easter by consuming a pound of chocolate left in an Easter basket on a low table and, as a result, must be rushed to the veterinarian, is a case in point. While companion canines can be provided with opportunities and allowed to make their own choices in some circumstances, much of the time their human caretakers must call the shots. A “doggy door” to a fenced back yard provides an appropriate opportunity to satisfy capability ten (Limited Control Over One’s Environment), while free access to the pantry will lead to numerous health problems.

Companion canines survive, and some flourish, with the help of human owners who employ fences, leashes, crates, groomers, veterinarians, the dog food industry, and “puppy kindergarten” to ensure that certain functionings are achieved. Just as adults must insist that human children achieve the functionings that schooling affords, dog owners must insist that their canine companions achieve the functionings necessary to coexist in a society structured and controlled by humans. The shift in emphasis from capabilities to functionings for nonhuman animals, which Nussbaum entertains but does not fully adopt, is necessary for companion canines. The lives of untrained, unvaccinated, and uncontrolled dogs are often thoroughly Hobbesian: “nasty, poor, brutish, and short.”

4.2.4 Dignity: A Questionable Foundation

More needs to be said about Nussbaum’s reliance on the concept of dignity as a justification for entitlement to minimal threshold levels of the central capabilities. The problems with the use of dignity for this purpose go well beyond those raised by Ilea. In 2008, the President’s Council on Bioethics was asked to determine the meaning of “dignity” as used in medical ethics. They failed to reach a consensus. Rosalind English, reviewing Michael Rosen’s book *Dignity* for the UK Human Rights Blog, referred to efforts to define

“dignity” as attempts to “nail jelly to the wall.” And Rosen himself finds some truth in Schopenhauer’s assessment of the term: “That expression, *dignity of man*, once uttered by Kant, afterward became the shibboleth of all the perplexed and empty-headed moralists who concealed behind that imposing expression their lack of any real basis in morals” (Rosen 2012, 1).

In her doctoral dissertation, “Respecting Human Dignity: An Essential Principle of Bioethics?” Ayesha Bhavsar carefully documents the vague and “often conflicting” ways that the concept of dignity is used in the bioethics literature. She concludes that bioethics “should strive to move away from dignity’s inflationary use.” By “inflationary use,” Bhavsar is referring to the same phenomenon that Schopenhauer criticized as hiding “behind that imposing expression.” Both Bhavsar and Schopenhauer argue that the term “dignity” is often used as a substitute for a sound argument for a normative claim. Bhavsar contends that bioethics should avoid references to dignity and “instead concern itself with what moral guidelines ought to do, which is largely reducible to the protection of interests” (2012, 167).

Nussbaum is aware of the difficulty involved in defining “dignity.” “Dignity,” she explains, “is an intuitive notion that is by no means utterly clear.” It would, therefore, be a mistake to “use it as if it were an intuitively self-evident and solid foundation for a theory” (2011, 29). Her approach is to develop the concept of dignity in conjunction with other concepts: equality, respect, fundamental neediness, capabilities, wonder, freedom and choice, active striving, and integrity. She thinks that the meaning of dignity comes into focus within this “network” of related ideas.

While Nussbaum is willing to concede that the definition of “dignity” is not “utterly clear,” she insists that the concept does important philosophical work that cannot be achieved

by the other ideas in the network (2011, 30). By grounding entitlements to threshold levels of capabilities on a notion of the dignity of sentient beings based on what they have in common—their neediness and wondrousness—the capabilities approach can extend justice considerations to vulnerable groups such as the disabled, foreign aliens, and nonhuman animals. Nussbaum carefully explores these three “frontiers of justice” in her book with this title (2006).

While the concept of dignity may come into focus for some readers as they consider Nussbaum’s “network” of ideas, for others, dignity is likely to remain a rather murky notion, not something upon which one ought to ground extensive, controversial obligations. In my judgment, the RGRA explored in the last chapter provides a more compelling justification for human responsibilities to companion canines than an appeal to their dignity.

It is important, however, to consider all of the functions that dignity plays in Nussbaum’s formulation of the capabilities approach before we abandon the idea. I suggest that in addition to its role in the justification of entitlements, dignity functions as a key concept in a heuristic approach to identifying the *central* capabilities, the truly important components of a flourishing life. To judge the importance of a capability, Nussbaum performs the following thought experiment: We begin by “imagining a life without the capability in question.” If life without the capability in question “is not a life worthy of human dignity,” then the capability we are testing is central, and worthy of constitutional protection (2006, 82).

Just as the considerations above cast some doubt on the usefulness of the concept of dignity to justify human entitlement to minimum standards of the central capabilities, they also provide grounds for questioning the usefulness of Nussbaum’s dignity test as a means

for selecting the truly important capabilities/functionings. While Nussbaum and others are confident that they can determine whether or not a capability is “central” and thus worthy of governmental protection by “imagining” a life without the capability and deciding whether such a life is “worthy of human dignity,” performing such a thought experiment for another species is clearly problematic. Nonetheless, selecting the functionings that are important for the wellbeing of companion canines is clearly necessary for the success of my project. The best approach may be to turn directly, as Bhavsar recommends, to the findings of veterinary clinicians, nutritionists, behaviorists, comparative psychologists, and sociologists concerning physiological and behavioral indicators of canine wellbeing.

Later in this chapter I propose a tentative list of wellbeing-promoting companion canine interests that functions in much the same way as Nussbaum’s list of central capabilities. While our understanding of how canine “beings and doings” contribute to their wellbeing is sure to grow with further research, thus necessitating modifications in the list, it is not clear that the use of the concept of dignity can be of much help in this effort. There is no need to become mired in an attempt to “nail jelly to the wall.”

4.3 The Wellbeing of Companion Canines

I have explored the capabilities approach in some detail because of its promise to help identify the wellbeing-promoting interests of companion canines and to build a moral framework for their care and medical treatment. In this section I summarize the features of the capabilities approach that will prove useful toward these ends, and discuss necessary modifications. I end the section with a list of the most salient wellbeing-promoting interests of companion canines.

4.3.1 Lessons from and Modifications to the Capabilities Approach

The following features of the capabilities approach will prove useful in generating a list of the wellbeing-promoting interests of companion canines that humans have a responsibility to recognize, promote, and protect.

1. Sen's insistence that wellbeing cannot be captured by a single metric certainly applies to dogs as well as humans. Dogs, like their human owners, have social and emotional needs as well as physical needs. We should strive to explicitly identify the *multiplicity of canine wellbeing interests*.

2. The interests of companion canines are best thought of in terms of the *capabilities and functionings* that promote wellbeing, what the animals are able to "do or be." Neither the availability of resources nor the satisfaction of preferences is sufficient to ensure the wellbeing of dogs. For example, dogs may refuse nutritious meals in favor of harmful treats. Owners have a responsibility to ensure that their canine companions are adequately nourished, that is, achieve the desired functioning.

3. *Individual differences in wellbeing-promoting interests* must be considered. *Canis lupus familiaris* exhibits extreme physical, social, and emotional variation. Just as mastiffs require far more food than chihuahuas, the average border collie requires far more exercise than the average chow chow, and most vizslas need more social interaction with their owners than do foxhounds. Furthermore, for many factors, individual variation within breeds exceeds variation between breeds. This variation must be recognized and accommodated as well. The goal should be to ensure that every companion canine enjoys a fully functioning life as defined by her needs and limitations.

4. Canine interests are *irreducibly heterogeneous*. Failure to provide adequate social

interaction cannot be compensated for with extra attention to physical health. Each wellbeing-promoting interest must be addressed.

5. The “built-in morality” of the capabilities approach, the beginning assumption that humans are needy, vulnerable, social beings, and that this fact implies that care is a primary good, applies equally to canines. This is precisely the good that humans have a responsibility to provide for their canine companions; as we saw in chapter three, relationships between partners with large power differentials entail responsibilities of care.

6. Prior efforts to define welfare standards, such as the “Five Freedoms” for food animals, have been criticized for being too vague (Webster 1994). The capabilities approach largely avoids this criticism by providing a list of central capabilities and setting *minimum threshold standards* for each. Minimum thresholds would be useful to veterinary clinics, animal welfare agencies, dog owners, and legislators, as they define acceptable practices, establish policies, and write legislation to ensure that human responsibilities to companion canines are met.

7. Nussbaum’s tentative list of central capabilities is a good place to start as we construct a list of the wellbeing-promoting interests of companion canines.

8. The capabilities approach connects philosophical concerns for human and animal wellbeing with real-world social/political decision-making procedures. “It stays close to the ground,” Nussbaum points out, by focusing on what “real people” care about—what they are able to do and to be—and by advocating governmental regulations designed to ensure that people have the opportunities they need to have a life of dignity (2011, 106). By specifying central capabilities critical for wellbeing, suggesting minimum standards for central capabilities, and charging government with a responsibility to ensure that minimum

standards are met, the capabilities approach forges a strong bridge between theory and practice. A similar connection is necessary for a fully functional moral framework for the practice of veterinary medicine.

The list of wellbeing-promoting companion canine interests I propose in section 4.3.3 differs from Nussbaum's list of "central capabilities" in four important ways.

1. My claim that humans have an obligation to consider the wellbeing-promoting interests of companion canines is grounded on the RGRA not on an appeal to dignity.

2. Nussbaum's emphasis on "practical reason" has been eliminated to more realistically reflect the cognitive limitations of dogs and the nature of their relationship with humans (section 4.2.2).

3. The key elements of canine wellbeing are identified using the empirical studies reviewed in chapters two and three rather than with a dignity test (chapters two and three, and section 4.2.4). My claim is that the included factors stand out in the scientific literature as the most important influences on the wellbeing of companion canines.

4. While, like Nussbaum, I express the wellbeing-promoting interests of companion canines in terms of what they are able to "do or be," the emphasis has shifted from capabilities to functionings to reflect the paternalistic oversight necessary for companion canines to flourish in modern mixed-species communities (section 4.2.3).

4.3.2 The Wellbeing-Promoting Interests of Companion Canines

Following Antonio Damasio, who understands the "crux of morality" to be "the regulation of life in a particular environment" as a means of "promoting life and avoiding death and enhancing wellbeing and reducing suffering" (2003, 167), I adopted as one of the initial assumptions of this project the claim that *wellbeing is the chief aim of ethical*

behavior. The discussion in this chapter has been motivated by the promise of Nussbaum's capabilities approach to enrich our understanding of the interests of companion canines, the "beings and doings" that promote their wellbeing. It is this understanding that is needed to provide direction for dog owners and veterinary clinicians committed to the ethical care and treatment of companion canines.

Nussbaum recognizes that not all of the capabilities of sentient beings contribute to their wellbeing. The human capability for waging war, for example, leads to death and destruction, not life and wellbeing. In order to identify the capabilities that promote wellbeing, Nussbaum used a dignity test. The ten "central capabilities" on her list are those that she judged to be necessary for a life of dignity. Because of the problems involved with this use of the concept of dignity (section 4.2.4), I employ a different method to identify the wellbeing-promoting interests of companion canines.

Preference utilitarians, like Peter Singer, argue that moral agents must consider the preferences of the beings affected by their actions. Singer defines "a person's interests to be what, on balance and after reflection on the relevant facts, a person prefers" (1993, 94). Even though we have seen (section 4.1.1) that Singer's utilitarian approach is unsatisfactory as a foundation for a moral framework for the care and treatment of canine companions because it fails to recognize the irreducible plurality of goods, introduces justice problems by averaging across populations, and does not account for adaptive preferences, we can make use of Singer's definition of "interests." By focusing on his phrase, "on balance and after reflection on the relevant facts" we can distinguish between interests and wellbeing-promoting interests.

It may be helpful to remember the distinction between first- and second-order desires.

Both humans and dogs have first-order desires—desires for certain objects and states of affairs. Just as a child may have a desire for a new bicycle or a day at the baseball stadium, a dog may have a desire for a generous serving of the Thanksgiving turkey or a walk in the park. Unfortunately, the first-order desires of both humans and dogs do not always promote wellbeing. Many humans have desires for artery-clogging foods and marriage-threatening sex that can significantly diminish wellbeing over the long run. That is where “on balance and after reflection” come in. Self-conscious beings have second-order desires—desires about first-order desires. While a heart-attack patient may find the double cheeseburger on the menu to be very desirable, he may—after reflection on what he learned from the hospital nutritionist—decide to push aside his first-order desire and select the heart-healthy salad entrée. He may desire to be the kind of person who is not tempted by fat-laden burgers. He has desires about his desires. Harry Frankfurt argues that the ability to act on second-order desires is fundamental to human freedom. “Actions [of a human that] reflect the economy of his first-order desires, without being concerned whether the desires that move him to act are desires by which he wants to be moved ... are no different from [those of] an animal” (1971, 12).

While the degree to which dogs are self-conscious is a matter of debate, few think that dogs form second-order desires after seriously “reflecting” on the long-term consequences of acting on their first-order desires. Both young children and dogs lack the cognitive development and experience needed for such reflection; they are ill-equipped to safely navigate the complex environment in which they live. Many canine first-order desires, demonstrated by behaviors such as chasing cars, eating chocolate Easter bunnies, and chewing on electrical wires, clearly pose serious health and safety risks. Companion canines,

like young children, profit greatly from the moderating influences of paternalistic adult humans; much of the “balancing” and “reflecting” that needs to be done to ensure their wellbeing must be done by parents and owners.

I use the term “interests” to designate beings and doings motivated by companion canine first-order desires, and “wellbeing-promoting interests” to refer to those beings and doings that respect the preferences (first-order desires) of companion canines as far as possible given the considerations of owners and veterinary clinicians looking out for the long-term wellbeing of their dependent partners. The challenge is to define what is meant by “wellbeing” and to find a way to measure it.

We can begin to formulate a conception of “wellbeing” with Erin McKenna’s observation that every sentient being has a “good of its own,” a good that includes freedom from suffering, pleasurable experiences, and opportunities to develop a full range of positive capabilities (2013, 42). There are two important parts to McKenna’s observation: “good,” which is captured by the terms we associate with wellbeing—“flourishing” and “thriving”—and “its own,” which relates to the idea, echoed by Stafford, that the wellbeing of a dog is connected with “its subjective experience of life” (2007, xi). It is this second aspect of wellbeing that is at the heart of the challenge for dog owners and veterinary clinicians who aim to enhance the wellbeing of companion canines. It is very difficult to enter a dog’s Umwelt, to see the world “from a dog’s point of nose,” to understand what a dog smells, sees, knows, and feels (Horowitz 2009, 13).

While our understanding of the subjective experience of dogs will always be incomplete, an ongoing consideration of relevant empirical studies provides our clearest window into what it is like to be a dog. “The problems of measuring dog welfare are

essentially the same as those for any other mammal, and therefore the same general techniques are used. ... By studying an animal's physiological and/or behavioral responses to its environment, it is possible to obtain some measure of its success at coping" (Hubrecht, 1995, 183). Observable physiological and behavioral parameters can be associated with positive and negative welfare states, and causal connections can be made with care practices.

Many of the causal chains connecting care practices, physiological and behavioral indicators, and states of *physical* wellbeing are clearly understood. For example, the pain associated with hip dysplasia can be inferred from an afflicted animal's limping gait and difficulty getting up from a lying position. A radiograph of the hip can identify the cause of the pain, and studies have linked hip dysplasia with inbreeding and obesity due to overfeeding.

We have seen in the preceding chapters, however, that dogs are complex, sentient, social beings who form close emotional relationships with humans. Their wellbeing—freedom from suffering, pleasurable experiences, and opportunities to develop a complete range of positive functionings—depends on the satisfaction of emotional and social needs as well as physical ones. While measuring the satisfaction of these needs is more difficult, physiological and behavioral clues can be helpful here as well. Dogs have two physiological systems that are activated during periods of stress: the sympathetic adrenomedullary axis and the hypothalamic-pituitary-adrenocortical axis. Physiological changes associated with these systems can be monitored to provide some insight into the stress level being experienced by dogs (Hubrecht 1995). Behavioral indicators can also be used to monitor emotional and social wellbeing. Researchers point to repetitive, functionless behaviors such as “circling, pacing, whirling, repetitive grooming or self-biting, polydipsia or polyphagia, compulsive

staring, and excessive barking” (Hubrecht 1995, 185) as indicators of high levels of stress.

It is important to remember that wellbeing entails more than freedom from stress.

In section 3.2.3, “Beyond the Prevention of Cruelty,” we concluded that Argos, like Jeffrey, has the capability to suffer *and* to experience pleasure. To respect the sentience of a being is to recognize and consider both positive and negative experiences. Those responsible for the care of dependent vulnerable beings, whether canine or human, have a responsibility to create conditions conducive to positive experiences. While much of the work of animal welfare scientists has involved pathological conditions, recent studies have focused on positive experiences in the lives of companion canines: data shows that close interactions with owners result in “increased plasma dopamine concentrations and other biochemical indicators of pleasure” (Stafford 2007, 225) including oxytocin levels (Nagasawa et al. 2015), behavioral studies carried out in cognitive canine labs have provided us with a better understanding of what dogs find rewarding (Horowitz 2009, 2016), and dog trainers have applied these findings to design practical dog handling practices that lead to enriched lives for both owners and their canine companions (Smith 2007). A particularly promising line of research involves “choice tests” and “demand curve tests,” which measure “what is important to an animal and how hard it will work to gain access to different elements of the environment” (Stafford 2007, xii). These methodologies were developed by economists to measure consumer demand (Cooper 2004, Carenzi and Verga 2009), and have helped biologists gain insight into the subjective experience of other animals. While we will never completely understand what it is like to be a companion canine—or a human infant or a severely mentally disabled human adult—our responsibility to care for these beings obliges us to continue to explore the connections between particular care practices and psychological

and social wellbeing.

4.3.3 The WPICC List

The following list of wellbeing-promoting interests of companion canines (WPICC) is a first draft, an invitation for discussion. Its construction began with Nussbaum's list of central capabilities. Care was taken to preserve the detailed analysis, the focus on "beings and doings," the attention to individual differences, and the irreducible heterogeneity of interests championed by the capabilities approach. Modifications were made according to the considerations discussed in this chapter. Other influences include the "Five Freedoms" (Brambell 1965, FAWC undated) and the work of animal welfare scientists and animal behaviorists (chapters two and three, and Stafford 2007). The WPICC list delineates the scope of human responsibilities of care for companion canines established by the RGRA; dog owners, veterinary clinicians, and legislators have an obligation to attend to these interests.

Each wellbeing-promoting interest identifies a "being or doing," or a collection of related beings and doings, that has been linked to observable physiological and behavioral indicators of wellbeing. Social interaction with other dogs and humans, for example, has been found to reduce physiological indicators of stress and to promote adaptive behavior, while isolation increases stress hormones and often leads to maladaptive, destructive behaviors (Serpell 1995). Under each entry, important causal factors that contribute to the ability of companion canines to achieve the critical functioning or to enjoy an opportunity for that functioning are highlighted.

THE WELLBEING-PROMOTING INTERESTS OF COMPANION CANINES (WPICC):

1. LIFE ITSELF: Nussbaum includes "Life" as the first of her "central capabilities"

and Damasio includes “avoiding death” in his list of the concerns of morality. Their contention is that the most fundamental interest of sentient beings is life itself, in simply being alive; wellbeing is impossible without being. Some thinkers, however, question whether the relatively limited cognitive abilities of non-human animals can support the seemingly abstract desire for life itself. Do companion canines value life *per se*, or only the momentary pleasures that life provides? The answer to this question has important implications for the most contentious issue in companion canine veterinary medicine—convenience euthanasia. This question will be discussed in more detail in section 4.4.1.

The lives of companion canines are cut short by many factors under the control of humans. First among these is *convenience euthanasia*. While terminally ill dogs are frequently euthanized in order to spare them from the pain and suffering their final days promise to bring, millions are killed in their prime because they are simply unwanted, because they are an inconvenience to their owners. Other unwanted dogs are *abandoned*, dumped beside the road or left at a vacation home site where their prospects for continued life are severely limited. Additional threats to life itself include factors that can negatively affect physical health: *a lack of basic healthcare, inadequate nutrition or shelter, and poor breeding practices*. These factors are discussed in more detail in the next entry.

2. PHYSICAL HEALTH: Physical health is an important component of wellbeing. To be achieved, attention must be given to *adequate nutrition*—clean water and nutritious food; *appropriate exercise*—including regular walks, runs, agility sessions, or other activities, as the condition of the animal allows; *adequate shelter*—clean, dry, warm housing; and *adequate healthcare*—both preventative and therapeutic.

In addition to the external conditions necessary for dogs to achieve physical health,

there are internal ones as well. The health and capabilities of all organisms depend on environmental influences *and* their *genetic heritage*. Much of the suffering experienced by companion canines is a result of breeding for extreme characteristics such as large heads in bulldogs, the nonfunctional posture (sloping croup) preferred in German shepherds, elongated backs in dachshunds, brachycephalic muzzles in pugs, and folded skin in shar-peis. Further suffering is a consequence of inbreeding or line-breeding that increases the likelihood of genetic defects. Deafness, hip dysplasia, eye defects, and many other pathological conditions have strong genetic components.

Just as dogs need shelter, clean water, and a nutritious diet to enjoy good health, they also need a sound genetic blueprint. Breeding decisions must prioritize health and functional morphology over fashion, conformation, and the “purity” of the breed. Two detailed examples of this issue—breeding for extreme anatomical characteristics in English bulldogs and uric acid metabolism in Dalmatians—are discussed in chapter six.

3. BODILY INTEGRITY: Companion canines have a welfare interest in the integrity of their bodies, in being whole. *Cosmetic surgeries*, such as the docking of tails and the cropping of ears, “are patently of no benefit” to dogs and, “indeed, cause suffering” (Rollin 2006b, 123). Furthermore, severely cropped ears and docked tails limit the ability of dogs to express their emotions (Horowitz 2009, 114). *Attempts to solve behavioral problems with destructive surgeries*, such as debarking and the removal of canine teeth, also compromise the bodily integrity of canines. Not only do these surgeries result in considerable pain and suffering, they also severely limit basic functions. Few of these operations would be necessary if dogs were properly trained and help was sought from veterinary behaviorists if difficulties arose (Rollin 2006b, 123).

The practice of *spaying and neutering* companion canines is more controversial. While these procedures clearly compromise bodily integrity, and cause significant canine pain and suffering, Nussbaum finds several reasons to support sterilization. She approves of castration for dogs “inclined to aggression” and argues that sterilization “may create better lives for future animals by preventing overpopulation and consequent shortage and neglect.” She bases her conclusion on the judgment that reproductive activity is “not central in the flourishing of animals” (2006, 396). Rollin is not so sure. Not only can’t we be sure of the importance of reproductive activity to dogs, reproduction can be managed without the pain and suffering involved in surgery. “Were people responsible about companion animals,” he observes, “one would not need to use these procedures” (2006b, 123). This is a good example of an issue in need of further study.

4. SOCIAL LIFE: Companion canines are social beings who have a wellbeing interest in regular, appropriate attention from members of a social group. The survival of many organisms, from *Canis lupus* to *Homo sapiens*, depends on their ability to interact socially. Cooperation is needed for many critical activities including protection, the procurement of food, and child rearing. Social organisms often have a need for attention, a desire to make frequent contact with members of their social group. Because a need for attention can become pathological, both in humans and other social animals, the term “*attentionis egens*” is used to designate the normal, emotional need for attention that provides social animals with a survival advantage (Odendaal 2000, Odendaal and Meintjes 2003). Odendaal and Meintjes argue that *attentionis egens* need not be conspecific; the success of the “social symbiotic relationship” between humans and companion canines “is probably mainly based on a two-way fulfilling of *attentionis egens*” (2003, 300).

The *isolation* of companion canines, left at home while their owners are at work, frustrates their need for *attentionis egens*. Regular, positive, social interaction with familiar humans is necessary for companion canines to flourish. Long periods of isolation can lead to separation anxiety, destructive behavior, excessive barking, and obsessive-compulsive behaviors.

While dogs have an innate need for social interaction, just like human children, they need to learn to interact in appropriate ways. *Socialization*—exposure to different kinds of people and animals in different settings—is necessary for companion canines to develop the ability to function in mixed human-canine communities. Opportunities for *play*—activities that provide pleasurable experiences for companion canines and their human and/or canine playmates—enable developing canines to test their abilities and explore their world. “The urge to play,” neurophysiologist Jaak Panksepp argues, “was not left to chance by evolution, but built into the instinctual action apparatus of the mammalian brain” (2005, 54). It helps them learn to navigate their social world, which brings them much joy.

5. EMOTIONAL LIFE: The interest of companion canines in the emotional dimension of relationships is closely related to their interest in the social beings and doings of life in mixed species communities. Humans have artificially selected dogs to form strong emotional bonds with their human companions. This has led to many of the most endearing characteristics of companion canines: the warmth and enthusiasm with which they greet their owners, their desire to give and receive affection, their loyalty, and their delight in playful time spent with human family members. Dogs have a need for affectionate relationships that go beyond simple social interaction. The strong emotional character of the relationships between mammalian mothers and children, and between canines and their owners, is well

documented (chapter three).

6. COGNITIVE LIFE: While dogs do not have the cognitive abilities and needs of humans, they do have a wellbeing interest in mental stimulation. The lives of companion canines are enriched by *mentally stimulating environments*, appropriate *training*, and opportunities for *breed-characteristic activities*. Dogs living in stimuli-deficient environments develop many of the same mental pathologies seen in zoo animals housed in traditional, barren cages. As social animals, companion canines need to be trained to behave in a manner acceptable to the community in which they live. They must be house-trained and learn simple commands so that they can enjoy time with family members and do not need to be isolated. Learning to participate in dog sports—agility, coursing, treibball, flyball, canine freestyle—helps dogs develop their minds as well as their bodies. Many dogs have been bred to work and are easily bored if they are not provided with a job to do: herding, hunting, guarding, controlling vermin, or pulling a sled.

7. LIMITED CONTROL OVER ONE’S ENVIRONMENT: While complete self-determination is not a realistic goal for companion canines, and the beings and doings listed above should primarily be thought of as functionings to be achieved rather than as opportunities to be chosen, some freedom and choice is appropriate and contributes to a flourishing canine life. Free access to water, shade or sun, a private space (bed or crate), and an approved place to urinate and defecate should be provided. Time spent exploring safe (fenced) outdoor areas and playing with other dogs provide opportunities for wellbeing-enhancing, self-directed behavior. As with young children, caretakers need to balance paternalistic protection and opportunities for growth and development.

4.4 Objections to the WPICC List

The wellbeing-promoting interests listed above are meant to provide moral guidance for the care of companion canines, to delineate the range of the positive duties of care that are generated by the human-companion canine relationship.

Objections to the WPICC list may take several forms. Some critics may take issue with the inclusion of entire interest categories. Many philosophers argue, for example, that because dogs “live in the moment” they cannot have an interest in their futures and, thus, have no interest in “life itself.” Others may object to some of the factors I have included under interest categories. Those who contend that in order to demonstrate that harm has been done, one must be able to show that a particular individual has been harmed may object to my inclusion of the inbreeding of pedigree dogs in the “bodily health” entry. Still others may have more general questions about the WPICC list. What is to be done, for example, about canine interests that are harmful to wildlife such as their desire to hunt and kill small animals? And what is to be done when canine and human interests conflict? I address each of these concerns in the next four sections.

4.4.1 Life Itself and Painless Killing

Is it wrong for veterinary clinicians to “euthanize” healthy, unwanted companion canines? Should the AVMA take a stronger stand against convenience euthanasia? Should the practice be legally restricted? If the human/companion animal relationship generates a responsibility to protect the “life itself” of companion canines—as I have suggested by including it in the WPICC list—then the answers to the questions above are yes, yes, and yes. Some philosophers, however, argue that as long as the killing is done humanely, in a painless manner, no wrong has been committed. On the contrary, under some circumstances

the painless death of an unwanted dog may be best for all concerned. Dogs, they argue, have no conception of their future lives. They have no plans or projects that can be frustrated by having their lives cut short. If an owner finds his dog to be a burden, and the dog's prospects for adoption are slim, a utilitarian calculation may find painless death to be the best alternative.

In this section I briefly consider the two leading categories of arguments against painless killing—lost-future arguments and preference arguments—before expanding the discussion to include relationship-based reasons for the protection of “life itself.” While I find neither of the traditional arguments compelling in themselves, when limited in scope to companion canines, and considered in combination with the RGRA presented in this dissertation, a stronger conductive argument emerges, an argument sufficient, I contend, to justify the inclusion of “life itself” in the requirements list.

LOST FUTURE ARGUMENTS: Lost future arguments claim that what is wrong about killing is that it deprives victims of their futures. Lost future arguments have been extensively used in the debate over abortion. In his influential paper “Why Abortion is Immoral,” Don Marquis begins with the “unproblematic assumption” that “it is wrong to kill *us*,” and claims that the reason it is wrong is because “the loss of one’s life deprives one of all the experiences, activities, projects, and enjoyments that would otherwise have constituted one’s life” (1989, 61-62). He then goes on to claim that “the future of a standard fetus includes a set of experiences, projects, activities, and such which are identical with the futures of adult human beings” (1989, 63), and concludes that abortion is, therefore, immoral.

While most of Marquis’s critics are willing to concede that the lost future of an adult

human being is a significant harm and thus morally impermissible in most situations, many claim that this is due to certain “natural properties” of adult humans that fetuses lack. Adult humans are aware that they have a future; they have hopes and dreams and plans for their futures; they place great value on their remaining years. Like human fetuses, nonhuman animals do not have these properties. Singer argues that many sentient animals live in an “eternal present.” Since they do not make long-term plans or set goals, painlessly taking their lives does not harm them the way a human would be harmed if her life were cut short. He claims that while such animals value the goods that life brings on a moment-by-moment basis, they do not value life *per se* and, therefore, cannot have a right to life (1993).

While supporters of Singer’s view would have to agree that having a life is a necessary condition for having a flourishing life, they would not necessarily be inclined to agree that owners and veterinarians have a responsibility to protect companion canines from painless deaths. A dog owner who asks her veterinarian to euthanize her dog because she is moving into a new apartment that does not allow dogs may be acting rationally and ethically, as may the clinician who painlessly kills the dog. Perhaps the owner found a better apartment at a lower price and finds her companion canine to be little more than a nuisance. Her interests are clearly served by the move and euthanasia. And if the dog only has interests in the present, he loses nothing by having his future cut short.

PREFERENCE ARGUMENTS: Preference arguments claim that the painless killing of animals is wrong because animals have a preference for continued life and the frustration of the fulfillment of this preference harms the animals. Preference for life can be seen in the fear animals express when their lives are threatened and in their struggle to escape from such threats. These indicators, however, are insufficient according to some critics. A desire to go

on living, they contend, requires far more than negative reactions to immediate circumstances. A desire to go on living requires long-term desires about one's future and perhaps even a sense of oneself as a being that exists over time. Once again, the limited cognitive capacity of nonhuman animals is used to counter an argument against painless killing. Critics claim that only humans, or perhaps humans and their closest relatives the great apes, have the capacity for long-term desires. Others disagree.

There are well-documented cases of animals chewing off one of their legs to escape from leg-hold traps (Curnutt 2001, 214). Surely, some argue, such behavior illustrates a strong desire to survive; the self-inflicted pain and loss indicate that trapped animals value their lives, value "life itself" apart from the value they place on pleasures of the moment. These animals, then, meet Singer's criterion for a "right to life." But how do we know, some wonder, that the self-mutilation does not result from terror, the panic that takes over as an animal struggles to free himself, rather than from an appreciation of life itself? Clare Palmer contends that explanations based on more immediate experiences cannot be ruled out and, therefore, more than a struggle to survive or short-term preferences such as a desire to eat a bowl of dog food are required to establish a preference to go on living. She thinks that preference arguments can work only for beings who demonstrate "the capacity to formulate certain relevant concepts and understand them," or at least "having sufficiently long-term desires about one's future that they amount, essentially, to having a desire to go on living" (2010, 131), and that few, if any, nonhuman animals have such abilities.

A RELATIONSHIP ARGUMENT: Just as the debate concerning abortion involves two distinct considerations—the moral status of the fetus and the moral implications of the relationship between the mother and the fetus—so too should the debate concerning the

painless killing of companion canines consider both the inherent characteristics of dogs and the relationship between humans and companion canines. We have explored this relationship in some detail and have seen that there are reasons to conclude that it generates responsibilities of care. We must now ask, “Does this relationship generate a responsibility to protect the ‘life itself’ of companion canines?”

Consider, once again, Rachels’s claim that parenthood is a “role” that entails certain responsibilities. To take on the role is to accept the responsibilities (1989, 50). Most readers would agree that the decision to become a parent, such as the Wesleys’ decision to adopt Jeffrey, involves a responsibility to protect “life itself.” I can’t imagine anyone approving of the killing of Jeffrey so that Martha and Peter Wesley could move to a condominium that didn’t allow children, no matter how “painless” the killing was. Why is the painless killing of an adopted companion canine different?

Consider Mr. Smith, the father of two children, both of whom have been begging him for a dog. Mr. Smith predicts that while his children will enjoy playing with a puppy for a short time, as the weeks and months pass their interest will wane, just as it did for the basketball court he built in the backyard. But, he reasons, why not afford his children the happiness a puppy would add to their lives? When they tire of the dog, he can take it to the local shelter where it will be placed in a new home or euthanized. His kids will enjoy the dog for a time and the dog will be well cared for during its stay in the Smith home.

Mr. Smith, I contend, is making the same mistake that Ms. Wood made. Both feel justified, for purely selfish reasons, to establish a relationship with a dog as if the dog were an inanimate object, to be used and discarded when no longer useful. If Mr. Smith follows his plan, he will voluntarily bring a sentient being into his family, whose life can go well or

badly from his point of view, who was selectively bred to emotionally bond with humans. The dog will become a dependent, vulnerable member of the family who will trust his caretakers and respond to their care with affection. The reciprocal, affectionate relationship that will form between the dog and the members of the Smith family is unlike the relationships between humans and stun guns, humans and African violets, and humans and basketball courts. It is a relationship analogous to that between the Wesleys and Jeffrey, a relationship that should not be terminated when inconvenient for the dominant party. Companions, friends, and family members ought not be discarded.

Of course, while critics will acknowledge that the Wesleys would be wrong (horribly wrong) to terminate Jeffrey's life in order to move into an attractive apartment, they may be unwilling to agree that it would be wrong for Mr. Smith to take his dog to an animal shelter when his children tire of it. For many readers, the arguments in chapters one and two may be insufficient to establish similar responsibilities of care for adopted children and companion canines. While speciesism may be at the root of this reluctance for some, others may find the objective differences between human children and companion canines to be sufficient to justify supporting the responsibility of parents to protect the life of their adoptive child while rejecting the responsibility of an owner to protect the life of her companion canine.

A CUMULATION OF CONSIDERATIONS ARGUMENT: The two traditional arguments against the painless killing of animals are not compelling in all cases. Controversy surrounds the question of whether or not animals have the inherent properties necessary for these arguments to succeed. What's more, many readers may not find the analogy between the parent/adoptive child relationship and the owner/companion canine relationship to be sufficiently strong to establish the responsibility of dog owners to protect the "life itself" of

their companions. These judgments, however, do not imply that veterinary clinicians are misguided in their concern for the killing of healthy animals, or that the solution to their moral stress is simply a better understanding of the allegedly innocuous nature of convenience euthanasia. While none of the three arguments reviewed above conclusively establishes that painless killing of healthy companion canines is wrong, they do raise legitimate concerns, and when combined form a cumulation of considerations argument that provides sufficient reason for the owners of companion canines and veterinary clinicians to avoid the “euthanasia” of healthy dogs.

The lost future argument reminds us that in ending the life of a healthy companion canine, we deny a sentient being many pleasurable experiences. On Marquis’s list of what is lost when a human future is cut short, “projects” is the only good that critics claim nonhuman victims do not lose as well. Projects, however, are not the only things, or perhaps even the most significant things, lost when a future is lost. Companion canines, like “us,” value “experiences, activities, and enjoyments.” They enjoy social interaction, good food, giving and receiving affection, mental stimulation, and play. While the futures of companion canines do not promise an “identical” set of “experiences, projects, activities, and such,” the similarity is sufficient to justify the discomfort veterinary clinicians experience when asked to perform convenience euthanasia.

It should also be noted that while the ability of dogs to conceive of long-term projects is questionable, it is also debatable whether Jeffrey has this ability, and yet, no one would use this possibility as justification for his “euthanasia.” And who is to say that living in the “eternal present” is not preferable to continuously planning for the future and fretting over the past? Some Eastern spiritual traditions consider “mindfulness,” fully experiencing life in

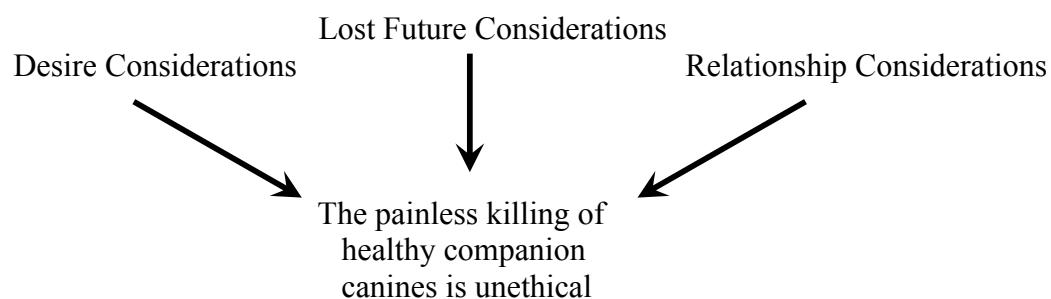
the present, to be highly desirable. The long list of simple pleasures that a dog's life can provide, combined with our uncertainty about what in life is truly valuable, should give us pause before we end the life of a companion canine.

We need to recognize our uncertainty when considering the objections to preference arguments as well. First, how sure are we that Singer and Palmer are correct in insisting that an awareness of oneself existing over time is necessary to have a desire to go on living? Some philosophers, such as Gary Francione, consider observations of animals struggling to survive as sufficient to establish a desire to go on living, and Tom Regan argues that “a sufficient condition of killing A's being a direct wrong to A is that continued life *is in A's interests*—is, that is, a benefit to A” (2004, 208). Secondly, even if we accept Palmer's more demanding criteria, how sure are we that dogs don't meet them? We have seen that experimental work at canine cognitive labs has demonstrated that we have repeatedly underestimated the capabilities of dogs. Singer is convinced that the great apes “are rational and self-conscious beings, aware of themselves as distinct entities with a past and future” (1993, 110-111). He criticizes “philosophers” who have written about the capabilities of animals “from the armchair,” when what is needed is a foundation of observational and experimental “investigation in the real world” (1993, 114). He goes on to note that a case can be made that in addition to the great apes, “whales, dolphins, monkeys, dogs, cats, pigs, seals, bears, cattle, sheep, and so on” may meet the more demanding criteria for a desire for life itself. It “depends,” he says, on “how far we are prepared to go in extending the benefit of the doubt, where doubt exists” (1993, 132). In the case of companion canines, doubt certainly exists, and most small-animal veterinary clinicians want to give their canine patients the benefit of the doubt.

We have carefully considered the relationship between human owners and companion canines in chapters two and three. Many of the characteristics of the parent/adopted child relationship widely thought to generate responsibilities of care were found to apply to the owner/companion canine relationship as well. These common properties point toward a responsibility to protect the “life itself” of the vulnerable member in each relationship. While the differences between the relationships are sufficient to convince some that a responsibility to protect “life itself” is generated by the parent/adopted child relationship but not the owner/companion canine relationship, others disagree. The similarities appear to be sufficient, however, to justify caution when contemplating the convenience killing of a vulnerable partner in a special relationship involving companionship, friendship, shared affection, dependence, and trust, even if that partner is a dog.

While none of the three arguments against the painless killing of healthy companion canines is conclusive, each appears to point to legitimate concerns with the practice. These concerns provide independent, convergent support for the claim that owners have a responsibility to protect the lives of their canine companions, that euthanizing healthy companion canines is wrong, and that the moral intuitions of veterinary clinicians concerning this practice are well founded.

Figure 3. The Painless Killing of Healthy Companion Canines



While cumulation of consideration arguments do not entail their conclusions, or support them by inductive generalization, they do provide plausible reasons for accepting them. The argument against convenience euthanasia outlined above strongly supports the veterinary clinicians who refuse to perform the procedure, suggests that the AVMA should take a stronger stand against it, and gives legislators sufficient reason to restrict it.

4.4.2 The Non-Identity Problem and Breeding Practices

Companion canines have a wellbeing interest in “physical health,” physical health is clearly affected by genetic factors, and genetic factors are strongly influenced by the practices of dog breeders. That much is uncontroversial. Disputes arise, however, when the morality of the breeding practices of dog fanciers are questioned.

With English bulldogs in mind, Nicola J. Rooney asks, “Is it acceptable to deliberately breed dogs that will have trouble running without shortness of breath, or whose likelihood of inheriting diabetes is 10 times higher than the general canine population?” (Rooney 2009, 180, quoted by Palmer 2012, 157). As noted above, dog breeders control not only the external factors that affect the wellbeing of their dogs, but internal genetic factors as well. The claim that breeders are responsible for the suffering that results from inbreeding and selection for extreme traits, however, is difficult to support. The problem is that breeding choices are “identity-affecting” choices; they determine which individuals, from a set of possibilities, come into existence (Palmer 2012, 159, following Lillehammer 2009). Because of this, it is difficult to argue that a breeder has harmed any particular dog, no matter how extreme the traits he seeks, or how horrible the suffering of his dogs. This is due to the non-identity problem.

The non-identity problem occurs when actions that appear to be harmful are identity-

affecting actions. Suppose a German shepherd fancier decides to produce a litter from a champion dog and champion bitch, both of whom exhibit the sloping croup favored by dog show judges, but also, sadly, associated with hip dysplasia. Can the breeder be said to have harmed the offspring of this mating if, as is extremely likely, some or all of the dogs suffer from crippling orthopedic problems in later life? It appears not. The breeder's actions did not cause any of *these* dogs to be worse off; if he had arranged a different pairing, a pairing of dogs more likely to produce healthy offspring, then different puppies would have been born. Assuming that the champion bloodline German shepherd puppies are well cared for, and that their lives are "worth living" in spite of the suffering they experience as a result of their orthopedic problems, the dogs are better off than if they hadn't been born. If the breeder didn't harm any particular dog, how can we say that his action was wrong?

For many of us, however, the intuition that the German shepherd breeder has done something wrong is not dispelled by identity-affecting considerations. Palmer (2012) discusses five "alternatives to the 'nothing wrong' conclusion": harm to others, placeholder arguments, non-comparative harm arguments, impersonal consequentialist accounts, and inappropriate dispositions. While she demonstrates that none of the proposed alternatives establishes wrongdoing on the part of all agents involved in identity-affecting actions that result in less than optimum outcomes, each, I argue, does point toward significant factors that support a case for the wrongdoing of the German shepherd breeder if one accepts the argument made in section 3.2.5 for the flow of responsibility along four vectors connecting individuals and collectives. By expanding the discussion to include responsibilities to collectives, the difficulties associated with the non-identity problem can be sidestepped. After reviewing the five solutions to the non-identity problem discussed by Palmer, modified

to apply specifically to the German shepherd breeder, I present an argument based on the four vectors of responsibility.

1. Harm to Others: While we might not be able to claim that the German shepherd breeder caused a particular, individual dog to be worse off, his decision to arrange for a litter of dogs likely to suffer from orthopedic problems rather than a healthier litter may harm other individuals. The dogs' medical problems will force their owners to decide between expensive treatments or euthanasia. Watching a loyal friend and companion suffer is certainly a harm.

There are, however, numerous cases where others appear not to be harmed. Some owners, for example, find their bulldog's snuffling, wheezing, and snoring to be cute. Where is the harm to a particular individual, then, if the brachiocephalic little fellow has a life worth living in spite of his congenital breathing problems, and his human family members enjoy his efforts to get air through his deformed nasal passages?

2. Placeholder Arguments: Placeholder arguments employ a broader sense of "individual" to disarm the non-identity problem. The breeder's goal is to produce a litter of German shepherd puppies. We can identify an individual allegedly harmed by his action as a "German shepherd puppy" rather than as the product of two specific gametes. An advocate of the placeholder argument might contend that the action of such a breeder does affect an individual dog in this broader sense because it affects the puppy the breeder produces, whoever that turns out to be. Since the breeder could have produced a German shepherd puppy with healthy hindquarters, his actions harmed the puppy he produced and, therefore, he has committed a wrongful act. Palmer objects to such reasoning, claiming that it does not resolve the non-identity problem: no "*particular* actual future" puppy has been made worse

(my emphasis). She goes on to claim that in the case of animals, placeholder arguments also fail to work because “welfare affecting factors are the purpose of breeding the animals” (2012, 161). The extreme sloping croup of the German shepherd, for example, is a sought-after trait that necessarily leads to orthopedic problems. Therefore, substituting “German shepherd puppy” for a “particular actual future” puppy does not solve the non-identity problem. Any show quality German shepherd puppy would have the wellbeing-affecting trait.

3. Non-Comparative Harm Accounts: Perhaps, some philosophers argue, the problem is with the criterion for harm. Why must an individual be made worse off in order to say that harm has been done? Suppose we take “harm” to mean “in a bad state,” no comparison necessary. A German shepherd dragging her hind legs due to hip problems is clearly in a “bad state,” and surely, acting in a manner that results in dogs existing in a bad state is wrong.

Palmer finds this solution problematic. It is not clear, she claims, what a “non-comparative harm” could mean. Any declaration of harm seems to require a reference frame of some sort. If harm implies “making worse off,” then the comparison is to the individual’s previous state. Perhaps, Palmer suggests, the comparison could be to a “species norm.” But how, she wonders, can whether or not a dog is harmed depend on what happens to other dogs? And, given the controversies surrounding the species concept, she is uncomfortable with a comparison to a species norm.

4. Impersonal Consequentialist Accounts: If one adopts a wider view, focusing not on an individual German shepherd with hip problems, but on the state of the world with inbred, unhealthy dogs versus an alternative world with genetically diverse, healthy dogs, one might

conclude that “some states of the world are worse than others even if they are worse for no one in particular” (Palmer 2012, 163). Palmer finds this approach promising. If presented with our case of the German shepherd breeder, she would probably be willing to concede that even though his actions did not make the quality of life of any particular dog worse, he could have bred healthier dogs that would have better lives. The breeder’s actions led to a world with an unnecessary measure of suffering and, therefore, were wrong.

Such consequentialist reasoning, however, leads to problems. Palmer is troubled by Derek Parfit’s frightening account of a “Z-future,” an apocalyptic world teeming with beings whose lives are barely worth living, the result of a population policy designed to maximize total welfare. In the animal case, Palmer explains, this line of reasoning “suggests that we should breed animals to the point where the creation of any further animals would reduce overall good in the world” (2012, 164). She is reluctant to drift so far from a personal account of harm.

5. Inappropriate Dispositions: The act of breeding unhealthy dogs on purpose—selecting for an extremely sloping croup, for example—raises ethical questions about the disposition of the breeder. Even if the breeder cannot be charged with harming a particular dog by making it worse off, we may wonder what *kind* of person would choose to breed unhealthy dogs when he could breed healthy ones. His actions may not reflect the virtues we admire and want to encourage.

Confronted with this criticism, the German shepherd breeder may protest: “My dogs receive the best of care; they have lives well worth living. I find much pleasure in showing my dogs as do the people who come to see them. If I haven’t harmed my dogs and they enrich the lives of me and other dog fanciers, how can you say that my actions reflect

undesirable ‘dispositions’? My actions make the world a better place.”

6. Four vectors of responsibility: I accept Palmer’s claim that substituting a class of beings for a particular individual misses the point of the non-identity problem. It does, however, make one wonder if moral agents, such as the German Shepherd breeder, have responsibilities toward collectives, in this case a particular breed of dogs. What if we understand “German shepherd puppies” not to refer to “currently fashionable German shepherd puppies,” but rather, the entire range of phenotypes exhibited in the breed? Photographs of German shepherds from 1910 through the 1970s to the present time clearly illustrate the existence of intelligent working dogs with healthy hips before the current craze for sloping hindquarters (Sandoe, Corr, and Palmer 2016, 106). While I agree that “German shepherd puppy” does not refer to an actual, individual, future puppy, and therefore does not offer a satisfactory answer to the non-identity problem, it does refer to a collective population to which the breeder arguably has responsibility. For social animals, whose existence requires cooperative interactions with collectives, wrongful actions may not require harm to a particular individual.

The moral framework I am constructing, founded on the RGRA, can help answer Rooney’s question without getting mired in the non-identity problem. Three aspects of my framework work together to make this possible: (1) WPICC category 2—Physical Health, (2) the Burgess-Jackson principle, and most importantly (3) the collective character of some responsibilities. The second wellbeing-promoting interest recognizes the importance of internal, genetic influences on the wellbeing of companion canines. Because humans have a large measure of control over the reproduction of companion canines, and thus their genetic makeup, the Burgess-Jackson principle—humans are responsible for the foreseeable

consequences of their actions—implies that breeders are responsible for the suffering caused by the genetic makeup of the puppies they produce. And even though the German shepherd breeder cannot be said to have harmed a particular individual because his breeding decisions involve identity-affecting actions, he has harmed the breed, a collective, by ignoring health concerns.

Social animals, both human and canine, can flourish only in supportive groups. Their wellbeing depends on the success of collectives such as families, schools, professional organizations, legislatures, police departments, churches, support groups for cancer patients, breed rescue groups, and the SPCA. *Institutional collectives* such as these are formed to foster the wellbeing of individuals and of *population collectives* such as women, children, veterans, German shepherds, communities, minority engineers, disabled pets, and humans suffering from celiac disease. The necessity of this complex supportive network of individuals, institutional collectives, and population collectives for the wellbeing of social animals forms the basis for my argument in section 3.2.5 that there are four responsibility “vectors” connecting human individuals and collectives with canine individuals and collectives. The breeder has a responsibility to the breed he works with in much the same way that a physician has a responsibility to her patients’ community. A human physician has a moral responsibility to promote vaccination protocols that lead to herd immunity within the population she serves. All members of a community become protected against contagion when a sufficiently large percentage is immune. Herd immunity is a property of the collective, not of the individuals within the collective. It is particularly important, however, for individuals who, for medical reasons, cannot be immunized. The physician’s responsibility extends beyond her individual patients to the community in which they live.

Likewise, the breeder's responsibilities extend beyond the individual dogs he breeds to the wellbeing of the breed. If one accepts responsibilities of individuals to collectives, the non-identity problem loses its sting and wrongs to companion canines need not be individual affecting.

The relationship-based analysis I advocate avoids the difficulties Palmer noted with other responses to the non-identity problem. Because my approach recognizes responsibilities to collectives, there is no need to demonstrate harm to an individual, consider "German shepherd" to be a placeholder for a particular German shepherd, or define "non-comparative harm." Breeding practices that produce extreme nonfunctional anatomical traits are wrong because they harm a population collective. Finally, because the relationship-grounded framework I am constructing is committed to the goal of ensuring that all companion canines achieve minimal threshold levels of all the beings and doings included in the WPICC list, there is no danger of movement toward Parfit's "Z-future."

4.4.3 Undesirable Interests

Some readers may question the use of wellbeing-promoting interests to specify the obligations of companion canine owners. Some companion canine interests, they may point out, lead to behaviors that are harmful to other animals. If the killing of small animals, for example, is a "being or doing" that contributes to a dog's sense of wellbeing, does the dog's owner have an obligation to provide his dog with opportunities to satisfy this interest?

I argue that some canine interests that were desirable when dogs were kept primarily as working dogs are now problematic for dogs serving as friends and companions. Some of these interests place the dogs themselves at risk, some threaten the wellbeing of other nonhuman animals, and some conflict with the interests of humans. An interest in chasing

moving objects is an interest of the first type, necessary for the success of coursing dogs but often deadly to urban companion canines who chase cars. I argued in section 4.3.2 that a measure of paternalism is required to prevent our canine companions from acting on first-order desires of this sort. In this section I acknowledge the need to address the second category of undesirable interests and offer some partial solutions. I do not think that the existence of these interests presents a serious challenge to the use of wellbeing-promoting interests to define owners' responsibilities of care. I discuss the third category of undesirable interests—those that conflict with human interests—in the next section.

Companion canines evolved from predators, and still bear physical and behavioral traits common to animals who survive by killing other animals. The large canine teeth and crushing jaw strength of many breeds of dogs, and their willingness to aggressively defend territory, clearly reflect their evolutionary past. Many dogs have an interest in chasing and killing small animals and in patrolling their territory. While the aggressive defense of territory may be appropriate for working dogs charged with guarding military installations or shipyards, it is unacceptable for most companion canines. Likewise, the strong vermin hunting instincts of many terriers, exploited by farmers as means of rodent control, may be problematic for a family set on adding a scrappy little terrier to a home that includes pet hamsters.

Nussbaum is aware of this problem. She notes that an attempt to follow a “value-free” approach “extracting norms directly from observation of animals’ characteristic ways of life” is bound to fail (2006, 369). What is needed is an objective evaluation of “nature” *and* a value-laden analysis of which “capabilities” contribute to the animal’s wellbeing in its current environment and the wellbeing of other sentient beings in that environment.

Nussbaum argues that the harmful behaviors characteristic of some species, predatory behavior in companion canines for instance, often reflect underlying drives. The solution, she suggests, is to distinguish between the harmful behavior and the underlying drive, and satisfy the latter without permitting the former (2006, 370). If the predatory drive can be satisfied without actual killing, the wellbeing of predators could be supported without the morally problematic prospect of providing them with prey. Because the predatory behavior of dogs has been modified during the coevolution of humans and canines, satisfying their “predatory” interests is, in many cases, relatively easy.

Biologists Raymond Coppinger and Mark Feinstein have studied the “predatory motor-pattern sequence” in wild and domestic canines. They have documented how the “orient > eye > stalk > chase > grab-bite > kill-bite > dissect > consume” sequence exhibited by *Canis lupus* has changed during the evolution of different breeds of domestic dogs. Cattle dogs such as the Queensland heeler or the Welsh corgi have been selected to follow a modified predatory motor pattern that includes the chase and grab-bite but does not continue to kill-bite. Herding dogs, such as the border collie, follow an even more abbreviated “eye > stalk” pattern (Coppinger and Feinstein 2015, 55-83). While working breeds, like those mentioned above, clearly retain remnants of predatory behavior, and languish without an opportunity to express them in some way, it is relatively easy to provide these dogs with activities that satisfy their needs while avoiding harm to other creatures, even without cattle to drive or sheep to herd. Treibball competitions, where dogs herd and drive large exercise balls into a soccer goal, for example, provide herding dogs an opportunity to exercise their characteristic motor patterns (American Treibball Association).

For some dogs, however, herding plastic balls or shaking stuffed animals is simply

not as satisfying as killing rats; the move from the barn to the bedroom, documented in chapter two, has placed many dogs in an environment in which the beings and doings in which they find pleasure, and for which they were bred, are unavailable or unacceptable. Those shopping for a dog need to do their homework, and veterinarians, dog breeders, rescue groups, and shelters need to help prospective owners choose canine companions whose interests can be met within their home environment. Breeders interested in placing their animals with typical families need to select for the traits that help dogs flourish in modern homes. Many working dogs are simply not suited for the “new work of dogs.”

4.4.4 When Human and Canine Interests Conflict

A more general concern about the WPICC list is that the wellbeing-promoting interests of companion canines often conflict with the interests of humans. Central to many of the ethical dilemmas that arise in veterinary medicine is a conflict of interest between client and patient. For example, an expensive therapeutic procedure may be in the patient’s interest, while the client may feel that his interests would be better served by euthanizing the animal. How can dog owners and veterinarians make morally sound decisions when faced with competing interests?

In an account reminiscent of William David Ross’s theory of *prima facie* duties, Rollin carefully delineates the “web of moral duties and obligations” in which veterinarians practice. “When evaluating any [ethically problematic] situation,” Rollin counsels, veterinary clinicians “should routinely ask, ‘Does it contain elements of obligation to client, peers, animals, society, or self?’” (2006b, 15-17). Identifying all relevant interests, however, is only a first step; more is required to help clinicians choose treatment plans. A clinician faced with competing interests must find a way to rank or balance those interests.

Ross argued that any given duty is a *prima facie* duty, and becomes an actual duty only if there is no stronger *prima facie* duty. When *prima facie* duties conflict one should follow the path that maximizes the satisfaction of both. Choosing this path, he admits, is a matter of judgment. A veterinary clinician faced with conflicting patient and client interests may wonder how such judgments should be made.

Rollin takes a step toward answering this question. Following Plato, he distinguishes between the art of one's craft and its business aspects. The most fundamental responsibility of every craftsman, he claims, is to be an artisan, "to improve, make better, or increase the value of that upon which one exercises one's craft" (2014, 1235). For veterinary clinicians, this implies that "*the primary moral obligation of a veterinarian is to the entity upon which he or she practices their [sic] art—the animal*" (2014, 1235). While the interests of bill-paying clients must come second, since they are but a part of the business aspect of veterinary medical practice, the interests of clients cannot be ignored; a veterinary practice that fails to attend to its business dimension will not be able to help animals for long. Even if one accepts Rollin's fundamental ranking of responsibilities, more guidance is needed.

Jerrold Tannenbaum has proposed a "general approach to ethical problems in veterinary medicine." Like Rollin, he believes that one must begin by identifying the parties "participating in, or potentially affected by a decision," and exploring the nature of their interests. He goes on to suggest how these interests should "be weighed, balanced, or reconciled." First, one should delineate the advantages and disadvantages of all reasonable courses of action for each of the interested parties, and then turn to the law and "official veterinary ethics" for direction (1989, 88-89).

The problem with this approach is that animal law and the AVMA's formal statement

of ethical concerns, “Principles of Veterinary Medical Ethics,” were largely developed before dogs were integrated into families and communities to the extent they are today. As we saw in chapter two, veterinarians are seeing fewer and fewer patients valued by their owners for purely economic reasons—draft horses, food animals, and working dogs—and far more patients valued as companions. Veterinary clinicians experiencing moral stress will find little of help in the law and “principles,” both of which condone many of the practices they find troubling. Our laws and the AVMA’s veterinary ethical principles do not ensure that the obligations of care established by the RGRA and the WPICC list—obligations recognized by a growing number of companion canine owners and veterinarians—will be met. In chapter five I suggest changes to the principles and legal statutes to bring them in line with the obligations of care dog owners have to their canine companions.

The moral framework I am constructing provides guidance for veterinary clinicians and their clients struggling to balance conflicting interests. It begins with the recognition that both humans and dogs are social animals whose quality of life depends on complex, intimate, responsibility-laden relationships. From this perspective, the conflicts of interests between owners and their companion canines do not appear to be as stark. Consider, for example, the woman discussed in section 4.4.1 who asked a veterinarian to euthanize her dog because she is moving to a new apartment. The request puts the veterinary clinician in a stressful situation where she must balance the interests of her patient with those of her client. When the dog and owner are viewed as two independent, separate beings, the interests of the dog and owner seem to be in direct conflict. Viewed from the RGRA perspective, where the responsibilities inherent in the role of companion canine owner are central, the owner is expected to have an interest in the wellbeing of her dog as well as an interest in the new apartment. A failure on

the part of the owner to value the interests of the dog constitutes a moral failure that should not be supported by veterinary practice and animal law.

Of course, a recognition of the important connection between dog and owner, and the responsibilities this relationship entails, are insufficient to determine a course of action. They do, however, change the nature of the discussion between the owner and veterinarian. Within a moral framework founded on the RGRA, euthanizing an “unwanted” dog is an extreme, last resort possibility. The conversation ought to focus on finding a home for the animal or continuing the apartment search until a more accommodating landlord can be found. As argued in chapter three, both the owner and the community bear responsibilities to the dog. The resources of the owner and the community must be fully explored and tapped before euthanasia is considered.

In addition to an argument for the claim that owners have responsibilities of care for their companion canines, the moral framework under construction provides a list that delineates the companion canine interests owners are obliged to consider. This list needs to be the starting point for any discussion concerning a conflict between human and canine interests. While practicing veterinarians will regularly encounter clients who do not accept the responsibility to promote the interests included in this list, that does not mean that these owners should be freed from this responsibility. Both elementary and secondary school teachers struggle on a daily basis with parents who fail to meet their parental responsibilities. In some school districts the majority of children are raised by single mothers with little or no support from fathers. The problem is not that our understanding of the responsibilities of parenthood are misguided, but that social conditions and human weaknesses are such that all too many fathers find themselves unwilling or unable to meet them. Just as social programs,

public policies, and legal structures need to be developed to help parents meet their responsibilities, so too should such measures be developed to help dog owners meet their responsibilities to their canine companions.

While changing the nature of conversations about conflicting interests by framing them in the context of a caring relationship and beginning discussions surrounding such conflicts with a recognition of a well specified list of companion canine interests and owner responsibilities will help to get the interests of vulnerable companion canines on the table, it will not settle all conflicts. Some owners will be unwilling to recognize their responsibilities and insist that their interests should determine the course of action. Other owners may simply find themselves unable to meet all their responsibilities even though they would very much like to do so. What is to be done when an owner must choose between feeding her children and buying expensive medicine for her sick dog? It is the function of the minimum standards for each of the interest categories to provide guidance when faced with such questions.

As discussed earlier in this chapter, Nussbaum's idea is to set minimum standards for each of the "central capabilities" she identifies as necessary for a life of human dignity. There is a point for each capability, she reasons, below which a life of dignity is seriously jeopardized. Governments should be committed to ensuring that each of their citizens enjoys opportunities to "do and be" in each of the categories above these minimums. While the moral framework under construction emphasizes functionings rather than capabilities, and relies on physical and behavioral indicators of wellbeing rather than on dignity to identify the important components of a flourishing canine life, the reasoning is much the same: there is a level for each WPICC below which the lives of companion canines are unsatisfactory. Dog owners and mixed-species communities must commit to ensuring that all companion canine

residents are able to function at or above these levels. The problem, of course, is where to set the minimum standards.

Consider adequate nutrition—one of the factors affecting “physical health.” It is easy to identify cases that clearly provide adequate nutrition and cases that do not. Most would agree that an owner who feeds her dog a balanced diet of fresh, organic meat and vegetables, supplemented with a customized concoction of vitamins, minerals, fatty acids, and antioxidants, is meeting her responsibility to care for the nutritional needs of her dog, while an owner who occasionally remembers to pour some of the cheapest kibble he was able to find into his dog’s bowl is not. Veterinary clinicians can easily identify these “easy” cases during routine examinations. A healthy weight, shiny coat, and regular bowel habits are indicative of adequate nutrition, whereas severe underweight or overweight, skin problems, and chronic diarrhea or constipation are indicative of inadequate nutrition.

It is one thing to identify cases that clearly meet or fail to meet a requirement and quite another thing to identify where on the continuum a satisfactory level is reached. Few owners can afford to provide fresh organic fare for their companions, and few have the nutritional expertise to design and manage such a diet. If “ought” implies “can,” minimum threshold standards cannot be set unreasonably high. Nussbaum suggests that minimum levels for each of her central capabilities should be “aspirational but not utopian” (2011, 42). While the RGRA of chapter three encourages owners to do their best to meet their responsibilities of care, setting an unattainable standard is unlikely to be helpful. Minimal standards for each of the WPICCs need to be widely debated. Input from dog owners, nutritionists, veterinarians, animal welfare scientists, government officials, community leaders, and the wider public need to be heard. Considerations should include the needs of

both canine and human community members, and the resources available to owners and community organizations. In the next chapter I suggest that the history of child welfare reform and legislation provides a good example of how to address concerns for the wellbeing of companion canines. Just as children have interests independent of those of their parents that may conflict with the interests of their parents, so too do companion canines have independent interests that may conflict with the interests of their owners. We need to recognize the needs of these animals and our responsibility to satisfy them, and develop professional ethical principles, veterinary clinic policies, and legislation designed to ensure that our responsibilities are met as well as possible. Sadly, as in the case of child welfare, progress is likely to be incremental, and we will always fall short of the ideal.

While conflicts of interests will always be with us, and the adjudication of such conflicts will continue to be difficult, the guidelines provided by a relationship-based framework should prove to be helpful. By recognizing that the role of dog owner entails obligations of care and a concern for the interests of canine companions, it rightfully identifies conflicts as involving competing owner interests rather than strictly between the interests of separate unrelated beings. By providing a specific list of wellbeing-promoting companion canine interests and setting minimum standards for meeting responsibilities of care, a relationship-based framework provides owners and veterinary clinicians with clear objectives. And, by recognizing both owner and collective responsibilities, solutions to conflicts that are beneficial to both humans and canines are more likely to be found.

One of the greatest obstacles to implementing a relationship-based framework is the legal classification of companion canines as personal property. Some dog owners use this status to deflect criticism of their treatment of their canine companions. Because dogs are

lumped in with inanimate possessions such as hair dryers, kitchen chairs, and umbrellas, some owners are reluctant to accept any more responsibility for their dog than they do for their umbrella. A common response when an owner's treatment of his dog is questioned is, "It's *my* dog!" As we saw in chapters two and three, dogs form strong emotional bonds with human beings; their relationship to humans is closer to that of parent/adopted child than to owner/umbrella. A new category of property to include companion canines and other animals bred to be friends and companions needs to be created. This topic is explored in the next chapter.

4.5 Conclusion

Insights from the Sen/Nussbaum capabilities approach suggest a fruitful way to explore the questions: (1) What are the interests of companion canines? (2) Which of these interests promote wellbeing? (3) How far do human responsibilities to promote companion canine interests extend? (4) How can we ensure that these responsibilities are met? The multidimensionality of the capabilities approach, its focus on what beings are able to "do and be," its unwillingness to aggregate across individuals, the specificity with which it identifies "central capabilities," the setting of minimum threshold standards for each of those capabilities, and the strong connection it forges between the needs of sentient beings and the responsibility of governments to ensure that the needs of those living within their jurisdictions are met can provide direction in our effort to delineate human responsibilities to companion canines.

Four significant modifications were made to the Sen/Nussbaum approach in order to adapt their work for our purposes: (1) Human obligations to companion canines are grounded on the RGRA rather than on an appeal to dignity. (2) The role of choice, practical reason, and

self-determination was de-emphasized. (3) The identification of the key elements of canine wellbeing were identified using physiological and behavioral indicators rather than by a dignity test. (4) The focus was shifted from capabilities to functionings to reflect the paternalistic oversight necessary for companion canines to flourish in mixed-species communities. In spite of these changes, the resulting list of wellbeing-promoting companion canine interests is similar in structure and function to Nussbaum's list of central capabilities. It delineates the range of companion canine interests that humans are obliged to promote.

Four objections to the WPICC list were discussed: painless killing and "life itself," the identity problem and breeding practices, undesirable interests, and conflicting interests. The RGRA and the WPICC shed light on each of these long-standing problems. Of particular importance to this project is the direction the RGRA and WPICC provide when human and canine interests conflict. By framing conflicts within the context of a caring relationship where both owner and community responsibilities are recognized and minimum standards have been set for the satisfaction of wellbeing-promoting interests, the moral framework under construction provides guidance as owners and veterinarians struggle with questions concerning what is morally required when the needs of dogs conflict with the needs of people.

In the next chapter I discuss the professional ethical standards and legal regulations necessary to ensure that the responsibilities of owners and communities to companion canines are met, completing the moral framework for the care and medical treatment of companion canines. In chapter six I apply the framework to several ethical problems commonly encountered by the owners of companion canines and the veterinary clinicians who care for them.

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CHAPTER 5: MEETING RESPONSIBILITIES

It is unethical for humans to use animals unless the method of use allows the animal to experience the critical components of life for the animal, and the law should reflect this duty.

David Favre (2010, 1066)

Chapter two ended with three questions designed to guide the construction of a moral framework for the care and medical treatment of companion canines that is consistent with their new role in our families and communities. The first question—do humans have obligations to companion canines generated by their relationship with them—was answered in the affirmative. The RGRA concluded that humans have extensive, positive duties of care to companion canines. The second question—specifically what obligations does the relationship entail—was explored using a modified capabilities approach. The result was a list of wellbeing-promoting interests of companion canines that humans are obliged to consider when making decisions concerning canine care and medical treatment. While this list of interests defines the scope of human obligations, we have yet to establish minimum standards or limits to these obligations. Following Nussbaum, I argued that minimum standards need to be aspirational but feasible, and should take shape during extensive conversations among veterinarians, animal welfare scientists, and dog owners. I offered some preliminary suggestions to initiate the conversation.

That brings us to the third question—what professional guidelines, social policies, and legal protections are required to ensure that human obligations to companion canines are met—and the topic of this chapter. Nussbaum reminds us that “a long tradition, beginning in the West at least with Aristotle, has argued that a key task of government, and a reason for

the existence of government, is to secure to people their most central entitlements” (2011, 168). The conclusions of chapters two, three, and four justify the extension of government responsibility for the protection of entitlements to companion canines. In this chapter I explore three approaches to elevating the legal status of nonhuman animals to ensure that they receive the treatment to which they are entitled. I conclude that companion canines, along with other companion animals selectively bred to form close, emotional relationships with humans, should constitute a new category of property—custodial property—and that laws, public policies, and codes of professional ethics should be created to reflect the special character of this kind of property and to protect the entitlements these animals are due. This connection between theory and practice is necessary for a fully functional moral framework for the care of companion canines and the practice of veterinary medicine. “Fundamental rights are only words unless and until they are made real by government action” (Nussbaum 2011, 65). Our focus will therefore shift away from the moral philosophy of chapters three and four to the concerns of legal and political philosophy, concerns that must conform to the realities of political life. The discussion needs to be about what Kennan Ferguson describes as the lived “experience of the realm” (2004, 379).

I first evaluate two ambitious attempts to elevate the legal status of animals: (1) Gary Francione’s argument that the property status of animals should be abolished and (2) the case for extending citizenship to some animals advocated by Sue Donaldson and Will Kymlicka. I find each of these approaches to be both conceptually problematic and politically unfeasible, and propose instead the adoption of a suggestion by David Favre for the creation of a fourth category of property to distinguish owned animals from other kinds of personal property (2010).

The category I propose, *custodial property*, differs from that proposed by Favre, *living property*, in that my category is defined by a morally significant characteristic of the human/companion canine relationship: companion canines are deliberately bred to form strong, emotional bonds with their owners. I argue that Favre's category—living property—is too broad; because it includes farm animals and laboratory animals as well as companion animals, its adoption is politically unfeasible. Furthermore, it fails to adequately address the characteristics of human/non-human animal relationships thought to generate responsibilities. Custodial property, as defined above, could help focus attention on the needs of companion canines and the responsibilities of their owners and the veterinary clinicians who care for them. The addition of this category of property would facilitate the recognition of the new social status that companion canines have in our society and encourage legislation, judicial findings, home care, and veterinary clinic policies and practices consistent with this status, all within our existing political and legal framework. The chapter ends with a short discussion of the professional ethical standards according to which veterinary clinic practices are judged. I argue that ethical standards and clinic practices need to be made consistent with the responsibility of humans to ensure the flourishing of companion canines.

5.1 Abolishing the Property Status of Companion Canines

Some philosophers contend that “the moral universe is limited to two kinds of beings: persons and things” (Francione 2008, 61). Persons have interests and therefore intrinsic value while things have only extrinsic or conditional value. The value of a thing is contingent upon the interests of its owner. According to the animal rights thinkers known as “abolitionists,” because “animals are owned in the same way as inanimate objects such as cars and furniture,

their welfare depends on the mercy of their owners” (Francione 2008, 37). Abolitionists conclude that animals cannot be protected as long as they are classified as property, and that the end of all use of animals is both ethically desirable and politically feasible. I deny all three of these assertions. In this section I argue that the welfare of *companion canines* and their property status are *not* inconsistent, and that further progress in protecting their wellbeing can and should be made within a property framework.

In 1995, with the publication of *Animals, Property, and the Law*, Gary Francione provided the first detailed proposal for the elevation of the legal status of animals. Animals, he claimed, need only one right, the right not to be held as property. As long as animals are classified as property, Francione argued, their interests will not be respected. “The property status of animals means that the level of protection provided by these [anti-cruelty] laws and standards does not go beyond what is necessary to exploit the animals efficiently. We generally protect animal interests only to the extent we derive an economic benefit from doing so” (2008, xiii). For example, laws require that cattle are stunned before they are slaughtered but fail to regulate castration. Fully conscious cattle in line to be slaughtered are dangerous to human workers but cattle can be castrated (without anesthesia) relatively safely. Our laws, Francione contends, are designed to protect humans (persons) not nonhuman animals (things). The sharp focus of our laws on human interests is grounded in a long tradition of protecting the rights of individual property owners against interference from the state. “To interfere with property is a gross infringement of rights and liberties” (Vincent 1995, 43). According to the law, Francione argues, animals, like other forms of property, are economic commodities whose value depends on the benefits they convey to owners. Until animals are recognized as persons rather than things, their welfare will be inadequately

protected.

Francione documents the failure of our legal system to protect animals. He notes that domestic animals are completely dependent on humans, a “very unnatural situation” (Francione and Garner 2010, 79); their liberty is severely limited; and even under the best of conditions “all animal use involves pain, suffering, and harm,” with “*no* principled way to determine what levels of pain are acceptable” (Francione and Garner 2010, 206). He compares the living conditions that animals are forced to endure with those suffered by human slaves in the United States prior to emancipation: “The institution of slavery was structurally identical to the institution of animal ownership” (2008, 46). The horrible suffering of domestic animals is tolerated today and is relatively unaffected by animal welfare regulations, he claims, for the same reason that the suffering of slaves was tolerated and unaffected by laws designed to protect them: as property, they were treated as things. When the interests of an eighteenth-century slave-owner and slave came into conflict, the interests of the person inevitably prevailed over the interests of the “thing.” The same is true today when the interests of humans and companion canines conflict. Property, Francione tells us, cannot have rights.

5.1.1 The Limitations of Property Rights

Our discussion in chapters two and three supports Francione’s contention that many animals have person-like characteristics and should not be treated like “cars and furniture.” There is however, no bright line separating “things” and “persons”; Francione’s binary legal ontology is overly simplistic. Companion canines also have thing-like characteristics. Like cars and furniture, companion canines are designed by humans to serve human needs and they are produced and maintained with considerable human effort and expense. Fortunately,

in spite of their thing-like characteristics and their property status, there are good reasons to believe that the welfare interests of companion canines can be adequately addressed. The “ownership of animals,” Robert Garner points out, “is logically separate from the issue of suffering” (Francione and Garner 2010, 238). As Alasdair Cochrane notes, ownership does not entail “exclusive and absolute control” over property. “Rather, ownership refers to a set of *relations* governing the possession and use of a particular entity” (2009, 424). The rights of owners can be limited by law. What’s more, property can be granted legal rights. Just as corporations can have legal rights even though they are owned, so can companion canines. In fact, they do.

Attorney Jerrold Tannenbaum notes that “many people seem to conceive of property as something that belongs to one and over which one has complete control, to the absolute exclusion of anyone else” (1995, 541). Much of the moral stress experienced by veterinary clinicians has its origin in encounters with the minority of dog owners who have the attitude, “it is my dog, I can do with it whatever I please.” A moment’s reflection, however, is all that is required to generate a long list of counterexamples to this common misconception: a landowner may be limited as to what she can build on her property by zoning regulations; where and when an automobile owner may operate his car is strictly controlled; laws also limit automobile use based on the owner’s age, visual acuity, and the condition of the car.

Francione, of course, is well aware of zoning laws and regulations concerning the operation of motor vehicles. He would likely counter that such regulations are designed to protect other *persons*, not real estate or automobiles, and grant that dog owners are restricted in the use of their canine property by leash laws and vaccination requirements but, once again, these laws are designed to protect other persons not dogs. For example, owners are

required to vaccinate their dogs against rabies, a potential threat to other humans, but not for canine hepatitis, which is fatal to dogs but does not threaten humans.

While it is true that many of the laws concerning dogs are designed to protect humans, the primary goal of anti-cruelty laws is animal welfare. As early as the 1860s animal legislative initiatives shifted from laws designed to protect owners to laws for the protection of animals. In 1867, for example, a New York law recognizing the interest of animals in being free of “unnecessary pain and suffering” was passed by the state legislature and signed into law. Other states quickly enacted similar laws (Favre 2010, 1028). More recently, state laws have been significantly expanded to include positive rights. The Michigan Penal Code, Act 328, for example, requires owners to provide “adequate care” which includes “sufficient food, water, sanitary conditions, exercise, and veterinary medical attention in order to maintain the animal in a state of good health” (State of Michigan, 2009). Thus, not only can the rights of owners be limited, but as the Michigan Penal Code demonstrates, property can have rights, including positive rights.

Francione argues that anti-cruelty laws are ineffective: they do not prevail in cases where the interests of animals and humans conflict. He points to the common, painful, and legal practices of dehorning and castrating cattle, debeaking hens, and confining breeder sows. Francione contends that the economic interests of owners (persons) always trump the interests of animals (things):

The property status of animals renders meaningless any balancing that is supposedly required under the humane treatment principle or animal welfare laws, because what we really balance are the interests of property owners against the interests of their animal property. It is, of course, absurd to suggest that we can balance human interests, which are protected by claims of right in general and of a right to own property in particular, against the interests of property, which exists only as a means to an end for humans (2008, 38).

Francione's examples of the ineffectiveness of welfare laws involve the practices of industrial animal agriculture, a purely economic enterprise. The morality of such practices is beyond the scope of this project. With regard to companion canines, anti-cruelty measures are becoming increasingly effective. As early as 1979, courts began to recognize the special nature of companion animals. A New York court ruled in favor of the interests of companion animals at the Crawford Dog and Cat Hospital, overruling prior precedent and finding "that a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property" (Favre 2011, 126). Rulings favoring the interests of companion canines over the interests of owners are becoming more common. In 2007, for example, the Animal Legal Defense Fund (ALDF) won a suit in North Carolina filed on behalf of privately owned dogs. The court authorized the ALDF to remove the dogs from the defendant's home "because of the adverse conditions in which the animals were living" (Favre 2010, 1036). What's more, the penalties for violating anti-cruelty laws have become far harsher: "In 1993, only seven states had felony anti-cruelty provisions, by 2005, forty-one states had some felony provisions" (Favre 2010, 1030).

Generally, animal welfare law provides animals with "weak" legal rights—legal action to protect these rights can only be taken by the government. Some "strong" rights, in which private human citizens can file civil suits in support of animals, and even "preferred" rights, in which animals themselves can file suits, have been codified in state and federal laws and recognized by United States Courts (Favre 2010, 1034-1039). To file a preferred suit, nonhuman animals, like human children, must do so through a legal guardian. This is precisely what happened when fifty pit bulls owned by Michael Vick were placed under the guardianship of an attorney (Favre 2010, Gorant 2010). A companion canine can also

become a “legally relevant being” with “equitable title in the income and assets of a trust” (Favre 2010, 1039). Classification as property has not prevented companion canines from acquiring legal rights that go beyond the prevention of cruelty.

Abolitionists also argue that the property status of animals frustrates some of their fundamental interests, such as mobility and reproduction. I will limit my comments to mobility but contend that similar reasons can be used to justify limitations on reproduction. Human owners employ leashes, harnesses, cages, chains, and fences to ensure that their canine property does not escape. These tactics strike abolitionists as incompatible with the just treatment of intelligent, sentient beings, hence the title of Regan’s book *Empty Cages* (2004).

Concern about the confinement of animals is surely justified. Pictures of large carnivores pacing in tiny cages, calves in veal pens, and dogs stacked in crates in “puppy mills” are likely to convince all but the most callous that regulations are necessary to ensure that animals have enough space to live comfortable lives. That does not imply, however, that all confinement should be eliminated, all animals “liberated,” and the property status of animals abolished.

Most companion canines, and many other domesticated animals, are incapable of surviving without regular assistance from humans. This assistance must include protection from dangers posed by modern civilization such as automobile traffic, toxic materials, and other animals, which can only be accomplished by limiting mobility. Some degree of paternalism, and the limitations placed on mobility that are motivated by it, is justified for dog owners just as it is for the parents of young children. A measure of confinement is not incompatible with a good life; it is a necessary component of protective care.

The abolitionists, as we have seen, claim that all “use” of animals involves unjustified pain. Certainly, companion canines suffer from restrictions, frustrations, deprivations, and pain at the hands of their owners. These harms need to be recognized and minimized. However, some restrictions, frustrations, deprivations, and painful events are for the animal’s own good. Fences prevent dogs from chasing cars; food stored in securely closed cupboards ensures that dogs do not overeat; and painful medical procedures maximize the health and longevity of canine companions, just as they do for humans. All life involves pain. Wild animals free of human “exploitation” arguably suffer far more pain than companion canines under the care of human owners. The examples of the connection between use and pain that Francione highlights are the result of the profit motivated practices of industrial agriculture, not the property status of companion canines.

In the case of companion canines, some “use,” rather than causing “pain, suffering, and harm,” is necessary for the animals to flourish. As veterinary behaviorist Mary Klinck argues, “all dogs need a job to do” (2014). Siberian huskies “used” to pull sleds, springer spaniels “used” to flush pheasants, border terriers “used” to kill rats in barns, bullmastiffs “used” to guard homes, and pugs “used” to keep housebound elderly owners company are happy dogs. Border collies without sheep to herd will attempt to herd neighborhood children or even the family cat. Border collies, like most breeds, have been selectively bred to cooperatively work with humans; they have a need to work. A recurring refrain in dog-care books is that without sufficient “activity,” a “job to do,” and a “sense of purpose,” dogs become frustrated, “bored,” and likely “to get in trouble” (Palika, 2007). While Francione’s claim that pain, harm, and suffering are a necessary consequence of animal “use” may be true for animals used by the industrial/agricultural complex to produce food products at the

lowest possible cost to human consumers, it is not necessarily true for companion canines “used” as friends and companions.

Furthermore, there are advantages, for both humans *and* dogs, to classifying companion canines as property. First, the concept of property has the potential to encourage better treatment of canines. Property is more than just the designation of belonging and ownership. Anthony M. Honoré argues that ownership consists of a set of rights, duties, and liabilities associated with particular owner/property relationships (1961). The relationship between an owner and her dog allows for a sense of responsibility and value. If dogs are to flourish, there must be some way to pair dogs with particular humans who can be held responsible for them. Ownership provides a well-established way to assign responsibility for particular dogs to particular people.

Second, by assigning responsibility for individual dogs to individual humans, ownership also draws practical legal boundaries to prevent, or at least adjudicate, disputes. Ownership provides civil authorities with clear direction when responding to nuisance barking complaints, threats to public safety from overly aggressive dogs, and cases involving substandard care.

Third, within Francione’s all inclusive, mutually exclusive, dichotomous system of persons and things, abolishing the property status of companion canines entails the end of all use of dogs, including their use as friends and companions. It means the end of the human/companion canine relationship and all that it involves, including the list of positive influences dogs have on our community and family life described in chapters two and three, and the end of a symbiotic commensal relationship that has made *Canis lupus familiaris* one of the most successful species on the planet.

Fourth, because humans control the reproduction of companion canines and provide for their physical needs at considerable expense, it is reasonable to conclude that the transfer of dogs from person to person should involve monetary compensation for the breeder. This economic dimension of the human/companion canine relationship allows breeders to provide their dogs with the resources they need to flourish and encourages buyers to value their animals, and fits well within an owner/property framework.

5.1.2 Personhood for Dogs Is Politically Unfeasible

I have argued that Francione's claim that the welfare interests of animals cannot receive due consideration as long as they remain property is simply not true for companion canines. Legislation and court findings have limited the rights of dog owners to do as they please with their animals and have provided dogs with both negative rights, including freedom from cruel treatment, and positive rights such as the right to "adequate care." While some dog owners fail to recognize the distinctive features of companion canines that distinguish them from other forms of personal property, and claim the right to treat them as they do their inanimate personal property, the courts have demonstrated a willingness to consider these differences in cases involving conflicts between human and canine interests.

Not only is personhood status unnecessary in order to protect the welfare interests of companion canines, it is not an attainable goal in the United States at this time or in the foreseeable future. The coevolution of dogs and humans, and the selective breeding of dogs by humans, has resulted in canines whose wellbeing can only be assured by human beings. Most companion canines are incapable of surviving independently. The abolition of domestic animals advocated by Francione entails the extinction of companion canines. The relationship often referred to as the "human/canine bond" and all benefits that come with it—

playmates for children, company for the elderly, increased social interaction—would be lost. The economy would be significantly affected: no groomers, or trainers, or veterinary clinics. The industries that produce dog food, pet toys, collars and leashes, and veterinary medicines would disappear. Any effort to end the ownership of dogs and other domestic animals would be strongly resisted by millions of voting citizens, many well-organized and well-funded organizations such as the American Kennel Club and the American Veterinary Medical Association, and by the multibillion-dollar pet industry. Given this reality, those interested in the wellbeing of dogs should consider other options.

Some argue that the human/canine bond should be preserved but that human partners should not be referred to as “owners.” Ownership should be replaced with some form of “guardianship” in which individual humans continue to be paired with individual dogs in a caretaking relationship similar to humans who care for foster children. We see such ideas in the movement to refer to dogs as “companions” rather than “pets.” Consider, for example, the “guardianship” relationship recommended by Nussbaum:

The morally sensible alternative is to treat them [domestic animals] as companions in need of prudent guardianship, but endowed with entitlements that are theirs, even if exercised through a guardianship. In other words, they may be treated as we currently treat children and many people with mental disabilities, who have a large menu of rights and are in that sense far from being “mere property” (2006, 376-7).

While this change in vocabulary may be desirable, as the proposed term better reflects the new social status of dogs and may help to focus attention on our responsibilities to them, it does not represent a proposal for the abolishment of the property status of dogs. In rejecting the characterization of domestic animals as “mere property,” Nussbaum is *not* rejecting all use of animals as advocated by the abolitionists. Her goal is to ensure that all

animals can flourish in their own species-specific ways. She recognizes that for some animals “no plausibly flourishing existence in the wild is possible” (2006, 376). She does not object to the buying and selling of animals or their use as companions. Companion canines under the Nussbaum capabilities approach may be thought of as property with entitlements to the central capabilities they need to flourish. In section 5.3 I suggest the name “custodial property” for sentient property created to form close, emotional relationships with human owners.

Not only would an effort to abolish the property status of companion canines face stiff opposition from individuals, organizations, and corporations, it would also require a legal revolution. As Favre points out, “some animals have always been considered property,” and that is unlikely to change in the near future (2010, 1026). Our common-law system favors evolution over revolution; our concept of property has evolved with the changing nature of our property and will inevitably continue to do so. Laws recognizing the special relationship we have with companion canines and the responsibilities that relationship generates can be written, adopted, and enforced. Limits can be placed on the rights of dog owners, and dogs can be given rights. In section 5.3.2 I argue that establishment of a new category of property that recognizes the morally distinctive features of companion canines would help guide legislators and courts as they write, interpret, and enforce appropriate laws.

5.2 Companion Canine Citizens

The entitlements to goods and services guaranteed by governments are largely organized around the concept of citizenship. Governments prioritize the needs of their citizens and commit to the provision of those needs with legislative guarantees. While governments recognize some responsibilities toward denizens, those who wish to live within

a nation's boundaries but who are not eligible for or interested in full citizenship, such as seasonal workers, visiting students, and refugees, and even make legal provisions for the just treatment of foreign tourists and other short-term visitors, the primary concern of government regulations is the welfare of its citizens.

Sue Donaldson and Will Kymlicka propose that the concept of citizenship should be extended to protect the interests of some nonhuman animals including companion canines. In this section I will describe and critique their plan. I conclude that nonhuman animals do not qualify as citizens and that declaring them so is politically unfeasible.

5.2.1 Zoopolis

In *Zoopolis* (2011), Donaldson and Kymlicka contend that questions concerning the obligations of humans to nonhuman animals have primarily been explored within three different moral frameworks: welfarist, animal rights, and ecological. They find each of these approaches unsatisfactory, in large part, because they fail to address important positive obligations to animals that are generated by the relationships that we have with them. They argue that a new approach is necessary to expand the domain of moral concerns for animals and propose a framework patterned after the citizenship model used in human affairs. I will briefly describe their criticisms of the welfarist and animal rights approaches, and the alternative they suggest. Because the ecological approach focuses on wild animals and, therefore, does not provide insight into human obligations to companion canines, I will say nothing about this framework and direct interested readers to *Zoopolis* (Donaldson and Kymlicka 2011, 3).

The welfarist framework recognizes that nonhuman animals are capable of experiencing pain and suffering and that this is a matter of moral concern. Welfarists,

however, consider the concerns of nonhuman animals to be subordinate to those of humans and seek to eliminate only *unnecessary* suffering. While there is much debate about whether or not particular cases of suffering are necessary, welfarists have demonstrated a remarkable tolerance for accepting severely restrictive living conditions and painful procedures for domestic animals when human economic interests are at stake (Harrison 1964, Singer 2002, Singer and Mason 2006, Donaldson and Kymlicka 2011). Furthermore, the welfare approach has focused primarily on negative rights, protections from pain and suffering, rather than positive rights to social interaction, exercise, a mentally stimulating environment, and play. As a result, the welfarist approach, according to Donaldson and Kymlicka, is unable to give animal interests the consideration they are due; it does not provide a useful framework to ground the positive obligations humans have to domestic animals that are generated by their relationship to them.

Donaldson and Kymlicka also find the animal rights approach unsatisfactory. While it rejects the subordination of the interests of nonhuman animals to those of humans, it “has virtually no resonance amongst the general public” (2011, 5). They point out that while the public is supportive of welfarist projects—in 2008 for example, 63% of California voters supported Proposition 2 that banned the use of gestation crates, veal crates, and battery cages—the public does not support the inviolable rights for animals that animal rights advocates endorse. Donaldson and Kymlicka argue that the claim of animal rights theorists (abolitionists) that domestication is inherently exploitive (Dunayer 2004, Francione 2008), and their conclusion that domestic animals should not be bred but live independent of human influence, is unrealistic. Most troubling of all for Donaldson and Kymlicka is the failure of the animal rights approach to consider relational duties. Just as governments have more

extensive obligations to attend to the welfare of their citizens than they do to foreigners, so governments have more extensive duties toward domestic animals than toward wild animals.

Because of the failure of the welfare and animal rights approaches to address positive rights based on relationships, Donaldson and Kymlicka argue that an alternative is needed and propose a political theory of animal rights based on citizenship. They make a compelling argument that interaction between human and nonhuman animals is inevitable. The ideal world envisioned by abolitionist animal rights advocates with humans living in developed areas and nonhuman animals living independently in unspoiled wilderness areas is impossible to achieve. Therefore, any theory of animal ethics, Donaldson and Kymlicka contend, must consider just rules for human/animal interaction. Citizenship theory has been helpful in sorting out rules of interaction between humans, and there is no reason, they claim, that it could not do likewise for human/animal interactions.

A human in a particular locale can be related to those around her in a number of ways: she may be a fellow citizen, a denizen, or a visiting foreigner. The kinds of relationships animals have with humans fall into similar categories. Some animals, such as companion canines and other domestic animals, could be considered to be citizens. Others, such as wolverines, are wild animals analogous to foreigners. Still others, such as rats and pigeons, are in between, animal denizens that live side-by-side with humans but lack the dependency and degree of interaction characteristic of domestic animals. An important advantage of the citizenship approach, Donaldson and Kymlicka claim, is that it can account for this range of relationships. While this is an important consideration for those attempting to construct a general theory of animal rights, it goes well beyond the question of our obligations to companion canines.

The fact that citizenship recognizes relationships, and that it provides a justification for legal protection, make the citizenship framework attractive as a foundation for our obligations to companion canines. Citizens share certain rights and responsibilities designed to create a mutually supportive society. A citizenship approach to animal rights could, therefore, recognize the obligations that are missed by theories based on welfare or animal rights. The citizenship approach also ensures that the interests of animals are taken seriously. As citizens, animals would share many of the same rights, guaranteed by law, as human citizens. The state would be committed to promote the wellbeing of its nonhuman animal citizens just as it is that of its human citizens. The citizenship framework appears, *prima facie*, to be ideally suited to address concerns about the treatment of companion canines.

The critical response to *Zoopolis* included several serious objections to the group-differentiated rights Donaldson and Kymlicka advocate—different rights for wild animals, denizens, and citizens. Most of these objections, however, were aimed at difficulties involving wild animals, including such problems as the policing of nature and overlapping “sovereign territories” (Cochrane 2013, Horta 2013). These debates are beyond the scope of this project.

Little, if anything, has been written specifically about the suitability of the theory for companion canines. In many ways companion canines appear to be prime candidates for becoming co-citizens with humans. They have impressive and well-documented cognitive abilities, they are adept at interacting with humans, and they are well integrated into our communities and homes (Fox 1978, Serpell 1995, Miklósi 2007, Wood et al. 2007). In spite of the natural fit between the citizenship approach and companion canines, Donaldson and Kymlicka’s project faces serious conceptual and practical problems.

5.2.2 Companion Canines in *Zoopolis*

Donaldson and Kymlicka's political theory of animal rights based on citizenship has some of the same shortcomings found in the Burgess-Jackson and Palmer accounts. First, it does not distinguish between farm animals and companion animals; it considers all "domestic animals" to be "citizens." Second, it does not provide an analysis of *who* bears responsibility for the needs of domestic animals. The *Zoopolis* account does not discuss the distribution of obligations between the owners of domestic animals and the polis in which the animal citizens reside. And, importantly, it is able to connect in only a partial way to the relational factors in the central analogy I have used to ground human responsibilities to their canine companions.

Zoopolis recognizes that the *inherent characteristics* of domestic animals are sufficient to justify some moral consideration, just as they are for denizens and wild animals. As citizens, domestic animals are recognized as *members of a common group* and enjoy a *special relationship* with fellow citizens. Furthermore, citizenship involves *contract-like aspects*—benefits are provided for those who meet certain requirements—and provides some protection for the *dependent and vulnerable*—*all* citizens are entitled to benefits.

The citizenship account, however, does not include a consideration of the role that *affection* plays in the generation of obligations within relationships, nor does it recognize the importance of *voluntary*, self-assumed responsibilities. The central analogy, the comparison of the parent/child relationship with the owner/companion canine relationship, is better suited to consider these factors. It also focuses on a smaller scale *common group*, the family, and a more intimate *special relationship*, the human/companion canine bond, where responsibilities are generated and discharged. Comparing companion canines to adopted

human children is a more apt and fruitful analogy than comparing companion canines to human citizens.

5.2.3 Companion Canines Are Not Qualified to Be Citizens

In order to get their argument for the citizenship of domestic animals off the ground, Donaldson and Kymlicka attempt to disassociate citizenship from “active political participation” by pointing to the fact that many human citizens do not participate in the political process. They argue that citizenship performs three “functions”: It determines where an individual belongs, it justifies political authority through the idea of popular sovereignty, and in democratic societies it offers the opportunity to participate in the deliberative process of lawmaking (2011, 55-56). Domestic animals, they contend, have connections with particular communities, their interests should be taken into account when those communities make laws, and with assistance they can achieve some level of “trust-based dependent agency” (2011, 104). Since citizenship can function in these three ways for domestic animals as well as for humans, Donaldson and Kymlicka conclude that domestic animals should be recognized as fellow citizens.

The set of criteria for citizenship advocated by Donaldson and Kymlicka abandons much of what many philosophers and lay citizens alike consider central to the notion of citizenship. Jean L. Cohen, for example, identifies three important components of citizenship in her paper “Changing Paradigms of Citizenship” (1999). First, citizenship in the United States confers a legal status designed to protect certain political and social rights. The targeted rights—the rights to a fair trial by jury, to run for an elected office, to vote in elections, and freedom of worship—are very different from the rights needed to protect the interests of companion canines. The latter, as we have seen, can be established and protected

under property law. Second, along with the rights of citizenship come responsibilities, including the responsibility to actively participate in the society's political institutions. This is precisely what Donaldson and Kymlicka reject. And third, citizenship provides a sense of identity, of "team spirit," that contributes to social integration. This is very likely beyond the capacity of companion canines.

Government publications and recent court findings support Cohen's understanding of the nature of citizenship. A quick look at the literature published by the US Citizenship and Immigration Services (USCIS), "Citizenship Rights and Responsibilities," clearly demonstrates that the concept of citizenship as used in United States law is not meant to apply to nonhuman animals. Courts have consistently refused to extend constitutional rights to nonhuman animals. In 2012, for example, regarding a PETA lawsuit claiming that the 13th Amendment, which granted African Americans citizenship status, applied to the orcas in SeaWorld, Judge Miller opined that the "only reasonable interpretation of the 13th amendment" is that it applies to humans not orcas (Zelman 2012). In order to grant citizenship status to dogs, the concept would need to be stretched beyond recognition.

Of course, perhaps the criteria for citizenship should be stretched. Donaldson and Kymlicka reject demanding standards for citizenship, such as those implicit in Cohen's analysis and USCIS documents, because they have been used in the past to block the inclusion of subordinate groups. They compare the current plight of domestic animals with the "struggles of historically excluded groups for respect and inclusion" (2014, 201). Repeatedly, in both their 2011 book and in a 2014 paper, they make comparisons to women, blacks, and Jews. "We've likened domestic animals to the case of former slaves ... who were initially brought into a community as a subordinated class" (2011, 101). When discussing a

citizen's right to freedom of movement and assembly, they go so far as to compare restrictions on companion canines in public spaces to "Jim Crow style segregation" (2011, 129), and the banning of dogs from restaurants as equivalent to the "No Jews allowed" policies in Nazi Germany (2011, 131).

These comparisons are unjustified. One's gender, the color of one's skin, and the religion one follows are irrelevant to the rights and responsibilities of citizenship. When full citizenship rights were extended to African Americans in the United States and to Jews in Germany, each group demonstrated that its members were capable of functioning as competent citizens. The restrictions placed on African Americans and Jews were unjust because they were based on irrelevant criteria. The components of citizenship identified by Cohen are as appropriate for African Americans and Jews as they are for white Protestant males. The same cannot be said about their appropriateness for companion canines.

The fact that the set of individuals who qualify for citizenship has been too narrowly defined in the past does not mean that it cannot be too broadly defined. Just as supporting the extension of marriage rights to homosexual couples does not imply that interspecies marriage is appropriate, so the support of citizenship rights for African Americans fails to imply that companion canines should enjoy these rights as well.

5.2.4 Citizenship Status Is Politically Unfeasible

Citizens cannot own other citizens. To grant companion canines citizenship status is to abolish their property status. This would be a fundamental, revolutionary change that would require a break from hundreds of years of legal tradition. Legal scholar David Favre notes that the human ownership of animals has been an accepted part of "our common-law system for almost the past 1000 years and there is no real likelihood of changing this

approach in the near term” (2010, 1057). Incremental change is the norm in our legal system. Executive initiatives, new legislation, and judicial findings allow the law to adapt to changing conditions in our society in an evolutionary rather than revolutionary manner.

Donaldson and Kymlicka want a revolution but fail to offer a scenario that would cause one to question Favre’s conclusion that such a change is politically unfeasible. They point only to the history of African slaves and other groups who were denied citizenship status as a model for the path forward for domestic animals. I have noted problems with that comparison in the previous section and would now like to suggest a more appropriate analogy. Progress toward more extensive rights for companion canines could realistically follow a path similar to the history of children’s rights in the United States. Not only does this example demonstrate that significant changes in welfare protection can occur in an evolutionary manner, it also connects strongly with the central analogy I have used to ground human responsibilities to companion canines.

In colonial America children enjoyed few rights. They could be indentured under “poor laws” and live under conditions approaching those of slaves (Bureau of Labor Statistics 2017). The first state child labor laws were passed in Massachusetts in 1836 and required only that working children under 15 attend school for at least three months per year (University of Iowa 2007). While similar laws were passed in other states, they provided little protection. Public concern led to the formation of nongovernmental child protection societies, such as the New York Society for the Prevention of Cruelty to Children, patterned after animal protection groups. By 1922 there were over 300 such groups. These organizations were successful in lobbying for legal protection for children, and by 1967 most states had passed effective child protection legislation (Myers 2008, 454). More recent

developments include the establishment of privacy rights for children in 1985 (New Jersey v. T.L.O.), and the extension of voting rights in Takoma Park, Maryland elections to those 16 and older in 2013 (Powers 2013). The rising status of children in our society has been evolutionary not revolutionary. It was accomplished by grassroots public support, legislative initiatives, and court findings. A similar approach holds promise for companion canines.

While it is difficult for many to conceive of companion canines as fellow citizens, it is clear that our “best friends” are different from other examples of personal property—shoes, hedge trimmers, and baseball bats—in morally significant ways. The growing recognition of the cognitive capabilities of dogs and the new role they play in our society creates an environment where the evolutionary expansion of rights for companion canines is politically feasible. This process could be supported by the establishment of a new category of property to include sentient beings created to be companions.

5.3 A New Category of Property

A third approach to elevating the legal status of animals is the creation of a new category of property. Three kinds of property are currently recognized in the United States: *real property* includes land, homes, and commercial buildings with fixed locations recorded at the local courthouse; *personal property* includes movable, less public items such as lawn mowers, telephones, and golden retrievers; and *intellectual property* includes human creations that can be thought to exist apart from their physical manifestations such as songs, computer programs, and novels. The laws that apply to these three kinds of property and the public policies that have developed concerning them have evolved in response to their distinctive features. For example, laws concerning copyrights, patents, trademarks, and trade secrets help to make intellectual property more tangible and ensure that the owners of such

property enjoy the benefits they are due. A fourth category of property should be created to address the unique characteristics of companion canines and to protect their interests. The path to moral progress, Dewey observes, often “involves the multiplication of sensed distinctions” (1922, 196).

5.3.1 David Favre and “Living Property”

“Inherent in acknowledging the interests of animals,” David Favre contends, is the necessity of creating legal structures “to assure that these interests are given some measure of weight in the decision making of the legal process” (2010, 1023). As we have seen in Section 5.1, Favre has demonstrated that Francione is incorrect in claiming that animal property cannot have rights. Favre points to criminal anti-cruelty laws and civil trust laws within our current legal system that recognize many animal interests. What is needed, according to Favre, is not the abolition of ownership, but the creation of a new category of property, “living property,” to formally recognize that living things, unlike other examples of personal property, have interests of their own, and to help legislators and courts create a “coherent package” of animal laws and public policies. While “animals already exist as individuals within our legal system,” Favre notes, they do not do so “in a systemic, focused way that is accessible to traditional writers of jurisprudence” (2010, 1032).

Favre argues that “moral and ethical concerns should start with all beings who have self-interests” (2010, 1043), and claims that self-interest is sufficient to reclassify any piece of personal property as living property. Obviously, this definition encompasses a wide range of living things. Favre suggests that a consideration of species-specific capacities can be used to determine the extent of an animal’s rights but that capacities beyond having self-interests should not be required to be classified as living property. He does, however, recognize many

“practical limitations,” and given his desire to “keep the discussion focused upon those who have the most complex needs,” decides to eliminate the plant kingdom and invertebrates from consideration and limit the domain of living property to vertebrate animals owned by humans who can be identified by either specific name or group name (2010, 1047).

One of the first steps toward a coherent set of laws for the legal protection of the interests of living property must be the identification of the fundamental needs of animals. While biologists, animal behaviorists, cognitive scientists, veterinary clinicians, and animal welfare scientists need to be involved in this step, Favre makes some preliminary suggestions as to what should be included: sufficient food, opportunities to socialize, mental stimulation, and “continued life,” among others. Favre’s list of animal “interests,” Nussbaum’s list of “central capabilities,” and my list of “wellbeing-promoting interests of companion canines” overlap significantly. While any such list must be tentative, open to modification as our understanding of animals grows, there is agreement concerning the most important needs of animals; our current knowledge is sufficient to begin to create legal protections to improve their lives.

Favre provides many examples of the kinds of laws that could protect the interests of living property and distinguish it from other forms of personal property, including laws limiting the rights of owners and laws establishing rights for living property. If one accepts the claim that living property has interests of its own that deserve consideration, one is committed to consider possible limits on owners’ use of their animals. Limits might prohibit certain uses entirely—primates as subjects in medical research, elephants as circus performers, or dogs as gladiators—or simply establish animal protection guidelines. For example, while owners have historically had the right to sell their property to the highest

bidder, in the case of living property owners could be limited to selling to buyers who demonstrate the ability to properly care for the animal.

As noted in section 5.1.1, most of the rights enjoyed by animals are “weak rights,” rights that can be protected only by suits brought by the government. Favre argues that the legal status of living property could and should be strengthened by expanding strong and preferred rights. There are ample precedents for such laws. From the New York Animal Act of 1867 that granted the American Society for the Prevention of Cruelty to Animals (ASPCA) the authority to file criminal complaints against individuals violating the act, to the recent appointment of a guardian ad litem for a chimpanzee by the Palm Beach County Circuit Court in 2002, lawmakers and judges have demonstrated a willingness to extend strong and preferred rights to animals (2010, 1035).

To illustrate how a preferred right could function within our legal system, Favre suggests a new tort, “the intentional interference with the primary interests of a chimpanzee.” In order to prevail in a case involving this tort, a chimp’s court-appointed guardian would need to (1) identify an interest of the chimpanzee, (2) demonstrate that the interest is critical for the welfare of the animal, (3) show that the defendant has interfered with the plaintiff chimp’s interest, and (4) show that the interests of the plaintiff outweigh those of the defendant. For example, a chimpanzee kept in a small metal cage in his owner’s basement for the amusement of the owner and his buddies clearly, Favre argues, has several, fundamental interests seriously compromised by his owner’s treatment: chimps are social animals with an interest in interacting with other chimpanzees, they are active animals with an interest in freedom of movement, and their physical wellbeing requires sunshine and fresh air. None of these interests can be met in a small basement cage. Favre concludes that in a

case like this the interests of the chimpanzee outweigh the interests of the owner and a court would find in favor of the chimpanzee and set remedies that could include injunctions for improved conditions or possibly a reassignment of ownership (2011, 424-9). Criminal laws might also apply, leading to fines or prison time for the defendant. Favre also supplies hypothetical scenarios in which a court would be more likely to find in favor of the defendant.

Of course, even with stronger animal protection legislation, the judicial process will involve competing interests, differences of opinion, and much interesting debate, just as it does in cases where both the plaintiff and defendant are human. Favre's point is simply that the property status of animals does not limit the ability of legislators and the courts to protect the interests of nonhuman animals, and that a new category of property would help to focus attention on the interests of animals and to systematically develop a consistent and comprehensive package of protections.

5.3.2 Custodial Property

Favre's proposal has much to recommend it. Unlike Francione's abolitionist plan and the Donaldson and Kymlicka call to grant citizenship to domestic animals, Favre's approach to elevating the legal status of animals is evolutionary rather than revolutionary. It recognizes the progress that has been made and demonstrates how past legislation and court findings can serve as precedents for further legislative and judiciary action. Second, Favre's approach does not attempt to lump human and non-human animals together in the same category. It recognizes both similarities and differences between human and non-human animals, allowing for the continued use of animals while making accommodations for the morally significant feature of self-interest that separates animal property from other forms of personal

property.

For the purposes of this project, however, I want to suggest some modifications to Favre's living property proposal. My concerns are both theoretical and practical. The criterion he uses to distinguish the new category of property from other forms of personal property is based on the inherent characteristics of animals. This approach, as we saw with the theories of Singer, Regan, and Nussbaum, ignores the responsibility-generating properties of relationships discussed in chapter three: the strong, reciprocal, emotional bond between companion canines and their owners; the complete dependence of companion canines on their owners; and the causal role that humans played in the development of that dependence and vulnerability. Humans deliberately and systematically bred companion canines to bond with humans in a personal, emotional way. While this practice constitutes a disanalogy between the parent/adopted child and owner/companion canine relationships, it adds further support for my claim that the owner/companion canine relationship generates responsibilities of care. Both the nature of the human/companion canine relationship and the causal role humans had in creating canines adapted to such a relationship generate obligations of care.

What's more, lumping together companion animals, farm animals, and laboratory animals would lead to overwhelming resistance to the creation of the new category. The economic realities of animal agriculture necessitate the imposition of harms on sentient animals: relatively restricted living conditions, an abbreviated lifespan, and the stress and pain associated with slaughter, to name a few. Perhaps these practices are unethical, perhaps not. In any case, they are beyond the domain of this project. Since the likelihood of the American public becoming vegan in the near future or agreeing to spend significantly more

for their food is quite small, we are justified in bracketing the animal agriculture question for the moment and focusing on the implications of our obligations to companion canines based on our relationship with them.

With these two concerns in mind, I propose that a new category of property, *custodial property*, be defined to include animals who are (1) sentient, (2) typically owned by humans, and (3) intended to have a relationship with their human owners that has as its goal the “human-companion animal bond” described by Tannenbaum (1989, 124). The criteria for classification as custodial property thus include considerations of the inherent characteristics of animals, their economic/legal status and, most critically, their relationship with humans. The idea is to focus on the need of some animals for protective, personal care, hence the use of the term “custodial.” It is these animals for whom our obligations are most extensive, and it is these animals for whom public support for increased protection is strongest.

Favre recognizes the special nature of companion animals and the readiness of the voting public to support legislative initiatives to protect them. He cites many cases where courts have struggled to recognize and respect the strong emotional relationships that develop between owners and their companion animals. He envisions animal rights that are applicable to companion animals but not to farm and laboratory animals. And, he even hints at the analogy developed in chapter three between the relationship owners have with their companion animals and the relationship parents have with their children. Many of the arguments he makes for changes in our legal structure are grounded in the criteria I have set for custodial property rather than those he used to define living property.

Currently, under the law, harm to companion canines is treated as damage to personal property, for which compensation is limited to the market value of the property. This

treatment fails to recognize the significance of the relationship between dogs and their owners in our society. Because of the strong, emotional bonds many owners have with their animals, they value them far above market value. Recently, courts have explicitly recognized this bond in their decisions. In *Scheele v. Dustin* 2010, a case involving the killing of the Scheeles' pet dog Shadow, the court noted "the destruction of the special relationship that each [family member] had with Shadow" (Michigan State University Animal Legal and Historical Center). While the court recognized the bond between the Scheeles and Shadow, compensation to the Scheeles was limited to market value due to the property status of Shadow. It is the relationship between the Scheeles and Shadow that is important here, not the "living" status of Shadow. Custodial property, as defined above, focuses attention on the critical factor.

One of the animal rights Favre suggests is the "right to own property." What he has in mind are laws providing for the establishment of a trust in an animal's name to provide for the animal after the owner is no longer able to do so. Such laws make sense for the companion animal of an elderly owner but not for the millions of chickens headed for slaughter. They are motivated by the custodial nature of the relationship between owners and companion animals not their status as living beings.

In describing his idea for a new category of property, Favre notes that "the reader can envision more of the colors and contours of this new paradigm if a duty toward an animal is viewed in the light of the legal duty of parents to their child. This is particularly easy when the animal is a pet, as many pets are treated as a child in the family" (2010, 1059). The problem with Favre's use of this analogy, which I have developed in detail in chapter three of this work, is that it only applies to companion animals. Our relationship with animals

destined for the dinner plate can hardly be “viewed in the light of the legal duty of parents to their child.” Favre’s proposed fourth category of property, “living property,” is too broad. It includes the groups of animals—farm animals and laboratory animals—whose owners are most likely to fight animal rights legislation, and fails to focus attention on the responsibility-generating relationship factors that drive many of our intuitions about our duties to animals.

Favre would likely agree that I have defined “custodial property” in terms of an important moral factor, that a campaign to legally recognize custodial property would not generate as much political resistance as a campaign to recognize the more inclusive category of living property, and that custodial property would encourage the creation of a coherent legal framework for the protection of companion animals. He notes that animals with a “human-designated name ... may be easier to consider within the legal system,” and that as a result, should “living property” become a legally recognized category of property, “named property, e.g. pets, may receive some legal rights before other categories” (2010, 1046). That is, what I have called “custodial property” may receive rights before other kinds of animal property. However, he would also likely despair at my willingness to ignore the plight of farm and laboratory animals who, like companion animals, are sentient, self-interested beings. I share his concerns for all sentient beings, but accept Theodore Parker’s observation, as quoted by Martin Luther King, Jr. that “the arc of the moral universe is long,” one must be patient and move ahead where one can (Parker 1853, 84-85). Given the growing recognition of the “new work of dogs,” the dissatisfaction of many with court settlements that fail to reflect this new social status, and the moral stress of veterinary clinicians, the addition of custodial property as a new category of property may be politically feasible at this time.

Analogous to Favre’s suggestion for a new tort to protect primates, the moral

framework developed in this dissertation supports the adoption of the following tort by common-law state courts: failure to meet minimum standards for the wellbeing-promoting interests of companion canines. The Relationships-Generate-Responsibilities Argument (RGRA) provides us with good reasons to recognize extensive positive duties of care to companion canines, and our growing understanding of the nature of dogs and their relationship to humans gives us a good idea of what those duties entail. The list of Wellbeing-Promoting Interests of Companion Canines (WPICC), which reflects our best understanding of the needs of companion canines based on the scientific findings of researchers in all relevant fields of study, provides specific guidelines for the legal requirements necessary to prevail in a civil case based on the proposed tort. The first three requirements—identifying an interest of a canine plaintiff, demonstrating that the interest is critical for the welfare of the animal, and showing that the defendant has interfered with that interest—can be established by appeal to the minimum standards set for each of the WPICCs as discussed in section 4.4.4. The minimum standards provide criteria for determining whether or not illegal interference has taken place and provide the desired connection between theoretical arguments for animal entitlements and the laws needed to protect those entitlements.

The fourth requirement, showing that the interests of the plaintiff outweigh those of the defendant, while also informed by both the RGRA and the WPICC list, is necessarily a matter of judgment. Just as an impoverished mother who steals food for her children is likely to be treated differently in the courts than an affluent businessman who siphons funds from a charitable organization to support his extravagant tastes, so should a poor family who neglects the healthcare of its dog during a family financial crisis be treated differently than a

wealthy owner who refuses to provide basic healthcare for his dogs. Laws protecting the entitlement of companion canines to the conditions they need to flourish must be balanced against the needs of humans and other animals. Francione is wrong to view the use of qualifying terms such as “unnecessary” and “needlessly” in animal protection laws as a sign that something is amiss and that we are stuck in the world of Thrasymachus where “justice is nothing other than the advantage of the stronger” (Plato 1997, 983). These terms remind us that the interests of humans, canines, and other animals inevitably conflict and that the details of the laws protecting custodial property must balance the interests of all affected parties. The creation of a new category of property would help to ensure that the interests of companion canines get the consideration they deserve as the public, legislators, and the courts work to craft a coherent package of laws, policies, and practices for the benefit of all. More will be said about balancing interests in section 5.4.2.

Favre recognizes that in developing laws designed to protect owned animals, both individuals and groups must be considered: “there are two varieties of legal personalities that may be a plaintiff: the individual and the group” (2010, 1061). As our society works to develop laws, policies, and practices consistent with the nature of custodial property, it is important to remember how responsibilities relate to collectives as well as to individuals. In chapter three I argued that in addition to the responsibilities that individuals have to the companion canines they acquire, communities that include dogs also have collective responsibilities for these animals. In chapter four we saw that some of the threats to the wellbeing of companion canines originate in the policies of groups such as the American Kennel Club, and that the actions of individuals can have negative effects on groups of animals such as dog breeds. Legislation designed to ensure that human responsibilities for

the welfare of companion canines are met must, therefore, address the four responsibility vectors first diagrammed in section 3.2.5 (see p.89). For example, just as some children are not loved and cared for, some dogs are discarded by the road by owners who no longer value their companionship. Such animals qualify as custodial property, not because they currently have a personal relationship with a human being but because they are members of a group of animals selectively bred to have such a relationship. (“Custodial property” is defined to include animals *intended* to form strong emotional bonds with their owners.) Communities have a responsibility to care for discarded dogs just as they have a responsibility to care for abandoned children. Laws concerning custodial property need to address all four vectors of responsibility.

5.4 Professional Ethics

“Society,” Bernard Rollin observes, “expects veterinarians to be animal advocates.” When they fail to strongly support the interests of the animals they care for they lose credibility with the public. Rollin sites an example of an AVMA Animal Welfare Committee report “asserting that there are no morally questionable systems in contemporary animal agriculture, only a few ‘bad managers’” (2006, 37). This claim, in the eyes of many, does not reflect the conditions animals endure on industrial farms as described in popular books such as Singer’s *Animal Liberation* and Jeffrey Masson’s *The Pig Who Sang to the Moon*, and appears to be motivated by the economically beneficial relationship veterinarians have with animal agriculture, and leads one to wonder, “Who speaks for the animals?” A similar unwillingness to directly address abuses to companion animals can be found in the “Principles of Veterinary Medical Ethics of the AVMA.” In the sections that follow I argue that the American Veterinary Medical Association’s “Principles” fail to sufficiently

differentiate ethical guidelines for farm animals and companion animals based on the relationships we have with these animals, and fail to provide adequate moral direction for veterinary clinicians who must balance the interests of patients and clients. I argue that the “Principles” should be revised to explicitly support the WPICCs. Not only should our legal system recognize the new social status of dogs and strive to ensure that human responsibilities of care are met, so should professional organizations dedicated to their medical treatment.

5.4.1 Failure to Differentiate According to Relationships

The discussion in the first four chapters of this work strongly supports political scientist Kimberly Smith’s claim that “an animal’s degree of sentience and intelligence, and our social relationships with it, all have significant bearing on whether we (as citizens) must attend to its interests, and on which interests we must attend to” (2012, xvi). To attend to the interests of companion canines, and address the ethical dilemmas faced by veterinary clinicians when treating them, one must be willing to consider their unique cognitive and relational characteristics. While the AVMA’s “Principles” begins with the recognition that “veterinarians practice the profession of veterinary medicine in a variety of situations and circumstances” (AVMA 2013a, 1), there is little attempt to differentiate ethical guidelines for different “situations and circumstances.” The “Principles” are thus unable to provide much guidance to practicing veterinary clinicians concerning the treatment of particular animals in particular situations.

As we have seen, the majority of small-animal veterinarians consider their professional relationship to their patients to be analogous to that between a pediatrician and her patients. More and more dog owners expect this kind of relationship and the arguments in

chapters two and three support such a relationship. For veterinarians working in industrial animal agriculture settings, however, such a relationship would be at odds with the economic interests of their employers. Managers in meat, milk, and egg producing companies expect the patient/veterinarian relationship to resemble that between a car and an automobile mechanic (section 2.2.1). We must acknowledge that in the United States at the current time it is impossible to construct a single set of ethical guidelines that will be helpful to veterinarians working in small-animal practices and those working with animals in industrial settings. To address the important moral decisions that clinicians regularly confront, separate guidelines need to be created for different “situations and circumstances.”

To its credit, the AVMA has published many single-issue position statements, “AVMA Policies,” on topics pertaining to the practice of veterinary medicine including euthanasia, welfare principles, guidelines for companion animal care, and ear cropping of dogs (AVMA 2016). While some of the policy statements discuss healthcare concerns for particular species and provide some moral direction, they do not go far enough. The AVMA is aware of the shortcomings of its “Policies.” Their position statement on “Companion Animal Care Guidelines” cautions readers: “A single set of guidelines cannot completely describe appropriate care for all species in all situations” (AVMA 2016). While the authors are certainly correct to recognize the impossibility of a truly comprehensive account of companion animal care for all species under all conditions and the advisability of discussing particular concerns with a veterinarian, significant, fundamental improvements could be made in the “Principles” and “Policies.” After considering my second major concern with the “Principles” I will suggest some improvements.

5.4.2 Failure to Balance Patient and Client Interests

The conflict between patient and client interests is a pervasive and troubling ethical problem in veterinary medicine. Conflicts arise over many veterinary practices including cosmetic surgeries, invasive procedures to control behavioral problems, futile treatments, and end-of-life issues. Consider a Doberman pinscher puppy whose owner wants his dog to have erect ears rather than the drop ears specified by his dog's DNA. The owner takes his puppy to a veterinarian to have his ears cropped. The procedure involves surgery and weeks of taping supports to what is left of the dog's ears. The puppy has an interest in avoiding the pain and discomfort of surgery and the taping and re-taping of his sensitive ears. The owner has an interest in owning a dog with the "right" appearance. Should the veterinarian crop the dog's ears?

The fact that companion canines are dependent on their owners for medical care, and the potential for conflicting interests, motivates the question Rollin refers to as the "fundamental question of veterinary ethics": "Does the veterinarian have primary allegiance to client or animal?" (2006, 27). The AVMA's "Principles" gestures toward this problem but does not directly address it. The "Principles" includes just one ambiguous statement on the topic: "Veterinarians shall *first* [my emphasis] consider the needs of the patient to relieve disease, suffering, or disability with minimizing pain or fear" (AVMA 2013a, 1). It is not clear, however, whether the use of "first" indicates a primary responsibility for the interests of the animal over those of the client or, alternately, simply a temporal ordering of considerations—examine the animal before having a discussion with its owner about treatment options. Throughout the remainder of the "Principles" the reader is repeatedly reminded to consider the "welfare of the patient, the needs of the client, and the safety of the

public” when making medical decisions. All care, the “Principles” emphasize, must take place within a “veterinarian-client-patient relationship (VCPR)” (AVMA 2013a, 1). But how does one go about balancing interests within this complex relationship? No direction is provided.

The emphasis of the “Principles” needs to shift from billing practice details and reminders to “present a professional appearance” and to make sure that clinic “records comply with the standards established by state and federal law,” to a consideration of patient interests (AVMA 2013a, 2-6). While the business dimension of veterinary practice is a legitimate concern, the “Principles of Veterinary Medical Ethics of the AVMA” should primarily be a work of medical ethics, not business ethics. The next revision of the “Principles” needs to explicitly recognize the inevitable conflicts of interest between clients and patients. The “Principles” must provide guidance for veterinary clinicians struggling with conflict situations; it is precisely in such situations where critical moral decisions are made. The arguments of chapters three and four of this work support the contention that the AVMA needs to do what it can to ensure that minimum standards for the WPICCs are met. Medical procedures that do not comply with minimum standards should be considered only under extreme conditions. Many current practices, including cosmetic surgeries such as the cropping of ears and docking of tails, and invasive procedures to control behavior problems such as debarking, should be specifically addressed in the “Principles.” While, as I have emphasized throughout this work, the specification of minimum standards and the application of those standards to particular practices and policies must be accomplished through a wide-ranging discourse involving veterinarians, animal welfare scientists, animal ethicists, animal owners, and the public, I think it is likely that any discussion that begins

with an acceptance of the responsibilities our relationship with companion canines generates and the general outline of what those responsibilities entail will conclude that the interests of a Doberman pinscher puppy in avoiding the pain, infection, and stressful trips to the clinic involved in transforming his drop ears to erect ears outweigh his owner's esthetic interest in canine ear fashion. That was the conclusion reached in many European countries (Broughton 2003).

Other conflicts of interest will be more difficult to resolve. Even for the "hard cases," however, the moral framework discussed in this dissertation provides some direction. It provides an argument for extensive responsibilities of care for companion canines, identifies those responsibilities, and sets minimum standards. Deliberation within this framework will ensure due consideration of the interests of companion canines. Identifying responsibilities, however, falls far short of determining proper balance when the interests of patients and clients conflict. In the hard cases, we may need to be satisfied with a careful analysis of the possible options and the selection of the path that satisfies the most interests, all parties considered. "To the extent that we see ourselves bound by multiple general values or commitments," Tom Tomlinson writes, "we are motivated to look for ways in which all or most of those commitments can be honored" (2012, 57). I will discuss two such conflicts in detail in the next chapter.

5.4.3 Revising the AVMA's "Principles" and "Policies"

1. The "Principles" should explicitly recognize responsibilities to animals generated by relationships. The Relationships-Generate-Responsibilities argument (RGRA) presented in chapter three provides a justification for the differential treatment of cognitively similar animals. Some such grounding is necessary to justify the creation of distinct ethical

guidelines for small-animal veterinary clinicians and those working in industrial settings. While many animal ethicists reject distinctions based on relationships, without separate guidelines for companion and farm animals all animals will receive minimal protection. Follow the money; the political influence of the animal food industry is extremely powerful.

2. The “Principles” should recognize the morally significant characteristics of the relationship between companion canines and humans and support the establishment of a fourth category of property, custodial property, to help organize legislative, judicial, and professional efforts to ensure that human obligations to companion canines are met.

3. The “Principles” should explicitly identify the Wellbeing-Promoting Interests of Companion Canines (WPICC) and declare its commitment to working with dog owners to ensure that the minimum standards are met for every companion canine.

4. The “Principles” should alert readers to likely points of conflict and send them to specific policy statements that provide further guidance in resolving conflicts. Policy statements should provide case studies illustrating the range of considerations and approaches to resolving the conflict. This recommendation will be explored further with several examples presented in chapter six.

5. Detailed policy statements should be written addressing each of the WPICCs. These statements should define the factors involved, clearly specify minimum standards, and provide case studies to help veterinary clinicians connect general “requirements” with their daily clinical experience.

6. A policy statement should be written pledging AVMA support for legislation designed to protect the entitlement of companion canines to minimum standards for each of the WPICCs.

7. References to particular policy statements should be made throughout the “Principles.” No veterinary student or practicing clinician who briefly skims the “Principles” should be unaware of the more detailed information available in the “Policies.”

5.5 Conclusion

Donna Haraway notes that “*parent-child, guardian-ward, and owner-property* are all lousy terms for the sorts of multispecies relationships emerging among us” (2008, 51). I have argued that a better term for recognizing the unique relationship we share with companion canines is “custodial property.” As defined in this chapter, custodial property focuses attention on the need of companion canines for protective care and on our responsibility to provide that care. It recognizes that the human/canine relationship can be symbiotic in the mutually beneficial manner that biologists refer to as “commensalism” and that the abolition of human ownership of dogs would be harmful to both species. Custodial property also recognizes that while dogs have interests of their own and are entitled to protective care, they do not qualify as citizens. The natural and artificial selection of *Canis lupus familiaris* for juvenile characteristics has resulted in friendly, trusting, inquisitive, playful beings—perpetual puppies—well adapted to life in human families and communities but unequipped to make simple decisions about what to eat, where to roam, or what medical procedures are necessary. Companion canines are artifacts, human creations whose lives can go well only when provided with custodial care.

The concept of custodial property is consistent with the four major conclusions of this project: (1) Humans have a special relationship with companion canines. (2) The human/companion canine relationship generates obligations of care. (3) Those obligations entail the responsibility to attend to an extensive list of companion canine wellbeing-

promoting interests. And, (4) laws, professional ethics standards, and veterinary clinic policies and practices need to be established to ensure that human obligations to companion canines are met. Because custodial property embodies these understandings, it provides a powerful organizing concept for the development of a moral and legal framework for companion canine care consistent with their new social status. A new legal category of property—custodial property—should be established. In the next chapter I consider several ethical problems involving companion canines and explore how a custodial property framework can help to solve these problems for the benefit of both companion canines and the humans who care for them.

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CHAPTER 6:
“THE PERSONAL IS PHILOSOPHICAL IS POLITICAL”

Ways of living and dying matter: Which historically situated practices of multispecies living and dying should flourish?

There is no outside from which to answer that mandatory question; we must give the best answers we come to know how to articulate, and take action, without the god trick of self-certainty.

Donna J. Haraway (2008, 88)

The moral framework constructed and defended in this dissertation is not a revelation of god or a mathematical truth; it is merely the “best answer” that I “know how to articulate” to a complex and important moral problem. While the adoption of this framework requires one to be willing to move forward without “self-certainty,” it is not a step into the dark. It is founded on two moral principles that have served us well and therefore have presumptive weight: *relationships generate responsibilities* and *the aim of moral behavior is wellbeing*. The extension of these normative claims to the care and treatment of companion canines is supported by extensive empirical evidence and compelling arguments. The characteristics of the parent/adopted child relationship thought to generate responsibilities have been shown to apply to the owner/companion canine relationship as well. These responsibilities, I have argued, go well beyond the prevention of cruelty to include extensive duties of care. The details of these duties have been explored using a modified capabilities approach. In addition, reasons have been offered for the extension of responsibility for the welfare of companion canines to the wider community. Humans have individual and collective responsibility for companion canines that ought to be reflected in the professional ethical principles and practices of those entrusted with their medical care, and in the laws and public policies at local, state, and national levels. Provisions ought to be made to ensure that the

human responsibilities to companion canines are met.

I refer to the framework developed in this dissertation as the *Custodial Property Framework* (CPF). “Custodial” denotes protective care and therefore captures many of the morally salient characteristics of the human/companion canine relationship explored in chapter three (sections 3.2.4 and 3.2.6). The connotations of protective care anticipate the duties involved in attending to the wellbeing-promoting interests of companion canines (section 4.3.3) and the need for protective laws. “Property” denotes an ownership relationship that is inherently asymmetrical and connotes the involvement of economic concerns in the origin and propagation of dogs. Adopting the Custodial Property Framework entails the acceptance of the following conclusions:

1. *Humans and companion canines have a special relationship.* Companion canines have been invited into our homes and communities to serve as friends and companions. They are sentient artifacts who have been deliberately and artificially bred to exhibit the juvenile traits of friendliness, trust, curiosity, and playfulness, and, as a result, are totally dependent on their human partners. They are capable of suffering, experiencing joy, and communicating with humans more adeptly than any other species. Their inherent characteristics and their place in human society enable them to form strong, reciprocal, affectionate bonds with humans (chapter two).

2. *Our relationship with companion canines generates responsibilities of care.* Many of the characteristics of the human/adopted child relationship thought to generate responsibilities—group membership, a special relationship, dependence and vulnerability, affection, and voluntarism—apply to the human/companion canine relationship as well. The responsibilities generated by this relationship go beyond the prevention of cruelty to include

responsibilities of care, duties to attend to the wellbeing-promoting interests of companion canines. Responsibilities of care follow four “vectors” from human individuals and collectives to canine individuals and collectives (chapter three).

3. *The wellbeing-promoting interests of companion canines involve physical, social, and emotional factors.* The wellbeing of companion canines, like that of humans, depends on far more than the physical resources available to them. It is important to consider the complete range of factors that determine what companion canines are able “to do and to be.” In addition to adequate nutrition, exercise, and healthcare, they also need a sound genetic heritage, proper socialization and training, and opportunities for play and loving attachment. Humans have a duty to attend to the full list of wellbeing-promoting interests of companion canines (chapter four).

4. *Professional ethical principles, public policies, and laws designed to ensure that human responsibilities to companion canines are met should be written, adopted, and enforced.* A new category of property, *custodial property*, should be created to focus legislative, judicial, and public attention on the inherent characteristics of companion canines and on our relationship with them that distinguish them from other examples of personal property. Laws, public policies, and professional ethical principles must reflect these differences and ensure that human responsibilities to companion canines are met (chapter five).

It is important for a work of applied ethics to make a connection between theoretical claims and the medical and social problems that motivated the analysis. Toward this end, the remainder of this chapter is dedicated to an exploration of the effects that adopting the CPF might have on clients, clinicians, and patients. I show that the recognition of responsibilities

generated by relationships, the WPICC list, and the new category of property combine to create a framework conducive to the wellbeing of companion canines, their owners, and veterinary clinicians. Dividing my attention between veterinary medical practices and those of custodial owners and breeders, I consider both relatively tractable problems and more difficult problems in each area.

6.1 Veterinary Medical Practices

We have seen that conflicts between the interests of patients and clients can lead to patient suffering and clinician stress. Problems arise over client requests for cosmetic surgery, destructive surgeries to solve behavioral problems, the withholding of effective treatments for economic reasons, futile treatment, and convenience euthanasia. Progress has already been made on some of these problems especially in the European Union. With precedents to build on, these problems should be relatively tractable. Others, however, promise to be harder to resolve.

In the sections that follow I consider several conflict situations and give reasons why the Custodial Property Framework (CPF) would protect companion canine interests and reduce conflict between clients and clinicians by establishing a new equilibrium among the laws protecting companion canines, veterinary ethical principles and practices, and the moral intuitions of most veterinary clinicians and companion canine owners. I contrast typical interactions under present conditions with those in a future society whose laws recognize the special characteristics of custodial property and protect the welfare-promoting interests of companion canines. The widespread adoption of the CPF would reduce the frequency of conflict situations and improve the welfare of patients, clients, and clinicians, in both “easy” and “hard” cases.

6.1.1 Tractable and Not So Tractable Problems

In section 5.4.2 we considered a conflict of interests between an owner who finds erect Doberman pinscher ears to be esthetically pleasing and a Doberman puppy who would prefer to avoid the pain, discomfort, and possible complications resulting from the surgery and weeks of taping required to transform his naturally drop ears to erect ones. Currently in the United States the cropping of ears for many breeds of dogs is not only legal, it is specified in the breed standards published by the American Kennel Club (AKC). While Dobermans with natural ears are not “disqualified” from AKC sanctioned events, the official breed standard states that Doberman ears are “normally cropped and carried erect” (AKC 1982). It is, therefore, understandable why the cropping of ears is standard practice for Doberman breeders who want their dogs to have every possible advantage in the show ring. It is also understandable why Doberman puppies would not be as enthusiastic about the practice and why many of the women and men who became veterinarians to help animals would find requests for this cosmetic surgery troubling.

In a CPF environment this conflict is unlikely to arise. Within this framework, a Doberman puppy is classified as custodial property and, as such, his owner is obligated to attend to his welfare interests. This understanding is supported by public policies, veterinary clinic policies and practices, and laws: the (revised) AKC standard specifies that only dogs with natural ears are eligible to be shown in sanctioned events, veterinarians do not crop ears for cosmetic purposes, and legislation is on the books outlawing the procedure.

Critics may claim that the CPF does not give adequate weight to the interests of owners. A Doberman fancier purchases and cares for his dog because it brings him pleasure. He may like the athleticism of the breed, its alert demeanor, and erect ears are a part of that

look. He provides his animal with good food, shelter, medical care, and exercise at considerable expense. In return he enjoys the company of an animal whose appearance conforms to a standard he finds esthetically pleasing. Shouldn't the owner/companion canine relationship involve some give and take?

The CPF is committed to a thorough consideration of the interests of patients, clinicians, *and* clients. We have encountered the problem of balancing these interests on several occasions (sections 4.4.4 and 5.4.2). In this case, however, the arguments of chapters three and four support the contention that the interests of the dog should prevail over those of the client. The client's interest in erect ears is primarily a matter of fashion while the dog's interest in avoiding surgery involves pain, discomfort, and the risks of anesthesia, hemorrhage, and infection—considerations central to the WPICCs.

Interests grounded in preferences of fashion can change when they encounter competing and arguably more fundamental interests. Movie stars of the 1940s and 1950s were often pictured with cigarettes. The way they handled cigarette packs and lighters, the way they rested cigarettes on their lips, and even the way they exhaled were copied by fans. Smoking was sensual. Today, however, with a plethora of medical data indicting tobacco for its harmful effects on lungs, arteries, and hearts, cigarettes don't look so sexy.

A similar change in fashion has occurred in Europe in response to the growing awareness of the pain and medical complications suffered by dogs undergoing cosmetic surgeries. European countries have banned the cropping of ears and the British Kennel Club (KC) permits only dogs with natural ears to be shown in its events. British dog fanciers have largely come to see Dobermans and boxers and great Danes with drop ears to be more esthetically pleasing than those with surgically altered ears (Broughton 2003, Stafford 2007).

The attitudes of dog fanciers in the United States toward the cropping of ears have begun to change as well, and for the same reasons. The adoption of the CPF would accelerate these changes by focusing attention on the interests of companion canines and on the harms that many currently “acceptable” practices have on animals. This attention and the understanding it brings could plausibly make butchered ears as attractive as secondhand smoke.

Conflicts surrounding other ethically problematic veterinary practices would also likely diminish in a CPF environment. Other cosmetic surgeries such as the docking of tails would fall under the same regulations that ban ear cropping. Destructive surgeries to solve behavioral problems, such as debarking dogs and declawing cats, would also come under scrutiny. While it may be decided that these practices are necessary under extreme and unusual circumstances, careful consideration of the interests of custodial property would make such surgeries relatively rare. Most behavioral problems develop when the fundamental needs of companion canines for exercise, socialization, training, play, and loving attachment are not met (see the WPICC list in section 4.3.3). The solution to the constant barking of a dog chained in a backyard is to provide the animal with opportunities to exercise and interact with other dogs and humans, not the surgical removal of her vocal cords.

Critics may rightly point out that many companion canine owners do not have the time or resources to provide their dogs with fenced yards, regular walks, training sessions, and trips to dog parks. It is also true, however, that few of these owners gave sufficient thought to the needs of a canine companion before acquiring their dog. Cute puppies purchased in shopping mall pet stores to appease pleading children often grow into neglected

adults whose sorry lives lead to the suffering of dogs, owners, and veterinary clinicians. In a CPF environment the acquisition of a canine companion would not be as easy as purchasing a hair dryer or other piece of personal property. It would come to more closely resemble the adoption of a human child. Fewer families would include canine members, but the welfare of both human and canine members of mixed human/canine families would be far better.

There is currently some movement in that direction. Many shelters and breed rescue groups carefully screen potential adopters. Elaborate adoption forms, interviews, and home studies are employed to ensure that dogs are placed in homes where their needs are understood, resources are available to satisfy them, and the adopters are committed to the care of the dog for life. The adoption procedure at the Mid-Atlantic Border Collie Rescue in Chestertown, MD, for example, begins with the completion of an application form, a telephone interview, and a reference check. If everything appears to be in order, a representative visits the prospective adopter's home for an inspection and to review the conditions of the adoption agreement. While many families purchase puppies from commercial pet stores without much thought about the responsibilities they are taking on, Mid-Atlantic Border Collie Rescue adoption procedures ensure that potential adopters carefully consider the responsibilities involved in companion canine ownership. Within a CPF environment, such procedures would become the norm.

Other areas of conflict are more complex. The withholding of effective treatment for economic reasons and the continued futile treatment of animals whose pain cannot be controlled involve more fundamental client interests. Veterinary clinicians regularly encounter situations where they could help an animal but the animal's owner cannot afford the treatment, and others where there is nothing they can do for an animal but the owner is

too emotionally involved to let the animal go. These economic and emotional interests of clients have far more *gravitas* than do mere matters of fashion, making the balancing of interests far more difficult. Cases involving such interests must be considered on an individual basis. Veterinary clinicians must be sensitive to the needs of their clients as well as those of their patients.

Within the current personal property legal framework, however, wealthy owners can refuse to pay for inexpensive, life-saving treatments, resulting in the unnecessary suffering and death of dogs and debilitating feelings of frustration and helplessness in clinicians. Owners can also refuse to euthanize terminally ill dogs whose pain and suffering cannot be controlled. Laws, policies, and practices consistent with the CPF would ensure that life and death interests of patients are not necessarily trumped by owner preferences. Patients could be protected by legally mandated pet insurance and by giving clinicians a greater role in the decision-making process, analogous to that of pediatricians.

The provision of adequate healthcare is one of the factors that contributes to physical health—one of the WPICCs. The minimum standards set for this wellbeing-promoting interest could inform legislation concerning required insurance coverage. While inexpensive, legally mandated, basic health coverage could not fully cover complex surgeries and cancer treatments, it could ensure that dogs do not die for want of simple, preventative measures including heartworm medication and vaccinations, or because inexpensive, effective treatments were withheld for economic reasons. This would go a long way toward improving the health of companion canines and reducing the frustration many practicing clinicians experience.

The reclassification of companion canines from personal property to custodial

property liberates them from the absolute control of their owners. Because companion canines are dependent, vulnerable members of our families and communities, their interests need to be protected against potential owner abuse. While decisions concerning the medical treatment of young children are largely in the hands of parents, final treatment decisions in some situations can be made by physicians. A physician can, for example, administer blood against parental objections if the child's life is in jeopardy. Physicians are also required by law to report suspected cases of child abuse to authorities even when the suspected abusers are the patient's parents. Similar regulations may be appropriate in veterinary medicine as well. In the next section I return to the most contentious moral problem involving a conflict of interest between patient and client, convenience euthanasia.

6.1.2 Euthanasia in a CPF Environment

This dissertation is about relationships and the responsibilities they generate. Many of the characteristics of the human/companion canine relationship I have argued are instrumental in generating extensive duties of care become particularly salient when euthanasia is being considered. At no other time is the vulnerability of a canine companion to her human partners more acute, the special emotional relationship between human and dog more deeply felt, and an awareness of the role the dog has played in family life more important. At such times humans take on three roles: they act as "the caretakers, the decision makers, and the instruments of death" (Savishinsky 1988, 3). This relationship multiplex spawns many ethical problems for veterinary clinicians and their clients.

For eighteen months, sociologist Patricia Morris collected ethnographic data while working in veterinary hospitals and clinics in New York, Massachusetts, and California. She found that veterinarians "repeatedly described the practice of euthanasia to be both 'the best

and worst parts of the job” (2012, 10). Veterinarians were thankful that they have the option to end the life of suffering terminal patients whose pain they are unable to control. They were deeply troubled, however, when clients are unable to “let go” of their suffering canine companions and when they want to “put down” healthy dogs for what the clinicians view as “trivial reasons,” a practice commonly referred to as “convenience euthanasia.”

In this section I contrast the harmful effects of convenience euthanasia on patients, clients, and clinicians in the current personal property environment with what we might expect to see in a society operating under a custodial property framework. Recall the case of Dr. Reamsnyder discussed in section 2.2.2.

Dr. Karen Reamsnyder remembers the day well. Her client was an angry middle-aged man requesting euthanasia for his dog, a healthy looking small mixed breed.

I remember telling him, “This dog is healthy, and I don’t feel comfortable putting this animal to sleep. Have you tried to place it?”

“I don’t have time for that,” he replied. “I’ll be honest with you. If you refuse to do it now, I’m driving down the street and going to open up the door and kick the dog out on the road.” (Verdon 2003)

Remember also the sad outcome and the personal property framework in which these events transpired: Dr. Reamsnyder, fearing that the little dog would suffer a worse fate should she refuse the owner’s request, euthanized the dog and regrets it to this day, twenty-six years later. At the time of the euthanasia Dr. Reamsnyder was a young, inexperienced veterinarian. Her patient was the personal property of her client. The requested procedure was legal, probably regularly performed in the clinic in which she was newly employed, and at least tolerated by the AVMA. “Humane euthanasia of animals is an ethical veterinary procedure” is the only statement concerning euthanasia in the “Principles of Veterinary

Medical Ethics” (AVMA 2013a, 2).

It must be acknowledged that in a separate policy statement on euthanasia the AVMA expresses reservations concerning the practice of convenience euthanasia. The document begins with the recognition that “changing social attitudes toward animal care and use have inspired scrutiny of some traditional and contemporary practices” (AVMA 2013b, 5), and goes so far as to note that “the veterinarian’s prima facie duty in carrying out euthanasia *includes, but is not limited to*” (my emphasis) the animal’s interests and the use of humane techniques (AVMA 2013b, 6). The need to consider the “plurality of values” in our society, however, is repeatedly stressed, and the emphasis of the document is on the “methods of euthanasia,” including an illustration of proper bullet placement to dispatch dogs and cats when other methods of euthanasia are not “available and practicable” (AVMA 2013b, 46). A careful reading of the “AVMA Guidelines for the Euthanasia of Animals” and a commitment to following its advice may not have changed the outcome of Dr. Reamsnyder’s encounter with the “angry middle-aged man” and his “healthy looking small mixed breed” dog. The AVMA does not take a clear stand against euthanizing dogs for what many clinicians view as “trivial reasons.”

“As Alasdair MacIntyre argues in the postscript to the second edition of *After Virtue* (1984), one key dimension for determining the superiority of one tradition over another is that the tradition judged to be superior can explain both (1) why the inferior tradition could neither fully appreciate nor solve certain problems, and (2) how the replacement tradition can either dissolve or resolve some of the tensions inherent in the prior tradition” (Johnson 2014, 127). The Custodial Property Framework (CPF) can pass both of these tests; it can explain why conflicts such as the one between Dr. Reamsnyder and her client are inevitable in a

personal property framework, and it can provide an alternative conceptual understanding and legal structure to “resolve some of the tension.”

Because companion canines and inanimate possessions share the same legal categorization within our current personal property framework, the morally significant differences between companion canines and inanimate possessions do not always receive the attention they deserve. Some dog owners, such as Dr. Reamsnyder’s client, conclude that they may treat their dogs as they treat their other personal possessions, and enter the veterinary clinic with the feeling that they are entitled to dispose of their animals when they so desire. Furthermore, the legality of convenience euthanasia, the failure of the AVMA to clearly censor it in its “Principles of Veterinary Medical Ethics,” and the widespread practice of convenience euthanasia help clients justify their requests for the convenience killing of their healthy animals. At the same time, the changing role that canine companions play in our families and communities, the recognition of our responsibilities of care toward these animals, our growing understanding of the capabilities and needs of dogs, and the shifting focus of veterinary medicine from farm animals to companion animals contribute to the growing discomfort veterinarians like Dr. Reamsnyder and many companion canine owners have with the killing of healthy companion canines. As long as companion canines are considered to be personal property and convenience euthanasia is a legal procedure tolerated by the AVMA, many healthy dogs are going to lose their lives and the tension between veterinary clinicians and some of their clients is going to produce debilitating levels of moral stress.

Much of this tension could be resolved by the adoption of the Custodial Property Framework (CPF). The CPF explicitly recognizes the morally significant differences

between companion canines and other examples of personal property; the responsibilities of owners to care for their canine companions; and the physical, social, and emotional needs of dogs including “life itself” (section 4.4.1). In addition, it includes ethical and legal provisions to ensure that human responsibilities to companion canines are met. If Dr. Reamsnyder had begun her medical practice in a society that had embraced the CPF, the outcome of her encounter with the client requesting the euthanasia of his dog would have gone very differently. First, the process by which her client obtained his dog would have been structured so as to ensure that serious consideration was given to the need for long-term commitment. Purchase/adoption procedures would be informed by a modern understanding of the nature of dogs, the human/canine bond, and by the responsibilities this relationship entails. Secondly, the killing of healthy dogs would not have been seen as an option. The practice of convenience euthanasia would be in direct violation of AVMA ethical principles, and the killing of healthy dogs by owners and veterinarians would be severely restricted by law. Third, foster care and adoption programs would be available to owners whose fortunes have taken a turn for the worse and are no longer able to care for their animals. Because human responsibilities to companion canines are held individually and collectively, adoption programs would be supported with both public and private funds. In a society with a robust CPF in place, Dr. Reamsnyder’s client may not have acquired the ill-fated dog in the first place. If he had, he may have had a better understanding of his responsibilities and taken them more seriously. And if, in spite of these precautions, he found himself in a situation where he was no longer able or willing to care for his dog, he would not have had the expectation that there was an “easy” solution. He would expect to be held responsible for his companion and make arrangements for someone else to assume the duties of care his dog is

due. Thus, not only can the CPF explain why healthy dogs continue to be killed and veterinary clinicians continue to experience moral stress under the personal property framework currently in place, it can “resolve some of the tensions inherent in [this] tradition.”

6.2 The Practices of Owners and Breeders

The Custodial Property Framework (CPF) can also help our society resolve controversies concerning the treatment of companion canines by owners and breeders. The lack of effective legal protection for the social and emotional interests of companion canines; American Kennel Club (AKC) policies against outbreeding and its support of selection for extreme characteristics; and many of the practices of dog owners, pet shops, puppy mills, and animal shelters are inconsistent with the new social status of dogs, our growing understanding of their inherent capabilities, and the responsibilities of humans to companion canines. Following the pattern of the previous section I consider both relatively tractable and more difficult problems concerning breeder and owner care of companion canines and give reasons why the adoption of the CPF would help to resolve these problems by establishing a new equilibrium among practices, principles, and protections.

6.2.1 Tractable and Not So Tractable Problems

The Wellbeing-Promoting Interest of Companion Canines (WPICC) that has received the most attention is physical health. As we have seen, some states have extended anti-cruelty laws beyond the prevention of cruelty to include positive rights to the satisfaction of physical needs. Because such laws are consistent with the understanding of canine needs and the recognition of the responsibility of humans to satisfy those needs central to the CPF, the adoption of the CPF would accelerate the progress of this trend.

While some progress has been made protecting the physical health interests of companion canines under our current personal property framework, little has been done to ensure that social and psychological needs are met. The CPF explicitly recognizes that the wellbeing of companion canines depends on a variety of factors that contribute to what the animals are able “to do and to be.” Adequate socialization, training, play, and loving attachment are as important as food and shelter.

Martha Nussbaum adopts an important insight from Jonathan Wolff and Avner de-Shalit’s book *Disadvantage* in her recent writings on the capabilities approach (Nussbaum 2011, 44-46). Wolff and de-Shalit note that functionings are not independent but interact in complex ways. The Nussbaum capability of “affiliation” is an example of what Wolff and de-Shalit call a “fertile functioning,” a functioning that enhances other functionings. A well-affiliated human has many opportunities to develop capabilities in many of the other Nussbaum categories. Social connections have been shown to positively affect “bodily health.” Well-affiliated individuals have outlets for their emotional needs, and have opportunities to “play.” And the capability category Nussbaum labels “senses, imagination, and thought” includes functionings developed through education, creative expression, and rational discourse—all facilitated by connections to other individuals, groups, and institutions.

The CPF is committed to ensuring that all of the WPICCs are addressed. These interests, like the “central capabilities” of Nussbaum’s capabilities approach, identify the many dimensions of wellbeing, and like the capabilities, some are more fertile than others. One of the most fertile is “cognitive life” and the “training” that contributes to it. The training of companion canines has implications throughout the list (section 4.3.3). A well-

trained dog is more likely to be included in family activities that provide opportunities for “socialization,” “exercise,” “play,” and “loving attachment.” Poorly trained dogs may be so uncooperative on a leash that they enjoy few walks, and so difficult to control in a dog park that such excursions are out of the question. While well-trained dogs politely greet and interact with visitors, poorly trained dogs may be banished to the garage when visitors arrive. Because well-trained dogs spend more mutually satisfying time with their owners, they are more likely to form strong affectionate bonds with their owners. Simply put, training enables a companion canine to be a companion. Attention to the needs of companion canines for training positively affects many of their wellbeing-promoting interests.

Adopting the CPF commits a society to the consideration of all the WPICCs, including the social and emotional interests neglected by our current regulatory framework. A society transitioning to a CPF would do well to initially focus its attention on the most fertile requirements and develop laws and policies to ensure that they are met. A law requiring that all dogs attend a certified “puppy kindergarten” class during their first year, for example, might prove beneficial to dogs and humans alike. Proof of completion could be required in order to obtain a dog license. Provisions to lower the cost of licensure for dogs who have completed more advanced training could be included in the legislation and incentives should be provided for owners to continue working with their dogs to obtain “Canine Good Citizen” status (AKC 2016c).

The social and emotional WPICCs are negatively impacted by the extent to which many dogs are isolated from other dogs and humans. Many companion canines are left alone in crates all day while their owners are at work, and some are chained in backyards around the clock. We have reviewed evidence that dogs are social beings selectively bred to form

strong emotional bonds with humans. Physiological data and ethological observations show that isolated dogs experience high levels of stress and may suffer every bit as much as those whose nutrition and shelter needs are not being met. If the responsibility to attend to the WPICCs is taken seriously, such practices are unacceptable. Therefore, a fully developed CPF must include provisions to protect companion canines from extreme isolation, including laws against the chaining of dogs and limits on the length of time they can be left alone.

Critics may find such recommendations to be overly restrictive and impractical. Expensive educational costs would prevent many less affluent families from owning a dog, and tying their dog in the backyard may be an owner's only means of controlling their animal. Dogs are an important part of many economically challenged families; it would be wrong to limit dog ownership to the wealthy.

Examples of dogs whose needs are adequately provided for by families of modest means or by homeless individuals could surely be collected in support of the view above (Irvine 2013). Dogs, like human children, often do better in poor but loving families than in rich but cold ones. It should be noted, however, that in other areas where society has a legitimate interest in the activities of individuals, such as in the operation of motor vehicles or the use of firearms, training requirements have been imposed. And as the analogy between the owner/companion canine relationship and the parent/child relationship suggests, restrictions on the amount of time canine companions are left alone may not be unreasonable. The need to consider a multitude of factors and the need to balance the interests of companion canines and owners have been recurrent themes of this work and are certainly necessary when searching for solutions to the problems of training and isolation.

In the State of Michigan, the completion of a safety course is required to obtain a

hunting license, drive a motorcycle, or carry a concealed weapon. Because the operation of motor vehicles and the use of firearms affect the welfare of its citizens, the government is justified in requiring users to be adequately prepared to responsibly participate in these activities. Because the government has an interest in maximizing participation in this training, the cost is partially assumed by the government and scheduling is made as convenient as possible.

Just as the training of hunters and motor vehicle operators contributes to the welfare of the community, so does the training of canine companions. A fundamental claim of the CPF, inherited from the capabilities approach, is that the government has a responsibility to ensure that the needs of canine community members are protected as well of those of human members. “Puppy kindergarten,” obedience training, and “canine good citizenship” training help dogs to behave in socially acceptable ways. Knowing how to walk on a leash, follow basic commands, and postpone gratification not only make trained dogs more pleasant housemates but better neighbors as well. They are less likely to exhibit aggressive behavior and nuisance barking. As a result, such dogs are able to participate in more activities and are less likely to be surrendered to shelters where they are often euthanized. Training benefits both human and canine community members.

The central tenets of the CPF suggest that it is necessary to have a public conversation concerning the advisability of placing legal limits on the amount of time canine companions can be left alone. The CPF recognizes a long list of WPICCs, many of which are negatively impacted by isolation. Furthermore, the CPF is committed to the legal protection of these interests. It is difficult, however, to define “excessive isolation” and to imagine enforceable regulations to prevent it.

There is tremendous variation in what constitutes excessive isolation among breeds and among individuals within breeds. There are dogs who suffer anxiety attacks when their owner leaves for a few hours and there are others who don't seem to notice. Some dogs appear to be more attached to canine "pack-mates" than to human ones, while other dogs are bonded exclusively to their owners. Other factors also make it difficult to define excessive isolation. The effects of isolation on a dog depends on his age, the amount of exercise he receives, whether he is confined to a crate or has a larger enclosure, and the amount of mental stimulation the enclosure provides. A dog who spends weekdays alone at home but has the run of the house, access to a securely fenced backyard through a "doggy door," two canine companions, and lots of toys is in a far different situation than a dog locked in a small, bare crate for ten hours each day.

The complexity of this issue, however, does not diminish its importance. It is not unlike nutrition or shelter in this regard. Adequate nutrition and shelter involve as many factors and vary just as much across the canine kingdom. Because adequate nutrition and shelter are protected by current anti-cruelty laws, animal control officers have experience making subjective judgments as to whether or not minimum standards are met. While egregious inadequacies are obvious (emaciated, shivering dogs, chained in snowy backyards) and often result in the re-homing of dogs and fines for their owners, all cases benefit from the attention of animal control officers who are sensitive to individual situations, have good community relations, and use diplomatic language. For marginal cases, written warnings from officers can lead to improvements in the living conditions of dogs surviving under less than ideal conditions.

While the CPF cannot hope to completely eliminate the suffering that isolation

brings, it can elevate the need for social interaction to the same level as the need for food and shelter. It can help to focus attention on social and psychological issues from the beginning of a human/canine relationship—the purchase/adoption of a companion canine. It can encourage breeders, veterinarians, and dog trainers to discuss these needs with their clients. And it can add social and psychological needs to the companion canine entitlements protected by law. While “excessive isolation” may never be as clearly defined as prosecutors would like, it is an important problem that needs to be addressed and can be done so more effectively within the CPF.

Some of the people most interested in sharing their lives with companion canines are devoted to particular breeds. Some are breeders who strive to produce litters of puppies who exemplify American Kennel Club (AKC) breed standards, while other “fanciers” simply appreciate the physical and behavioral traits of a particular breed. Many enjoy attending dog shows in which dogs are judged according to how closely they conform to the standard of their breed. The creation of closed breeding populations (breeds) in the pursuit of conformation standards, however, has led to serious welfare problems. Many of the traits dog fanciers find attractive, such as brachycephalic muzzles and elongated bodies, are inherently unhealthy, and the inbreeding and line breeding that are used to “fix” desirable traits result in a high incidence of congenital defects. In the next section I describe these problems in more detail and suggest ways in which the CPF could help to alleviate them.

6.2.2 Breeding Practices

In section 4.3.3, “Wellbeing-Promoting Interests of Companion Canines,” I noted that in addition to the *external* conditions necessary for dogs to thrive, there are *internal* ones as well. The health and capabilities of all organisms depend on environment influences *and*

their genetic makeup. Much of the suffering experienced by companion canines is a result of breeding for extreme characteristics such as large heads in bulldogs, the nonfunctional posture (sloping croup) preferred by German shepherd fanciers, elongated backs in dachshunds, brachycephalic muzzles in pugs, and folded skin in Chinese shar-peis. Further suffering is a consequence of inbreeding that increases the likelihood of genetic defects. Deafness, hip dysplasia, eye defects, and many other pathological conditions have strong genetic components.

Just as dogs need shelter, clean water, social interaction, and a nutritious diet to flourish, they also need a sound genetic blueprint. And, as advocates of the capabilities approach have clearly shown, these needs are irreducibly heterogeneous. Adequate shelter, water, social interaction, and nutrition cannot make up for the genetic disadvantage with which many dogs begin life. A poor genetic endowment is the kind of disadvantage Wolff and de-Shalit refer to as a “corrosive disadvantage” because of its wide-ranging effects on many critical functionings (2007). As demonstrated below, English bulldogs are destined to suffer throughout their lives because of the genetic instructions that control their development.

The Custodial Property Framework (CPF) is committed to ensuring that consideration is given to all of the WPICCs. Because of the “corrosive” effects that genetic factors can have on the welfare of companion canines, the CPF insists that breeding decisions must prioritize health and functional morphology over fashion, conformation standards, and the “purity” of the breed. An example of each of the two distinct genetically-driven wellbeing problems that plague pedigree companion canines—extreme anatomical characteristics deliberately selected for by breeders and fanciers and elevated frequencies of inheritable

diseases due to inbreeding—are discussed below within our present personal property framework and within the CPF.

EXTREME ANATOMICAL CHARACTERISTICS: In 2015, the English bulldog was the fourth most popular breed in the United States (Smith 2016). The familiar, low slung, corpulent dogs with flat, wrinkled faces and endearing, friendly, fun-loving personalities bear little resemblance to their ancestors whose longer legs and muzzles were put to use in bull baiting arenas in the nineteenth century. When bull baiting was outlawed in Britain in 1835 the breed was rescued by Bill George, a dog dealer who transformed the bulldog into a companion animal to cash in on the Victorian love affair with purebred dogs. With the advent of dog shows in the mid nineteenth century the goals of the selective breeding of canines shifted from functional considerations to esthetic ones. Unfortunately, the bulldog traits that many found and continue to find so endearing have proven to adversely affect the wellbeing of the animals.

The AKC standard for the bulldog requires a “massive, short-faced head,” a “heavy, thick-set, low-slung body,” an “extremely short” face and muzzle, and a “massive” and “undershot” jaw” (AKC 2016a). Bulldog heads have become so “massive” that few bulldog bitches are able to give birth vaginally; their bodies are so “heavy, thick-set” and “low-slung” that they require assistance in mating and suffer from many orthopedic problems; their faces and muzzles are so “short” that they have severe breathing problems; and their jaws are so “undershot” that their teeth are forced to erupt in a jumbled mess. “We’ve shortened the face of this breed so much,” laments Dr. William Rosenblad, “that there’s just not enough space for everything to fit. The tongue, the palate, it’s all compressed. The teeth often look like they have been thrown in there. They have little tiny nostrils. The end result

of all that compression is that many bulldogs can barely breathe.” Dr. John Lewis, a professor at the University of Pennsylvania’s School of Veterinary Medicine, has suggested a way to experience bulldog respiration: pinch your nose closed and “breath through a straw” (Denizet-Lewis 2011, 5).

Charles Darwin labeled the extreme morphologic characteristics exhibited by the bulldog “monstrosities.”

Some of the peculiarities characteristic of the several breeds of the dog have probably arisen suddenly, and, though strictly inherited, may be called monstrosities; for instance, the shape of the head and the under-hanging jaw in the bulldog ... A peculiarity suddenly arising, and therefore in one sense deserving to be called a monstrosity, may however be increased and fixed by man’s selection (Darwin 1989, 34).

The attraction that humans have for “monstrosities” has led them to selectively breed dogs for many pathological traits resulting in puppies destined to suffer short, diseased lives. Rather than selecting against deleterious traits, humans often choose to systematically concentrate mutant genes in isolated populations (breeds) of dogs. In 1972, for example, a rat terrier puppy was born with a mutant recessive gene for hairlessness. The naked, tiny puppy was extremely susceptible to skin lacerations and sunburn (Fogle 2012, 292). This unfortunate little girl was used to develop a new breed, the American hairless terrier. The inbreeding required to “fix” the hairless gene in the “line” has produced a breed with a dangerously small gene pool. In addition to skin problems, American hairless terriers are prone to congenital “knee problems, hip and elbow dysplasia, and allergies” (Palika 2007, 127).

Many breeds suffer from fanciers’ preferences for extreme morphological traits. The large, prominent eyes that pug breeders prize leads to exophthalmoses and exposure keratitis,

the long backs of dachshunds lead to herniated discs, the extremely deep chest of the borzoi predisposes them to gastric torsion, and the excess skin and abnormal skin folds on shar-peis often lead to painful skin infections (Stafford 2007, 64). A 2009 peer-reviewed study conducted by the Royal Veterinary College (RVC) identified over 322 inherited diseases in the fifty most popular breeds in the UK resulting from selection for extreme morphological traits:

Every one of the 50 most popular pedigree breeds of dog in the UK were found to have at least one aspect of their physical conformation which predisposes them to an inheritable defect. Conformation characteristics such as short heads, short legs, excessive facial skin folds, pendulous ears, long backs and curly tails are likely to predispose or are genetically linked in presenting breeds, to a range of physical problems such as occipital dysplasia, malocclusion of the jaws, hip dysplasia, eye ulceration, chronic otitis, intervertebral disc disease, and spina bifida, respectively (APGAW 2009, 16).

Humans fashion items of *personal property* to suit their fancies. The tailoring, fabrics, and colors of clothes are designed to appeal to the personal preferences of buyers. Household furnishings, sports equipment, appliances, and automobiles are created to satisfy the needs and desires of consumers. Companion canines, however, have interests of their own. When their needs for adequate breathing passages, protective coats, functional spines, and healthy joints are trumped by the desires of humans for “cute” flat faces, exotic hairlessness, elongated backs, and stubby legs, sentient, vulnerable, dependent beings suffer.

The artificial selection for morphological characteristics that cause companion canines to suffer is unacceptable within the CPF. As *custodial property*, companion canines are entitled to have their welfare needs considered, including their interest in a sound genetic heritage; breeders must consider the needs of companion canines when making breeding decisions. The UK Associate Parliamentary Group for Animal Welfare (APGAW) came to a

similar conclusion. The APGAW conducted a formal inquiry into the welfare status of pedigree dogs in 2008. A panel of nine MPs and three peers considered written and oral testimony from “organizations and individuals including pet owners, hobby dog breeders, representatives of dog breeding societies, veterinarians, dog trainers and behaviorists, academics of various disciplines, and the major animal welfare organizations” (APGAW 2009, 6). They determined that there are “significant health and welfare problems caused by some of the current breeding practices for pedigree dogs” and recommended that “breed standards should seek conformation of dogs so that they are ‘fit for purpose’ rather than based on visual aesthetics” (APGAW 2009, 6-7).

“Fit for purpose.” Just what would that mean for the breeders of companion canines? As documented in chapter two, most dogs today serve as friends and companions, members of mixed-species families and communities. To succeed in the “new work of dogs,” and to enjoy the flourishing canine life to which they are entitled, our canine companions need healthy bodies and sound temperaments, not “massive, flat-faced heads,” “tiny nostrils,” and “undershot jaws.” The CPF would facilitate the evolution of breeding practices from those favoring extreme morphological characteristics to those supporting physical and mental well-being by supporting the adoption of regulations similar to Article 5 of the European Convention: “No-one shall breed companion animals without careful regard to characteristics (anatomical, physiological and behavioral) that may put at risk the health and welfare of the offspring or female parent” (Council of Europe 1987).

In a society committed to the CPF, breed clubs would be pressured to eliminate or modify standards that lead to canine suffering. Many of the AKC breed standards used to judge dogs in AKC sanctioned shows specify extreme morphological characteristics that

have negative health consequences. These standards are unacceptable within the CPF. American animal welfare organizations should follow the lead of the British RSPCA and strongly condemn any “canine beauty contest that celebrates deformity or allows or encourages the breeding of dogs that are at risk of known inherited disease or disability or deformity” (APGAW 2009, 35). As a result of public pressure in the UK, the Kennel Club (KC) modified the most problematic bulldog standards. Unfortunately, the AKC has yet to follow suit. Stronger measures may be necessary.

The CPF recognizes the need to protect the wellbeing entitlements of companion canines and, therefore, would support the formation of a regulatory agency—a Companion Canine Welfare Commission (CCWC)—made up of veterinary clinicians, behaviorists, geneticists, breeders, and animal welfare scientists to advise breed clubs on the health and welfare implications of breed standards. The charge of the commission should go beyond advisory duties, however. The commission should work with state and federal legislatures to write laws prohibiting breeding practices that threaten the health and welfare of companion canines. Just as the ASPCA was authorized to file criminal charges against those who allegedly violated the Animal Act of 1867, so the CCWC should be authorized to file charges against those who violate new laws regulating breed standards and show criteria.

The AKC was founded in 1884 during a time when there was great interest in animal breeding, eugenics, and the “purity” of bloodlines. The organization has remained true to its founding principles to this day, strictly supporting the interest of its member breed clubs in developing distinctive varieties of dogs, and in guarding the purity of each variety. Given the influence the AKC has over the “dog world,” every effort should be made to encourage the organization to adapt to and ideally contribute to the CPF. It might be helpful, however, to

create a competing organization explicitly dedicated to furthering the goals of the CPF. An American Companion Canine Club (ACCC) could focus on the breeding of a number of *types* of dogs rather than on maintaining the 189 pure AKC bloodlines. Dogs could be grouped according to function—small companions for the elderly, medium-sized jogging partners, and sturdy playmates for children—rather than by breed. The goal of breeders should be to arrange pairings likely to produce healthy puppies “fit for purpose.” Rather than searching for champion dogs and bitches with illustrious pedigrees, breeders should seek healthy parents with documented success at functioning according to their type. Health, temperament, and suitability for life in various kinds of households should replace conformation to extreme morphological standards as the criteria for selecting breeding pairs.

Such measures are sure to encounter resistance from the dog-breeding community. When bulldog breeders and owners are questioned about the morality of breeding dogs destined to suffer numerous health problems, many defend their actions sincerely and vigorously. Their responses invariably emphasize two points: (1) if we selected for different traits, then we would not produce dogs with the characteristics we desire, and (2) the dogs we do produce enjoy good lives. They conclude, of course, that they are “good” to their dogs.

In 2009, the University of Georgia’s bulldog mascot, Uga VII, was owned by Sonny Seiler. After reminding Seiler of the health problems and short lives of previous Ugas, *New York Times* reporter Benoit Denizet-Lewis questioned him about the morality of breeding bulldogs. Denizet-Lewis suggested that bulldogs should be selected for longer muzzles and legs, smaller heads, and wider hips. Seiler shot back, “Change this dog too much, and it won’t look like a bulldog anymore,” and quickly followed up with, “Besides, Uga gets the best veterinary care, and we do everything to keep him safe. These dogs have a good life”

(Denizet-Lewis 2009, 3). Bulldog breeders, owners, and handlers at the Westminster Dog Show echoed Seiler's views: "If you elongate the face, it becomes a different dog" (Denizet-Lewis 2009, 8), and all agreed that their dogs got the best of care and led "happy" lives.

Such views are inconsistent with the CPF, which recognizes that relationships generate responsibilities along four distinct vectors, including responsibilities of collectives for collectives and responsibilities of individuals for collectives (section 3.2.5). The morality of human/canine relationships does not just involve the interactions of individual humans and individual dogs. Just as a health department can have responsibility for the herd immunity of a community, and an athlete can have a responsibility to his team, so can a breed club have responsibility for the health implications of the extreme anatomical characteristics of the breed whose conformation standards it sets, and an individual breeder can have responsibility for the health of the breed whose perpetuation she facilitates. Those who claim that one must be able to identify the individual harmed by an action in order for it to be morally reprehensible largely exempt identity-affecting actions such as the establishment of breed standards and breeding decisions from moral consideration; any breeding practice that brings into existence individuals who wouldn't have existed otherwise and whose lives are worth living cannot be judged to be immoral. By recognizing responsibilities of collectives to collectives and responsibilities of individuals to collectives, the CPF is able to hold human beings, both as individuals and as collectives, responsible for the suffering of English bulldogs struggling to breathe through their absurdly labyrinthine respiratory passages and censor harmful breeding practices that result in the suffering of millions of canine companions, including Uga VII. Some problems, including some moral problems, are most effectively addressed at the collective level.

INBREEDING AND CONGENITAL PATHOLOGIES: The Dalmatian is a strong, athletic, and versatile breed; Dalmatians excel in performance sports such as agility and flyball, and successfully serve as therapy dogs and as playmates for children. They are best known, however, for their distinctive spotted coat and, within the veterinary community, for congenital health problems including deafness and bladder “stones” (Straus 2011).

The Dalmatian’s beautiful coat and compromised bladder may have a common origin. The bladder problems, veterinary geneticist Danika Bannasch speculates, were “probably unintentionally introduced as breeders worked to select for more distinctive spotting patterns” (University of California-Davis 2008). Dalmatians suffer from bladder uroliths (“stones”) because of the breed’s unique urate metabolism, which leads to elevated levels of uric acid in their urine. While urolith formation can be reduced in some dogs with a special diet low in purines, surgical removal is sometimes required. Bannasch led a research team at the University of California-Davis School of Veterinary Medicine that showed that mutations in the SLC2A9 gene are responsible for the elevated uric acid levels found in Dalmatians.

Genetic issues similar to the Dalmatian’s uric acid problem can sometimes be successfully addressed by selectively breeding only healthy animals. Unfortunately, until recently, all Dalmatians were homozygous for the mutant SLC2A9 gene. The only way to produce Dalmatians with healthy urinary systems was to outcross Dalmatians with dogs from other breeds, a practice generally deemed unacceptable by the AKC. Remember, according to the AKC, in order for a dog to be a “purebred” both her parents must be listed in the studbook for the breed; no outcrossing is allowed. Beginning in 1973 the Dalmatian Outcross Project arranged a single outcross to an English pointer and backcrossed the offspring.

Fifteen generations of careful breeding produced dogs that are genetically 99.8% Dalmatian yet do not carry the mutant SLC2A9 gene. In 2011, the British Kennel Club (KC) registered these “Low Uric Acid” (LUA) Dalmatians and the AKC followed suit, making an exception to their usual policy (Maldarelli 2014).

Sadly, the Dalmatian urate metabolism problem is but one of many genetic problems endemic in the closed breeding populations of AKC registered dogs. Dozens of genetic problems affecting pedigree dogs could be ameliorated if the AKC abandoned its devotion to “pure” lines and encouraged outcrossing. “Breeds are by [AKC] definition genetically restricted breeding populations” (Rooney 2009, 182). They are created by inbreeding a relatively small number of founding individuals to “fix” desirable traits and to create a population of animals that breeds “true.” The goal is to have the characteristics of all individuals within the breed conform as closely as possible to a published standard. This is achieved by inbreeding—the mating of closely related individuals, and the repeated use of champion sires—dogs who have been judged to closely conform to the breed standard. In many breeds a large percentage of individuals can trace their lineage back to a handful of sires, a condition referred to as the “popular sire syndrome” (Maldarelli 2014).

Pedigree dog breeding practices have created populations (breeds) with extremely low levels of genetic diversity and, as a result, an alarmingly high prevalence of genetic disorders. Federico Calboli and colleagues studied the pedigrees of 2.1 million dogs in ten breeds and found “extremely inbred dogs” in all but one of the ten breeds (Calboli et al. 2008, 593). Bannasch and colleagues studied DNA samples from 824 unrelated dogs from 50 breeds and found surprisingly low y-chromosome haplotype diversity within breeds. A y-chromosome haplotype is a group of linked genes contributed by the male parent. The low

diversity reflects “the extreme to which males were overused in the creation of most modern breeds” (Bannasch 2005, 278). Sadly, the inbreeding of pedigree dogs has not only fixed desirable traits but undesirable ones as well; genetically influenced pathologies are found in most breeds including high levels of deafness in Dalmatians, progressive retinal atrophy in Irish setters, copper toxicosis in Bedlington terriers, cardiomyopathy in Doberman pinschers, osteosarcoma in rottweilers, and hip dysplasia in many popular breeds (Stafford 2007, 66-73).

The AKC contends that the solution to the problem of genetically influenced disease is the careful screening of breeding stock (AKC 2016b). They support research to identify offending genes and to develop tests to identify carriers. For complex polygenic conditions, the suitability of dogs for breeding purposes must rely on phenotypic examinations. Hip dysplasia, the most common inherited orthopedic problem, for example, can be assessed radiographically, and breeding stock can be chosen from dogs with healthy hips. There is some evidence to support this approach. Hip dysplasia was reduced in Sweden by the adoption of a policy restricting the registration of pedigree puppies to those born of parents with certified healthy hips (Stafford 2007, 68-69). The long-term effects of genetic screening, however, are not clear.

Many evolutionary biologists argue that the problem of low genetic diversity can only be worsened by aggressive selective breeding within closed populations. “Nonrandom breeding the best with the best results in further loss of variation. Eventually every ‘breed’ treated in this way will get into what is commonly called inbreeding depression” (Coppinger and Coppinger 2016, 185). The Royal Veterinary College (RVC) agrees.

The RVC has stated that “as mandatory screening and subsequent removal of

dogs from the breeding population reduces the number of dogs allowed to be bred, the population goes through a bottleneck. This could lead to the increased expression of other, currently very rare diseases. Hence one heritable disease could be exchanged for another. Geneticists have made it clear that simplistic avoidance of breeding from animals scoring positive for particular disorders at test is not the stand alone solution. This would be likely to make already small gene pools even smaller, and result in worsening the problem or causing new ones” (APGAW 2009, 23).

Dog breeding within the Custodial Property Framework (CPF) is a fundamentally different enterprise than what is currently practiced within the personal property framework. A CPF breeder is not in the business of producing a product to be judged against a published standard of physical criteria like the machine parts produced in a factory. A CPF breeder facilitates the reproduction of dependent canine community members with the goal of welcoming new members into the community who are healthy and fit for purpose. The CPF rejects the AKC’s insistence on closed stud books and its promotion of conformation standards. To achieve the goal of adequately addressing all of the Wellbeing-Promoting Interests of Companion Canines (WPICCs), efforts must be taken both at the individual and collective levels. Individual dogs suffer from congenital diseases, but their maladies are a result of the lack of genetic diversity in the breed. Measures need to be taken to eliminate harmful mutations and to increase the genetic diversity of the population, including: the testing of breeding stock for common genetic disorders, the pairing of individuals with different national or continental origins, limiting the repeated use of sires, and avoiding the pairing of closely related individuals. Most importantly, the practice of controlled outbreeding to introduce more diversity into breed (or type) genomes must be promoted. Dog breeders should strive to increase the health and genetic diversity of a variety of “types” of dogs, and to produce puppies who are “fit for purpose.”

New programs, policies, and laws are needed to promote wellbeing-promoting breeding practices, including: (1) an accredited breeder scheme such as the one in the United Kingdom, (2) a competitor to the AKC specifically formed to advance CPF principles, (3) the inclusion of genetic information by an examining veterinarian at the time of sale, (4) health and genetic diversity requirements for dogs shown at sanctioned events, (5) legislation regulating the use of closely related individuals as breeding pairs, and (6) oversight by an independent advisory board, the CCWC, as described above.

The AKC recognizes breeders who have a history of producing champions as “Breeders of Merit” (AKC 2016d). This program, which emphasizes conformation standards and participation in AKC events should be replaced with something similar to the Accredited Breeder Scheme (ABS) established by the Kennel Club (KC) in the UK in 2004. Accreditation under this scheme requires “a proven track record for producing healthy dogs of good temperament” and a testing program that includes “all health tests relevant to the breed of choice” (APGAW 2009, 28).

The AKC continues to support harmful breeding practices. Its insistence on closed breeding populations and focus on physical conformation standards contributes to the health problems of pedigree dogs. While the AKC could become a major force for reform by supporting the CPF, such a shift in direction seems unlikely. A new dog club, such as the ACCC suggested above, could prove to be invaluable for promoting CPF principles. It is plausible to assume that given the changing social status of dogs and the associated changes in the attitudes of dog owners and veterinarians, interest and support for such a club may be high and, over time, the club could become quite influential.

Veterinarians are currently required to examine dogs at the time of purchase or

adoption and issue a vaccination certificate (AVMA 2017). The medical examination and accompanying paperwork should be expanded to include genetic information. Particular tests should be required for different breeds depending on the genetic problems they commonly exhibit, such as deafness for Dalmatians and hip dysplasia for German shepherds. A Coefficient of Inbreeding (COI)—the probability that the two copies of the same gene have been inherited from an ancestor common to both the sire and the dam—should be calculated for every pedigree puppy changing hands and included in the veterinarian’s report. This practice would raise awareness of the genetic problems newly acquired dogs may have and of genetic issues in general. Veterinarians play an important role in educating owners about the care of their canine companions.

In 2003, the Pekingese who won best in show at Crufts—a prestigious conformation show in Britain—required surgery shortly before the event to help it breathe through its deformed respiratory passages (Brandow 2015, 145). (The brachycephalic Pekingese rivals the English bulldog in respiratory problems.) The fact that an animal who can barely breathe can be judged as the “best” illustrates the perversity of the standards by which pedigree dogs are judged. Show criteria consistent with CPF principles, including health and genetic diversity standards, should be developed and put into practice. If the AKC refuses to modify its conformation standards to include health and genetic diversity criteria, a new organization such as the proposed ACCC should offer an alternative for those interested in the health and welfare of companion canines.

The threat of inbreeding to human health is well recognized; the genetic troubles of isolated human populations such as the Amish have been thoroughly studied (McKusick 1978). As a result, all fifty states have marriage and incest laws that restrict sex between

closely related individuals (National District Attorneys Association 2010). Similar laws are needed for companion canines. The KC will not register the offspring of brother/sister, mother/son, and father/daughter pairings; the AKC demands only that both parents are registered. The AKC needs to adopt more stringent registration requirements, preferably more stringent than the KC's. Only offspring with COI's at or below the breed average should be eligible for registration, and criminal penalties should be imposed on breeders who knowingly breed animals with prohibitively close genetic ties.

The formation of a Custodial Property Welfare Council (CPWC) with regulatory powers as described earlier in this section could hold breeders responsible for the consequences of their choices. The CPWC should be charged with enforcing laws limiting the use of closely related individuals as breeding pairs and the repeated use of sires.

6.3 Conclusion

In this chapter I argued that the Custodial Property Framework (CPF) creates an environment more conducive to the welfare of companion canines, their owners, and veterinary clinicians than the reigning personal property framework. Moral issues involving both veterinary practices and the care of companion canines by breeders and owners were analyzed within each framework. It was demonstrated that client requests for medical procedures not in the interests of their dogs are less likely to occur in a CPF environment, and when they do occur, widely recognized moral principles, professional ethical standards, clinic policies, and legal protections ensure that the interests of companion canines receive the consideration they deserve. It was also shown that the adoption of the CPF would encourage changes in the practices of owners and breeders that would improve the wellbeing of companion canines.

Until recently, the laws of many states prohibited homosexual activity. As late as 1986 the Supreme Court upheld a Georgia sodomy law criminalizing homosexual acts between consenting adults (*Bowers v. Hardwick*). These laws, however, were inconsistent with our growing understanding of homosexuality; the contributions of homosexuals to our society; and widely supported, fundamental principles of tolerance and inclusion. In 2003, the court recognized this inconsistency and struck down a similar law in Texas (*Lawrence v. Texas*) and, by extension, invalidated sodomy laws in thirteen states (Richards 2009). This change in the law was a step toward establishing a new equilibrium among the principles, practices, and protections through which our society relates with its LGBTQ members.

I have presented evidence throughout this work that a similar inconsistency currently exists among the laws and policies that regulate the care and medical treatment of companion canines and our growing understanding of the nature of companion canines, our relationship with them, and the responsibilities this relationship entails. Without a coherent moral framework to guide our care and treatment of canine companions, many canine needs will go unmet, veterinary clinicians will continue to suffer from moral stress, and too many dog owners will find themselves involved with frustrated clinicians and unhappy dogs. The CPF establishes a new equilibrium among the considered moral judgments of most small-animal veterinarians and most companion canine owners, the moral principles we use to make decisions concerning the care and treatment of canine companions, the professional ethical guidelines for the practice of veterinary medicine, veterinary clinic policies and practices, and the legal protections needed to ensure that our responsibilities to our canine companions are met.

The CPF is grounded on empirical findings from many disciplines and the

philosophical insights of thinkers from several traditions. It builds bridges connecting scientific findings, moral arguments, professional ethics standards, veterinary practices, and legal protections. It is offered in the spirit of the work of the Human Development and Capability Association (HDCA) founded by Nussbaum and Sen to promote the capabilities approach to human welfare. The HDCA aspires to “transcend some significant separations that exist in the academic world as it is currently configured,” in particular, “the separation between academic disciplines” and “the separation between theory and practice.” I hope that this project contributes to that aim. As Nussbaum insists, “theoretical work should respond to the real world” (2011, 188-189).

I began this work with a quote from the veterinarian and historian Susan Jones: “Animals are perpetual ‘others,’ doomed to have their interests represented to humans by other humans” (2003, 4). I end by wondering how well my words have represented the interests of companion canines. I like to think that if they could speak, they would attempt to help their human partners understand the responsibility-generating power of the human/canine relationship, as did the fox in Antoine de Saint-Exupéry’s *The Little Prince*:

For me you’re only a little boy just like a hundred thousand other little boys. And I have no need of you. And you have no need of me. For you, I’m only a fox like a hundred thousand other foxes. But if you tame me, we’ll need each other. You’ll be the only boy in the world for me. I’ll be the only fox in the world for you (Saint-Exupéry 1971, as quoted by Leslie Irvine 2004, 2).

Many thousands of years ago *Homo sapiens* tamed *Canis lupus*, beginning a long, fruitful, *responsibility-laden* relationship. It is time to fully recognize our responsibilities.

WORKS CITED

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