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No pets allowed? Companion animals, older people and residential care

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ABSTRACT

This article is concerned with a particular site of interspecies relationships. Using the lens of liminality, it examines forced separation of older people from their companion animals when they move to a residential or nursing home in the UK. Such residential spaces frequently either exclude companion animals or fail to make adequate provision for them to accompany their human caretakers. We see such separation as a major bereavement for an older person at a stage of life when they experience significant other losses, and suggest it is often experienced as akin to the loss of a family member. We deploy vulnerability theory to argue that exclusion of companion animals from care spaces exemplifies a failure to understand the relational vulnerabilities of older age and the significance of animal companionship in mitigating those vulnerabilities. Equally, such separation fails to recognise the implications for excluded animals who can end up in unsuitable homes, being signed over to already over-stretched animal rescues or euthanised. Vulnerability theory highlights how companion species are always already vulnerable, given their liminal position between person and property, while older people are rendered particularly vulnerable in the 'liminal zone' of the care home, denied the ability to shape their environment, control their private space or form/sustain relationships of their own choosing. This article explores the potential of law to respond to and mitigate these shared vulnerabilities, suggesting that human rights arguments grounded in shared vulnerability may be invoked to argue for a re-definition of the family to recognise the significance of the human-animal relationship. We draw on the reasoning in a recent Court of Protection case which hints at law's ability to recognise the value of interspecies relations and their role in sustaining health and well-being, and the ability to live well in old age.

INTRODUCTION

This article focuses on a particular site of interspecies relationality, examining attachments between companion animals and older people. Specifically, we are concerned with the shared vulnerability of older people and their animal companions, and the often tenuous nature of the concepts of 'family' and 'home' in their lives. We apply the lens of liminality to a particular juncture—the transition of an older person from their own home to a residential/nursing home or extra care housing—with the accompanying disruption of the animal's home and familial life. The article forms part of a funded project which aims to empirically investigate the lived experience of

this transition across two sites in England. Here, we argue for recognition of the contribution that interspecies relationships between animals and older people¹ can make to the shared well-being of humans and animals,² suggesting that law needs to be more responsive to their common interests within care settings. We highlight the vulnerability of older people and their animal companions at this transitional moment, particularly their shared vulnerability to forced separation and the precarity of home in their lives. Underlining the implications of this transition, Helen Carr and Caroline Hunter suggest that "law constructs your identity primarily as a passive recipient of services if you are the resident of a care home, whereas if you live in your own home, you are an autonomous decision maker".³ As we show, this loss of autonomy in the transition to a care space often entails loss of choice about who to live with, including the choice to reside with animal companions. We argue that denying this choice discounts the deep emotional investment humans have in attachments to animals,⁴ and the role of such relationships in fostering resilience and agency. For many of us, as outlined below, they are considered kin⁵ or family members. For older people the value of this relationship may be heightened⁶ by age-related loneliness and loss.⁷ Animals play an important role in their physical, emotional and psychological wellbeing,⁸ acting as a buffer to the risks and vulnerabilities associated with older age, and underlining how vulnerability can be productive in forging relationships.⁹ A companion animal may also be a final link with a deceased spouse/partner.¹⁰ Changing health, coupled with disruptions to usual roles, can entail that caring for a companion animal becomes a vital source of reciprocity, with these 'intimate entanglements' helping to maintain the activities of daily life.¹¹

Since older people typically have more time to care for animals, they often conform to ideals of responsible animal ownership.¹² Within care/nursing homes it has been shown that the presence of animals can combat loneliness, and encourage conversation and communication.¹³ In consequence, we argue that these cross-species relationships exemplify the lived experience of 'being well together'. Yet, with growing numbers of people living into advanced old age and developing complex care needs, moving to a care home becomes increasingly common and is often accompanied by separation from animal companions.¹⁴ This can be especially true for older people with dogs and larger companion species, since many care home policies place restrictions or prohibitions on animals they will accept. Even those that purport to be 'animal



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friendly' often have variable and unclear policies.¹⁵ The consequences for excluded animals can be devastating, particularly if they end up in unsuitable homes, signed-over to animal rescues, or are euthanised.¹⁶ For the older person this constitutes a major bereavement at a time of significant other losses and likely makes adjusting to new surroundings more difficult, with a detrimental impact upon health and well-being. In this article we attempt to 'unconceal the ethics and politics' of this particular form of intimate entanglement in order to explore legal strategies that might permit a remedy in such circumstances, and the potential for law to intervene to sustain the inter-species relationship in this transitional moment.¹⁷ Our analysis raises thorny definitional questions, which we argue point ultimately to the need to re-think the status of companion animals as property and to recognise both the value and precarity of 'the home' in law. However, while flagging these issues, in this article we focus on the implications of conceptually reframing the definition of family to encompass non-human animals.

METHODS

As noted above, this article forms part of a funded project entitled *'He means the world to me': Human rights implications of separating older people from their pets in residential care/nursing homes* (Dunhill Medical Trust RPGF1711\7). In the empirical stages of the project we will recruit care home residents, carers and families to inform the research. These participants will not be patients. They will be involved in the shaping of the research and the questions we take up, and our recommendations will be rooted in their lived experience. In this article, however, our focus is on the potential contribution of legal analysis to our project.

'He means the world to me': the significance of animal companionship

A prominent example of the inter-dependency of older people and companion animals is afforded by the highly publicised case of Bob and Darcie. Eighty-seven-year-old Bob Harvey had lived in a Scottish care home for almost 4 years. He originally moved to this facility with his wife (who had Alzheimer's) and their miniature Schnauzer, Darcie, in 2013. Following his wife's death, in 2016 Mr Harvey was informed by Mead Medical Services Limited (MMS), which had taken over management of the home, that notwithstanding his lengthy residence and poor health (he was undergoing kidney dialysis) if he chose to continue living with Darcie he would be required to leave. The managing director of MMS claimed that Darcie had become a nuisance in a setting "housing mostly vulnerable residents, people that need care. These people have limited mobility and sensory abilities, it is not safe".¹⁸ Disputing the claim that Darcie had free rein of the home, Mr Harvey recounted the significance of their relationship, particularly since his wife's death:

"If he could stay it would mean the world to me. He's keeping me going. He's my life and we're the best of friends. If he had to go it would finish me off... He's my boy. He's family. It would be very difficult. He was a big help when I lost my wife. I just love him and everybody else loves him. He lives in my room and he's a perfect pet and is my companion. It is breaking my heart".¹⁹

In April 2017 Bob left the care home, which by that stage he had come to regard as home, to move to private rented accommodation with Darcie.²⁰

Bob and Darcie's story typifies the multiple ways in which older people in care homes are rendered vulnerable due to

their location in, and dependency on, those care spaces. This precarity is heightened if either their individual circumstances or management policies change. Bob's account underlines both the importance of animal companionship to older people and the deleterious effects of care home policies, which may well have prevented Darcie accompanying the Harveys in the first instance. The response of MMS to Darcie's presence typifies objections raised to companion species. They are perceived (often without evidence) to be troublesome and to pose a safety risk to other residents. Such rhetoric demonstrates how dogs are seen as 'out of place' in care homes, depicted as disruptive, unruly, ungovernable. They exemplify Mary Douglas's influential association between dirt and "matter out of place",²¹ with the dog's anomalous position in the care home "causing anxiety through disrupting classification systems and the 'normal' ordered relations that one understands the world through".²² The anxiety generated by the presence of the dog in this setting²³ taps into broader cultural understandings of dogs as contaminating, polluting, unhygienic, etc.²⁴ Meanwhile, subject to a biomedically-calculated approach to ageing, care home residents are depicted as a homogenous vulnerable group requiring protection from harm. This in turn allows the vulnerabilities of residents separated from their animals, and of the animals themselves, to be discounted. More generally, Bob and Darcie's story exemplifies the power exercised over the lives of older people in care contexts,²⁵ and testifies to what Martha Fineman calls "[t]he vulnerability of our embodied beings".²⁶

Importantly, the care home is just one of many sites in which individuals risk separation from companion animals.²⁷ We argue that these common-place separations should prompt reflection on how 'the family' and 'the home' are constructed in law, and the implications of excluding non-humans from legal definitions of family, with detrimental consequences for the care and well-being of both animals and humans. Significantly, although Bob and Darcie's case sparked a change.org petition to allow them to remain in the home, this challenge to care home policy was not couched in legal terms and it is unclear that any legal remedy would have been available to Bob Harvey.

Liminal spaces/liminal creatures

The lack of an obvious legal remedy in this situation highlights the precarity of 'home' for many older people. Highlighting the centrality and everyday importance of the home in law, Lorna Fox-O'Mahoney contends that law struggles to recognise that "home can encapsulate meanings beyond the physical structure of the house, or the capital value it represents".²⁸ Writing with James Sweeney, she underlines the "importance of 'being at home in the world' for human flourishing, and the alienating consequences when the connection with one's home is lost, "particularly given our contemporary vulnerability to displacement and dispossession".²⁹ There is much more to be said about the affective importance of home, which we aim to take up in a forthcoming article. For now, it is sufficient to note that, in this context, 'the home' is a particularly contested and precarious space for animals as well as older people. Although this holds for all companion species, Philip Howell demonstrates that it is especially true of dogs. In his study of domestication, he traces "the dog's *inclusion* in the home and the household" (coupled with "its putative *exclusion* from public space") and what he refers to as "the dog's all-too-conditional citizenship in the homeland of Britain and 'Britishness'".³⁰ As stories like Bob and Darcie's demonstrate, the dog's status in the actual home is equally conditional, reflecting the ambiguous or liminal

position of companion animals. Legally, as with the home, the dog is categorised as property, reduced to ‘legal thinghood’.³¹ Again, this contrasts with how many of us regard dogs and other companion species as intimate family members, with whom we even share our bedrooms. Thus, as Adrian Franklin notes in a seminal Australian study:

“The symbolism of household space needs to be emphasised here... when people... stated that an animal was both a member of the family and allowed into their bedroom, it was a refined answer indicating that they were not just a member of the family but a very close intimate member... in the past when dogs were kept outside, or when they were allowed inside but not on furniture, their separate, inferior status was being marked. To discover that half of those interviewed allowed their animals on furniture is to uncover a major shift in their status and position relative to humans and human society”.³²

Indeed, in later UK-based work, Nickie Charles has observed that companion animals may be privileged over human family members:

“Surveys consistently show that pet keepers see their pets as family members... Women are more likely than men to ascribe family membership to a dog or a cat and many people report feeling closer to their dogs than other family members... Research shows that, as with human family members, pets are defined as kin due to the quality of the relationship... Families may be ‘changing in structure’ but they still provide love and support for family members and kin. Moreover, there is growing evidence that the social relations constituting domestic groups incorporate animals as social actors... As well as being seen as family members animals are also included in friendship networks”.³³

Significantly, evidence suggests that age and household structure, as well as the gender and species dimensions that Charles highlights, can affect attachment to companion animals. Thus, Alexa Albert and Kris Bulcroft note that:

“[T]he importance of the pet as a source of affection and attachment is related to household structure and changes over the life cycle... attachment to pets is greatest in families where there is a limited number of significant others to function as sources of support and affection”.³⁴

Below we take up the changing structure of the family that Charles identifies, but here the key point is the rupture between social and legal understandings of companion animals. Animal caregivers do not conceive of animals as property—a status which, as Gary Francione contends, underpins their oppression by humans.³⁵ This disjuncture between social and legal attitudes entails that companion animals occupy a particularly contested zone between object and living being.³⁶ In line with the surveys detailed above, Jessica Pierce suggests that those who live closely with animals come to know them as ‘persons’ rather than objects. Yet, she demonstrates that the concept of ‘pet’ is “quite jumpy and slippery... ‘pet’ is an arbitrary assignation, a social construct”.³⁷ Consequent upon this slipperiness, we understand companion species as liminal beings, in the sense that they occupy a threshold or interzone between personhood and objecthood, serving to blur the legal categories of person/property, subject/object etc, while calling into question associated concepts, including ‘the human’ and ‘the family’.³⁸ As Victor Turner observes of liminal beings:

“The attributes of liminality or liminal personae (threshold people) are necessarily ambiguous, since this condition and these people elude or slip through the network of classifications that normally lo-

cate states and positions in cultural space. Liminal entities are neither here nor there, they are betwixt and between the positions assigned and arrayed by law, custom, convention and ceremonial”.³⁹

Thus, for instance, adolescents may occupy such a state of ‘in betweenness’, simultaneously inhabiting the different liminal spaces of childhood and adulthood, thereby posing challenges for legal regulation.⁴⁰ Given their tenuous claims to subjecthood and their existence on the borders of the human, it is arguable that companion animals are especially liminal beings. Simultaneously they live lives intimately entangled with humans, in which attachment and detachment is constantly negotiated, yet they are defined in opposition to the human.⁴¹ Scholars have responded to this ‘in between’ status by proposing special categories of property, such as ‘living’ or ‘constitutive’ property,⁴² which might more accurately reflect the liminal status of companion animals. Others have sought to cast animals as rights holders,⁴³ political subjects⁴⁴ or citizens.⁴⁵ In this article we eschew such debates, recognising the force of Ani Satz’s contention that wrangles over animal status have enmeshed legal scholarship “in a paralysing debate about whether categorising animals as ‘persons’ instead of ‘property’ will improve their legal protections”.⁴⁶ Thus, we merely note the ontological struggle that law faces when intervening in or governing situations where the status of the object to be regulated is hazy. Below, we propose a different legal strategy to negotiate this challenge, when we turn to human rights arguments which afford protection to family members. We argue that this can be a productive alternative to conventional legal regulatory approaches, which, rather than accommodating ambiguity and liminality—whether pertaining to animals, embryos or other research objects⁴⁷—typically take what Graeme Laurie calls a ‘bounded object’ approach. This involves the creation of “artificial constructs that become the object of regulatory attention of dedicated regulators who operate within legally defined spheres of influence or ‘silos’”.⁴⁸ The problematic consequences of such approaches are evident in law’s attempts to artificially group all non-human animals as property, and then to subject humans and animals to distinct governance regimens, even though many forms of research and technology can be better categorised as hybrid.⁴⁹ In any event, companion species continue to elude neat regulatory categorisation in practice. As Howell notes, over time:

“there was no settled conviction that the dog was fully accepted... [t]he dog was a companion, but neither a comrade nor a citizen, nor even (yet) a respectable member of society... the struggle over the dog’s place was never decisively settled”.⁵⁰

We argue that the animal’s place, literally, is also apposite in this struggle. The quality of legal protections accorded to animals differs crucially dependent on location, as the variable protection of rabbits—as laboratory artefacts, pets, food, pests, etc—testifies.⁵¹ In the case of dogs, Howell traces how, historically, the domesticated or owned animal was distinguished from the unowned or stray⁵²—a dichotomy which still structures contemporary human/canine relations. Thus, when an animal caregiver moves to a care/nursing home, their animal may transition from the relatively protected status of companion or ‘pet’ to the precarious status of stray. Moreover, the liminality of this transition is amplified in the particular space of the care home, which itself has been cast as a liminal institution. As, Katy McMillan and Nayha Sethi note, care homes are:

“sites of liminality and flux, both as institutions, and for those who spend time there in their respective roles. Liminality is central to the

lives of residents, care workers and families involved, although in different ways”.⁵³

Thus, understood as liminal zones, care homes encompass liminal activities—caring—and liminal beings—the residents/carers etc who inhabit them. Such spaces are simultaneously domestic and institutional, public and private, ‘home’ but ‘not home’, frequently an interzone between life and death. Indeed as Squier has argued, ageing itself is “the last liminal moment”.⁵⁴ Through the lens of liminality, then, care/nursing homes can be seen as contested regulatory spaces where relationships are governed, socio-spatial borderlines are drawn, and hierarchies (including species) are maintained and perpetuated.⁵⁵ They are spaces where vulnerabilities can be realised, but importantly for our argument where they can also be mitigated. Congruent with Laurie’s observation that liminality can provide negative and positive group-based experiences,⁵⁶ we suggest that a collective liminal state of shared vulnerability can serve as a vital resource for humans and animals negotiating these spaces. Clearly, our intimate entanglements with animals, and the interdependency and necessity for care this can entail in older age, render both parties vulnerable to dispossession and displacement.⁵⁷ Bob and Darcie’s case vividly highlights how those entering the ‘fourth age’⁵⁸ may, in the absence of other resources, become dependent on care home provision. Their living arrangements become susceptible to the vagaries of management policies and may be conditional on them (as well as their families/animals) conforming to norms of acceptable behaviour.⁵⁹ Older people whose condition deteriorates may be deemed to have needs too complex to be cared for in that site and may, like their animals, be designated ‘out of place’. Yet liminal states can simultaneously foster an openness to intimate relationships and generate a collective sense that Turner has termed ‘communitas’.⁶⁰ Susan Squier explains communitas as “a symbolically encoded set of behaviours and experiences that are *in between* in the sense both of being in transition and being held in common”.⁶¹ For Paul Stoller, this state may engender a form of camaraderie between liminal, and often submissive, beings:

“People in liminal states tend to be humble. They usually do what they are told—often without complaint. They accept regimes of pain. They are reduced to a common denominator so that they might be reconstituted. These processes create an intense camaraderie, which washes away differences in age, social status and ethnicity”.⁶²

We suggest that species differences too may be eliminated or rendered unimportant in liminal spaces such as care homes, where status distinctions are erased as social structures break down. In similar vein, Fineman argues persuasively that vulnerability can be experienced as productive:

“our vulnerability presents opportunities for innovation and growth, creativity, and fulfilment. It makes us reach out to others, form relationships, and build institutions”.⁶³

In our view, discounting the benefits of animal companionship in liminal care settings and failing to sustain these relationships is one instance of current policy failing to respond positively to vulnerability and relationality. To address this, and realise law’s potential to intervene productively in these settings, we would follow Taylor-Alexander *et al* in advocating new legal frameworks anchored in “temporal-spatial examination of regulatory spaces and practices as these are experienced by all actors, including the relationship of actors with the objects of regulation”.⁶⁴ For us, relevant actors would include older people and their animals,

who are too readily deemed incapable of such agency. We argue that taking account of their lived experiences of caring practices would help us shape better social and legal policies. Below, we address the implications of this analysis for legislating, but first we turn to one instance where law has attempted, although within limits, to recognise human–animal relationality.

Towards legal recognition of interspecies relationality

Mrs P v Rochdale Borough Council and NHS North, Central, and South Manchester Clinical Commissioning Groups was a 2016 English District Court ruling.⁶⁵ It considered whether care arrangements amounting to a deprivation of Mrs P’s liberty under the Mental Capacity Act 2005 (MCA) s. 21A were in her best interests.⁶⁶ The court’s assessment of best interests was inextricably linked to the appointment of a financial deputy to deal with her property and affairs. Mrs P had moved to a nursing home following two strokes and loss of capacity. Matharu J revoked the deputy’s appointment, which had been made in March 2015 by a different District Judge. The deputy was a solicitor with a firm which asserted a ‘long standing’ relationship with Mrs P. Following his appointment, various care plans and assessments took place regarding her welfare, “which repeatedly raised the need to reappraise her needs and to financially provide for her in relation to her diet [she was a coeliac sufferer], weight loss and new clothes” (at para. 13). In assessing best interests Matharu J’s attempts to understand what was and continued to be important to Mrs P are instructive. Acknowledging that she was a woman with specific health and dietary needs whose condition had caused bodily change, Matharu J noted the importance to Mrs P of an appropriate diet and dressing in the glamorous, well-fitting clothes she had always enjoyed. However, most strikingly, the judge recognised that her quality of life had been significantly impacted by the deputy’s failure to ensure contact with her dog, Bobby, who had not been allowed to accompany her. Matharu J expressed concern that the deputy had not responded to a written request by solicitors acting on behalf of the Official Solicitor that Bobby be brought to visit her, while a subsequent letter from his practice stated that it was “unrealistic to expect the lady to bring the dog to [the Nursing Home]”. In July 2016 the deputy’s secretary commented in an email that:

“[W]e would say that possession of Bobby has passed to his new owners... in the absence of any factual information about Bobby, his owner or the home’s policy on animals, it would seem *irresponsible in the extreme* to suggest that a dog visits a care home for elderly and frail people” (at para 24).

In addition to demonstrating a failure to make relevant enquiries, this claim echoes many of the myths about accommodating animals that were apparent in Bob and Darcie’s case. It exemplifies the same problematic assumptions about loss of agency, submissiveness and what ‘frail’ older people can/cannot manage, should/should not do/have/be, etc. Such rhetoric reinforces a culture of care grounded in binary perspectives on vulnerability/dependency which casts dependency as a ‘total’ state and fails to recognise the productive aspects of vulnerability. It also highlights a tendency on the part of professionals managing the care of older people to devalue animal-human attachments and their role in building resilience and fostering health and well-being. Acceding to the application to remove the deputy, Matharu J was satisfied that he had not been acting in Mrs P’s interests:

“The court is particularly troubled about how... the things that she needs are to be provided for. What is known is that her wishes and

feelings before her second stroke were very clear. She enjoyed a good quality of life, she loved her dog, likes to be made to feel glamorous” (para 27).⁶⁷

Such reasoning can be situated in broader jurisprudence under the MCA, where judges have endeavoured to place adults who lack capacity at the centre of medical treatment decisions.⁶⁸ For instance, in an influential Supreme Court decision, Baroness Hale ruled in *Aintree University NHS Hospitals Trust v James*, that:

“Insofar as it is possible to ascertain the patient’s wishes and feelings, his beliefs and values or the things which were important to him, it is those which should be taken into account because they are a component in making the choice which is right for him as an individual human being” ([2014] UKSC 67).

This centering of the person, and not the professional system engaging with her, is paramount. As Ruck Keene *et al* stress:

“It is critically important to understand that the purpose of the process is to arrive at the decision that health and social professionals reasonably believe is the right decision for the person themselves, as an individual human being—not the decision that best fits with the outcome that the professionals desire”.⁶⁹

The MCA’s codification of best interests, coupled with the checklist of factors contained in s.4, has certainly added content to the best interests test, which has been subject to trenchant critique (Donnelly 2016). Indeed, Jackson argues that judges hearing recent Court of Protection cases are according patients’ wishes a primacy that goes beyond the strict legislative requirements of the MCA, thereby promoting a patient-centred and participative approach:

“Post-*Aintree*... if the patient’s wishes can be ascertained, they should be central to the decision as to what is in her best interests. And in cases that have followed *Aintree*, judges... have been emboldened to take P’s wishes very seriously indeed, even when they are contrary to an ‘objective’ view of what is in P’s clinical best interests”.⁷⁰

In Mrs P’s case, the limited factual knowledge to be gleaned from the short transcript amply demonstrates her dependency on her carers and professionals appointed by the courts to deal with her affairs. Evidently, she is unable to conform to the mandates of autonomy, self-sufficiency and independence expected of decision-makers.⁷¹ Yet, while arguably displaying some of the submissive tendencies that Stoller argues are associated with liminal states,⁷² crucially, it does not follow that Mrs P is incapable of agency. Thus, having heard that “the only living being with whom she shares any love or devotion is her dog Bobby” (para 14), and that “her face lights up” when she sees dogs, Matharu J observed:

“It may seem [unclear] to those not well rehearsed in the needs of a person who owns a pet, in this case a person who no longer has capacity to make decisions about various matters, what the importance of a pet is in their life. The deputy only has to read any single reference in reports, assessments or statements of Mrs P of how important Bobby is to her” (para 14).

The judge’s attentiveness to Mrs P’s embodied gestures and expressions allowed her to recognise the pleasure Mrs P derived from being around dogs and persuaded her that simply being visited by Bobby would likely enhance her quality of life. The *Rochdale* case thus demonstrates the importance of decision-makers seeking signs of agency, rather than assuming that older

people lack agency. It also suggests that animal attachments may be still more integral in the lives of those lacking capacity, given the role of companion species in maintaining social connections and continuity.⁷³ In Mrs P’s case, her social worker indicated in court “that of single most importance in her life is her dog and having some form of contact with her dog in the future if possible” (at para 29).

Matharu J’s recognition that Bobby’s companionship could play a crucial role in promoting Mrs P’s well-being is significant, and extends well beyond a narrow medical conception of best interests. Similar questions about the role of companion animals in ensuring person-centred care are potentially raised by the Care Act 2014, which imposes obligations on local authorities to ensure that individual needs and well-being are at the heart of health and social care provision.⁷⁴ The legislative injunction to give people more control over their lives and family circumstances could further empower older people to identify inter-species companionship as central to their physical, mental and emotional well-being. This is why legal recognition of the relationship in *P v Rochdale* is so important. Of course, in other respects such a ruling is limited. Matharu J addressed only the implications of the deputy’s failure to bring Bobby to visit Mrs P, rather than the more fundamental question of her dog having been given away when she moved to the home. Furthermore, she was able to consider the dog’s position only in the context of the application to remove the deputy; absent the other factors which prompted concern about his behaviour it is unlikely that the case would ever have come to court and it was decided only by a District court. This suggests that a more radical legal strategy is needed than relying on empathetic judges to address the importance of animal companionship in sensitive, fact-specific judgments if and when such cases come before them.

However, promisingly, other areas of law also display tentative signs of changing judicial attitudes to inter-species relationality. For instance, analysing tort litigation in the USA, where judges have occasionally awarded damages for emotional distress and loss of companionship consequent on the death of a companion animal, Deckha has noted that:

“although these decisions are focused on the value of the animal to the owner or on the emotions of the owner, they also acknowledge the legitimacy of human bonds with companion animals and often theorise animals as family members, rather than as possessions”.⁷⁵

Similarly, in disputes over pet custody following family breakdown, Deckha demonstrates how US judges have on occasion been sympathetic to the claims of animal caregivers, applying the ‘best interests’ standard from child custody disputes to determine the disposition of a companion animal. Tom Bogdanoski has argued, in similar vein, that parallels exist between the position of children and animals in child custody disputes and has pointed to laws in certain Australian states which recognise ‘pets’ as victims of domestic violence.⁷⁶ In the UK, too animal custody disputes are growing in number, prompting Rook to suggest that:

“[W]e are currently on the verge of a shift in approach in resolving pet custody disputes—a move away from the application of pure property law towards an approach that recognises the interests of animals”.⁷⁷

While Deckha rightly cautions that such developments remain “minor, new and still precarious”, they seem to signal an understanding of companion animals as more akin to children or other human family members than objects.⁷⁸

Reconceptualising the legal family

In this section we advocate capitalising on these legal developments to theorise animals as vulnerable subjects and family members. In contrast to approaches that favour extending legal rights to animals, constituting them as vulnerable family members coheres with widely shared popular views of companion species outlined above. In our view this strategy also avoids the quagmire in which debates over animal status have become entrapped, and at least partially accommodates the inherent liminality of companion species. Of course, law remains steadfastly wedded to the idea of family as an exclusively human domain,⁷⁹ heavily laden with human associations,⁸⁰ and currently understands the associated human rights protections as pertaining to human family life. However, the right to family life “covers close and personal ties of a family kind. It does not just cover blood or formalised relationships”.⁸¹ Moreover, exclusionary definitions of the legal family which privilege conjugal, biological and filial relationships have attracted sustained critique. While space precludes a full examination of this issue here, it is worth noting some attempts to reframe the ‘sexual family’⁸² in more inclusive ways. For example, normalisation of assisted conception and same sex parenthood in the UK has resulted in a broadening of the ambit of the legal family to encompass ‘female parents’⁸³ in the Human Fertilisation and Embryology Act 2008.⁸⁴ In Australia and Canada more radical initiatives have sought to remove conjugality as the basis for legal recognition of family relationships,⁸⁵ and prompted legal scholars to advocate new family structures based on friendship⁸⁶ or care.⁸⁷ Given the ability of companion animals to provide care and companionship, if such attributes are accepted as constitutive of family life, we would contend that a compelling claim can be made to legally recognise animals as family members. Deckha has suggested that arguments for legal recognition for animals are most productively grounded in vulnerability theory, rather than more traditional equality-based approaches which have tended to become enmeshed in unproductive sameness/difference debates:

“...a shift towards the language of vulnerability and its related concepts of embodiment, corporeality, and relationality in the articulation of claims about animals... can recognise animals without sublimating or devaluing their differences or insisting that they approximate what are presumed to be human traits in order to receive legal recognition”.⁸⁸

In contrast to equality arguments, which are undoubtedly hard to substantiate for animals given the suffusion of equality discourse with human values and criteria, it is indisputable that companion animals, together with older people, are rendered vulnerable in the transition from home. Fineman’s universal vulnerability thesis therefore offers an apt foundation for legal recognition.⁸⁹ She argues that, since all humans will experience vulnerability across their lifespans, vulnerability is a more appropriate concept than autonomy around which to frame social and legal policy.⁹⁰ Consequently, she advocates replacing the autonomous subject of liberal law with the vulnerable legal subject. On this approach vulnerability is posited as a “fundamental characteristic that positions individuals in relation to each other as human beings and also suggests an appropriate relationship of shared responsibility as between state, societal institutions and individuals”.⁹¹ Notwithstanding Fineman’s emphasis on human subjectivity and human relationships, her thesis is readily extendable to animals. As Ani Satz contends:

“Unlike most human animals, the dependence of non-human domestic animals is permanent. Throughout their lives domestic animals

rely on humans to provide them with nourishment, shelter and other care. The permanent dependency of domestic animals is created and controlled by humans, rendering them uniquely vulnerable to exploitation. Domestic non-human animals are, for this reason perhaps the most vulnerable of all sentient beings”.⁹²

We have some reservations about creating such a hierarchy of vulnerability, but certainly agree that grounding subjecthood in vulnerability allows for animal subjectivity in a way that is simply not conceivable when autonomy is deemed constitutive of the legal subject. Yet, even if animals are accepted as vulnerable subjects and family members, this is not a complete solution to the frequent erasure of their interests in care settings. For example—and notwithstanding the crucial role of all types of family members in facilitating and supporting the transition of an older relative to a care/nursing home—McMillan and Sethi remind us that human relatives occupy a liminal and precarious position during this time:

“visiting family members can experience flux, particularly in an emotional sense... What are the rights of family members? How do we avoid the practice of relatives being banned from visiting their family members/fearing exclusion if they complain?”⁹³

The crucial difference, however, for humans is that their status as family member brings them within the ambit of human rights law and holds out the possibility of legal redress. It is for this reason that we contend that recognition of multi-species families is a crucial step in pressing for legal change. We hope to have demonstrated that companion animals occupy a liminal position given the disjuncture between how they are regarded socially as companions and family, but legally deemed to be property that can readily be discarded. Challenging exclusionary care home policies by couching claims in the discourse of the older person’s human rights is undoubtedly anthropocentric and, to some extent, reinforces the instrumentalisation of animals by recognising them for their value to humans. However, we suggest that according legal recognition to the animal–human relationship as familial is likely to prove a more viable strategy for protecting animals in practice than tactics focused on changing the animal’s legal status, which we see as more likely to generate resistance. As Deckha argues, vulnerability theory readily accommodates animals as beings leading precarious lives intertwined with those of humans,⁹⁴ while positing the human–animal relationship as one of shared vulnerability taps into a discourse that has in some contexts been taken up by judges.⁹⁵ Similarly, construing interspecies relationships as familial has, as we have seen, secured a high degree of social acceptance, and some degree of legal recognition. Article 8 of the European Convention on Human Rights (enshrined in UK law as a result of the Human Rights Act 1998) represents the most promising avenue for bringing interspecies relationships within the ambit of human rights protections.⁹⁶ Article 8 protects private and family life and the European Court of Human Rights (ECtHR) has taken an expansive approach to deciding Article 8 cases in the light of its long established ‘interpretative ethic’.⁹⁷ As one leading commentary observes, its:

“...overall approach can perhaps best be summarised as an evolutive approach based on its understanding of the object and purpose of the Convention, but also reflective of its own role as an international human rights court conscious of its subsidiary role in the protection of human rights”.⁹⁸

The ECtHR’s approach to interpretation thus recognises the Convention as a living instrument whose short and skeletal provisions must be fleshed out by judges and interpreted in the

light of changing societal values. As we have seen, the meaning of ‘family’ has evolved radically—both socially and legally—since the Convention was drafted in 1950, and this impacts on judicial reasoning. Space precludes a detailed examination of the ECHR jurisprudence on this issue, but the ECtHR has been clear that the existence or non-existence of ‘family life’ is essentially a question of fact depending on the real existence in practice of close personal ties.⁹⁹ While the case law to date has been concerned with exclusively human relationships, as George Letsas has argued, “the ECtHR has recognise[d] rights under the ECHR that would have been unimaginable thirty or forty years ago”.¹⁰⁰ Given the Court’s openness to expanding Article 8 in the light of developing international standards, and its historical willingness to take account of novelty, we suggest that there are persuasive reasons for it to accept that ‘family’ should be defined in terms of its function in providing companionship and care, and to recognise that inter-species relationships can fulfil these functions. Should this contention prove too radical, the Court has also accepted that close relationships deemed to fall short of ‘family life’ generally fall within the scope of private life protections under Article 8.¹⁰¹

Of course, such relationships will have to be managed in practice in the care home setting. However, Rook has suggested that under Article 8 a ban on companion animals cannot be regarded as proportionate to other objectives care home managers may have, such as protecting interests of other residents¹⁰² or carers. Thus, if a situation arose where, for example, other residents or employees had an allergy or fear of dogs, this would simply entail that the care home would have to accommodate both sets of interests. Indeed, a greater receptivity to interspecies relations may serve to call attention to issues of difference and diversity that are often not consciously considered in care homes.¹⁰³ Clearly, as with exclusively human families, not all interspecies families will be harmonious. Nor will all older people be ideal animal caretakers, and not all animals will be suited to life in care settings. As with any familial attachment, the relationship itself may render the animal vulnerable to abuse. Yet, since all familial relationships hold this potential for abuse, and since caring relations can always be oppressive or have a dark side,¹⁰⁴ these practical considerations are an inadequate basis for wholly excluding animals from the terrain of family. As Rosie Harding has observed, we must always be attentive to “the potential for pathogenic vulnerability when relational contexts are not supportive of vulnerable people”,¹⁰⁵ or, we would add, animals. Hence, in our view, vulnerability, with its emphasis on valuing relationships, offers a promising basis for articulating claims on behalf of groups, including older people and animals, who have traditionally been marginalised by law for failure to conform to the autonomous liberal ideal. Approaches grounded in shared vulnerability and family membership not only provide a basis for asserting human rights claims, but serve to direct attention to common vulnerabilities that exist within our social structures and to our individual, collective and state responsibility for addressing them.¹⁰⁶ It is to this issue of state responsibility that we now turn.

Legislating for liminal spaces

To summarise, we have argued that animals should be understood as vulnerable legal subjects with a compelling claim to legal recognition as family members, given the reciprocal caregiving and companionship that characterises many relationships between humans and their animal companions. This opens up the possibility of human rights litigation as an avenue for redress

for older persons forced to relinquish their animals. The importance of this relationship to the older person’s well-being entails that a failure on the part of care/nursing homes to accommodate it potentially breaches the right to family life protected under Article 8 and the Human Rights Act. As we have argued, the Care Act 2014 can also be interpreted as requiring local authorities to take this relationship into account, while its significance to an incapacitated person may be a factor in assessing their best interests under the Mental Capacity Act 2005. Yet, as we have seen, professionals managing the care and affairs of older people often fail to recognise the value to them of cross-species relationships. Moreover, vindicating these rights and entitlements obviously requires someone to have the necessary will and resources to take legal action. Arguably, therefore, an express statutory obligation setting out an explicit form of redress may be necessary to fill the current regulatory gap and compel institutions to take their obligations seriously. The argument in favour of legislation is reinforced by the commonplace nature of this issue. For example, Nigel Waterson (then shadow Minister for Work and Pensions) noted when introducing a private member’s (Care Homes and Sheltered Accommodation (Domestic Pets)) Bill to the House of Commons in 2009–10:

“It is a staggering and depressing fact that about 38 000 healthy animals are put down every year simply because their owners are going into a care home or sheltered housing project and the rules do not allow them to take their pet with them. That is bad enough, but it is also estimated that a further 100 000 pets have to be given up for adoption for the same reason. Many become so distressed because of being abandoned by their owners that they eventually have to be put down. That is totally unacceptable in a civilised country” (HC Deb, 5 March 2010, c 1167).

If enacted, Waterson’s bill would have stipulated that “Operators of a care home or sheltered accommodation must (subject to certain exceptions) grant permission to a resident to keep an authorised domestic pet within their accommodation”. Rook contends that the positive Parliamentary reception accorded to Waterson’s bill and earlier initiatives demonstrates “strong support in England for legislation to allow the elderly to take their companion animals into care homes and sheltered accommodation based on the health benefits that pets provide”. In her view “legislation prohibiting ‘no pet’ clauses in all residential leases is both possible and relatively easy to implement”.¹⁰⁷ In practice, we believe that such initiatives are likely to be plagued by considerably greater definitional, practical and enforceability difficulties than Rook allows. Defining what constitutes an ‘authorised domestic pet’ is unlikely to be easy, let alone framing exceptions to this general rule. Balancing the competing human interests involved can be tricky. For example, enabling more companion animals to enter care homes has the potential to create a disparity between the affluent elderly and those with fewer means. This raises the issue of whether the costs of accommodating animals could be borne by the state. Even against a backdrop of the current crisis in social care, such a policy may be justifiable on cost grounds given the potential economic health benefits to older people of animal companionship or therapy.¹⁰⁸ In addition to these tricky assessments of the competing interests of human residents and carers, the welfare implications of confining animals in care settings may prove still more difficult to quantify. A bill along Waterson’s lines is therefore likely to prove simplistic for these purposes, even though its promulgation and the support it attracted was symbolically important.

We would argue, then, that a more sophisticated and reflective approach to regulation will be needed. For one thing, legislation

must outline legal remedies and enforcement mechanisms which were wholly absent from the Waterson bill. It would also need to be firmly anchored in human rights norms and properly informed by input from relevant actors. To this end, a proper consultation process would be necessary, since statutory reform is likely to encounter resistance from within the sector. Stakeholders are seemingly prepared to accept that they have obligations in this context, but are wary of legal regulation. Thus, according to Randall Smith *et al*, “care home owners should be expected to have an explicit policy in regard to the keeping of companion animals, but one that is not dictated by law”.¹⁰⁹ Given the often knee-jerk and top-down form of legal interventions, such hostility is excusable. As Laurie and colleagues note, the prevalent form of health governance is a top-down “command-and-control regulation where a state authority has dominant oversight and power”,¹¹⁰ and regulation tends to “promote a rigid, fractured... response to ethical, epistemic, and ontological issues and to undervalue temporal and democratic values”.¹¹¹ Furthermore, as we demonstrated above, law has struggled to take account of the animal–human relationality that we argue is central to such legislation, since it does not easily fit law’s bounded object approach and tendency to position human and animals in regulatory silos. What is needed, in our view, is a shift from conventional command-and-control regulatory measures, and “imminent, near term and reactive responses”,¹¹² towards more responsive, adaptive and hybrid legal frameworks that would be attentive to the lived experience of all the relevant actors,¹¹³ including non-humans. As Robert Baldwin and Julia Black have argued, “responsive regulation demands that regulators take account of the cultures and understandings that operate within regulated organisations”.¹¹⁴ Consequently, we contend that the framing of responsive legislation must be informed by empirical research into the experiences of a range of stakeholders, including older people who reside with and those who have been separated from companion animals, their carers, those who manage care/nursing homes and charities dealing with abandoned animals. Statutory interventions need to attend to the shared vulnerabilities of older people and companion species in the transitions that accompany the fourth age, to seek to support relationships and to foster resilience. They should recognise that while cross-species relationships can render both parties vulnerable, they can also contribute significantly to the health and well-being of both the older person and the animal.

CONCLUDING THOUGHTS

In this article we hope to have demonstrated the value for animal scholars of engaging with law, and the potential that law holds for fostering conditions in which humans and animals can live well together. We have used the lenses of liminality and vulnerability to address the question of inter-species entanglements, ageing and governance of care spaces. In our particular case study, we have shown that for both older persons and their companion animals the transition to residential care too often entails a loss of ‘family’ and ‘home’ with deleterious effects on their well-being in older age. We have argued that further work is necessary to explore the affective dimensions of home and its meaning in the lives of both humans and animals. However, as a first step towards addressing the common rupturing of the inter-species relationship in the transition from home and affording those affected a legal remedy, we contend that this rupture should be understood as a form of family breakdown. Recognising animals as family members on the grounds of their shared vulnerability

and reciprocal companionship with older people would allow the staking of human rights claims to challenge such separation. Such arguments are bolstered by evidence of the benefits of animal attachment to the health and flourishing of older people, and the potential of animal companionship to mitigate vulnerability and promote agency. These positive reasons to accommodate animals, coupled with the prospect of legal action for breach of an older person’s rights if they are separated from animal companions, point to the need to address a regulatory gap. Legislative initiatives to respond to this gap would recognise the value of inter-species attachments and the limited opportunities for older people to ‘exit’ the service or go elsewhere. They could also build on the tentative signs that judges across a number of jurisdictions are more disposed to value animal–human relationality and caregiving. We have argued that the evolving ECHR jurisprudence on protection of family and private life can also be harnessed in this regard, and that these developments have the potential to bring law into line with social understandings of companion species as family. In our view it is crucial that such legislative proposals are empirically informed and attentive to cultural attitudes within the sector in order to secure the necessary regulatory buy-in. Those drafting statutory provisions must also address the difficulties that law has encountered when confronted with liminal beings and liminal spaces. We argue that regulation that is framed responsively to recognise the shared interests and vulnerabilities of the older person and their animal companions, and the importance of preserving continuities in their lives, would be an important advance in protecting the older person’s human rights and a further step in legal trajectories that increasingly recognise cross-species relationality. Of course, further and more intractable questions about the inadequate theorisation of the concepts of ‘family’, ‘home’, ‘human’ and ‘animal’ in law remain. However, we hope to have demonstrated the potential of law to engage more productively with the question of animal subjectivity, to counter vulnerabilities shared by humans and animals and to promote more collective responsibility for their well-being in older age.

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NOTES

- As regards terminology, we adopt the term 'companion animals' rather than pets, since it better captures the relational focus of the bond - Andrew Linzey and Priscilla Cohn (2011), "Terms of Discourse," *Journal of Animal Ethics* 1 (1): vii-ix. We acknowledge, however, that the term 'pet' may better account for other facets of this relationship, including dominance and dependency - see Yi-Fu Tuan, *Dominance & Affection: The Making of Pets* (New Haven: Yale University Press, 1984). Although our argument has resonance for all companion animals, in practice the cases we address have involved dogs. We use the term 'older people' since it serves to highlight ageing as a process, as opposed to terms such as 'the elderly', which homogenise a part of the life course characterised by diversity - see Law Commission of Ontario, *The Law as it Affects Older Adults: Developing an Anti-Ageist Approach* (2011) 20-21.
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- For caveats see p.215.
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- Randal Smith et al (2011), "People, pets and care homes: a story of ambivalence" *Quality in Ageing and Older Adults* 12(4): 217-228.
- Our project will map such variability across England.
- These policies also burden already over-stretched animal rescues.
- Latimer "Intimate Entanglements" 256.
- Daily Express* 20 December 2016.
- id. Bob Harvey's sentiments are much more widely reflected in the empirical literature - e.g. Pat Sable, "The pet connexion: An attachment perspective" *Clinical Social Work Journal* 41(1) (2013): 93-99.
- Deborah Rook (2018), "For the Love of Darcie: Recognising the Human-Companion Animal Relationship in Housing Law and Policy" *Liverpool Law Review* 39: 29-46.
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- An interesting question is whether companion animals are more acceptable as temporary visitors, rather than residents, in care homes. For, instance dogs trained in Pet Assisted Therapy (PAT) may be seen as appropriately trained and hence less disruptive in care home settings. Judith Gammonley and Judy Yates (1991), "Pet Projects: Animal Assisted Therapy in Nursing Homes" *J Gerontol Nurs.* 17(1): 12-15. It has also been noted that the failure to address the relative benefits of companion animals who live on the premises compared with those who visit is a significant limitation of current research - IFA, "Measuring the Benefits", 18.
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- Fineman, "Elderly as Vulnerable" 117.
- These include survivors of domestic violence, forced to flee their home and abandon animals (Dogs Trust's *Freedom Project* - <https://www.dogstrust.org.uk/help-advice/hope-project-freedom-project/freedom-project>), children in care separated from companion animals - Roxanne Hawkins et al. (2017), "Childhood Attachment to Pets: Associations between Pet Attachment, Attitudes to Animals, Compassion, and Humane Behaviour" *Int. J. Environ. Res. Public Health* 14(5): 490-505., and the removal of so-called 'dangerous dogs' from families - Marie Fox and Fiona Cook (2017), "Judging Dangerous Dogs: Barnes v Belfast CC" in *Northern/Irish Feminist Judgments: Judges; Troubles and the Gendered Politics of Identity*, ed. Mairead Enright, Julie McCandless and Aoife O'Donoghue (Oxford: Hart Publishing). More generally, homelessness (see Helen Carr (2016), "Caring at the borders of the human: companion animals and the homeless" in *Revaluing care in theory, law and policy* edited by Rosie Harding, Ruth Fletcher and Christine Beasley (London: Routledge), the precarious nature of private rented and social housing (see Rook, "For the Love of Darcie") and divorce/family breakdown (see Deborah Rook, "Who Gets Charlie? The Emergence of Pet Custody Disputes in Family Law: Adapting Theoretical Tools from Child Law" *International Journal of Law, Policy and the Family*, 28(2) (2014): 177-193) can all entail disruption of human-animal relationships.
- Lorna Fox-O'Mahoney (2006), *Conceptualising Home: Theories, Laws and Policies* (Oxford: Hart Publishing, 33).
- Lorna Fox-O'Mahoney and James Sweeney (2011), James (eds) *The Idea of Home in Law: Displacement and Dispossession* (London: Routledge) 2; see also Brendan Edgeworth, Caroline Hunter, and (2018), (eds) *Law and the Precarious Home: Socio-Legal Perspectives on the Home in Insecure Times* (Oxford: Hart Publishing).
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- Law struggles with this tension in a variety of contexts. It is particularly well captured in the EU context, where animals have a dual status as both tradeable products and sentient beings - Katy Sowers, "Sentient Beings and Tradeable Products: The Curious Constitutional Status of Animals under Union Law" *Common Market Law Review* 55(1) (2018) 55-99.
- Jessica Pierce (2016), *Run, Spot, Run: The Ethics of Keeping Pets* (Chicago: University of Chicago Press) 4; see also Donna Haraway (2003), *The Companion Species Manifesto: Dogs, People and Significant Others* (Chicago: Prickly Paradigm Press); Donna Haraway (2008), *When Species Meet* (Minneapolis: University of Minnesota); Susan Squier, *Liminal Lives: Imaging the Human at the Frontiers of Biomedicine* (Durham: Duke University Press, 2004); Matteo Andreozzi (2013), "Humans' Best Friend? The Ethical Dilemma of Pet Relations" *Beyond Anthropocentrism* 1 (2):23-35.
- Fox, "Re-thinking Kinship"

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49. Nik Brown and Siân M. Beynon-Jones (2012), "'Reflex Regulation': An Anatomy of Promissory Science Governance" *Health, Risk & Society* 14: 223–240.
50. Howell, *At Home and Astray*, 2.
51. Erica Fudge (2008), *Pets: The Art of Living* (London: Acumen Press) 98–105.
52. Howell, *At Home and Astray*, 61.
53. Katy McMillan and Nayha Sethi (2016). "Recent Reports Highlight Key Issues in Regulating Elderly Care" http://masoninstitute.blogspot.com/2016/12/recent-reports-highlight-key-issues-in_1.html
54. Susan Squier (2004), *Liminal Lives: Imaging the Human at the Frontiers of Biomedicine* (Durham: Duke University Press), 215.
55. Liminality captures these processes well, since it has both spatial and temporal dimensions. As originally conceived, it entailed transitions through liminal periods as well as space – Arnold Van Gennep (1960), *The Rites of Passage* (Chicago: University of Chicago Press, 1960), although as Taylor-Alexander *et al* argue, it can be conceived more broadly 'to account for the changing relations that people have with the world and the things around them' – "Beyond regulatory compression" 158–9.
56. Laurie, *Liminality and the Limits of Law*, 58.
57. For instance, older people may resist medical advice, or refuse admission to hospitals or residential care because of companion animals – McNicholas, "Pet ownership and human health, ICA, "Measuring the Benefits", 15.
58. Older people moving into care/nursing homes and ECH settings have, arguably, entered the 'fourth age', characterised by advanced chronological age, declining bodily function, co-existing long-term conditions/deteriorating health and increased dependency on others for help with everyday activities. Critically, however, these characteristics are not straightforward, not biologically or temporally determined and considerable variability exists in how older people interpret experiences of old age and associated decline – Liz Lloyd (2015), "The Fourth Age" in *Routledge Handbook of Cultural Gerontology*, edited by J. Twigg and W. Martin (London: Routledge), 261–268.
59. See, for instance, *YL v Birmingham City Council* [2007] UKHL 27, where YL, an Alzheimer's sufferer residing in a care home had her placement terminated following a deteriorating relationship between her family members and the home's management.
60. Victor Turner, *The Ritual Process: Structure and Anti-structure* (New Jersey: Aldine Publishing, 1969).
61. Squier, *Liminal Lives*, 280.
62. Paul Stoller (2004), *Stranger in the Village of the Sick: A Memoir of Cancer, Sorcery and Healing* (Boston: Beacon Press) 184; see also Laurie, "Liminality and the Limits of Law" .
63. id 126.
64. Taylor-Alexander, "Beyond regulatory compression", 175.
65. [2016] EWCOP Case No 12 744 015.
66. The MCA 2005 s.1 (5) requires a decision made on behalf of a person who lacks capacity to be reached in her best interests. Best interests are not defined in the Act, but past and present wishes and feelings must be considered.
67. The judge also observed that there had been inexplicable delay in establishing Mrs. P's financial position, that her bank account apparently had been emptied and that the firm appeared to work against rather than with the Litigation Friends.
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70. Jackson, "From 'doctor knows best'", 115.
71. Fineman, *Elderly as Vulnerable*, 115.
72. Stoller, *Stranger in the Village*, 184.
73. Sarah Knight and Victoria Edwards (2008), "In the Company of Wolves: The Physical, Social, and Psychological Benefits of Dog Ownership" *J Ageing Health* 20: 437–455; V Bernabei *et al.* (2013), "Animal-assisted interventions for elderly patients affected by dementia or psychiatric disorders: a review" *Journal of Psychiatric Research*, 47(6): 762–773.
74. s.47 of the Act also obliges the community social work team to arrange for the care of any animals when a person is admitted to a residential or nursing home or hospital as an emergency admission.
75. Maneesha Deckha (2012), "Property on the Borderline: A Comparative Analysis of Legal status of Animals in Canada and the United States" *Cardozo Journal Int & Comp L* 20: 313–365, 325.
76. Tom Bogdanoski (2010), "Towards an Animal-Friendly Family Law: Recognising the Welfare of Family Law's Forgotten Members" *Griffiths Law Review* 19(2) 197–234, 205–6.
77. Rook, "Who Gets Charlie?" 179.
78. See also Steven Wise (1998), "Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal," *Animal Law* 4: 33.
79. Maneesha Deckha (2015), "Vulnerability, Equality, and Animals" *Canadian Journal of Women and the Law*, 27(1): 47–70, 50.
80. Rook, "For the Love of Darcie", 3.
81. Age UK *Older People and Human Rights* (London: Age UK, 2011). http://www.ageuk.org.uk/documents/en-gb/for-professionals/equality-and-human-rights/older_people_human_rights__expert_series_pro.pdf?dtrk=true
82. Martha Fineman (1995), *The Neutered Mother, The Sexual Family and other Twentieth Century Tragedies* (New York: Routledge).
83. Essentially, UK law remains committed to the idea of a single gestational mother, but now recognises a lesbian co-parent who has participated in assisted conception as occupying a position akin to a father – she is deemed a 'female parent'. The legal definition of family, however remains tied to a two-parent norm centred on the gestational mother.
84. Julie McCandless and Sally Sheldon (2010), "The HFEA (2008) and the Tenacity of the Sexual Family," *Modern Law Review* 73:175–207.
85. Law Commission of Canada (2001). *Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships*; Jenny Millbank (2008), "The role of 'functional' family in same-sex family recognition trends," *Child and Family Law Quarterly* 20: 155–182; Jamie Wood, "Moving Beyond the Bedrooms of our Nation: Redefining Canadian Families from the Perspective of Non-Conjugal Caregiving" *Appeal* 13(4) (1998): 7–13.
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88. Deckha, "Vulnerability, Equality and Animals" 56.
89. Bogdanoski, by contrast, grounds his claim for legal recognition of companion animal interests in the concept of equitable self ownership – "Towards an Animal Friendly Family Law" 214
90. Fineman, "The Vulnerable Subject".
91. Fineman Martha and Anna Gear (2013), "Introduction: Vulnerability as Heuristic – An Invitation to Future Exploration" in *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* edited by Fineman and Gear (London: Routledge) 2.

92. Satz, "Animals as Vulnerable Subjects", 9.
93. McMillan and Sethi, "Key Issues in Regulating Elderly Care".
94. Deckha id, 60.
95. Alexandra Timmer (2013), "A Quiet Revolution: Vulnerability in the European Court of Human Rights" in *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* edited by Fineman and Grear (London: Routledge); Deckha, "Vulnerability, Equality and Animals".
96. It is also arguable that the distress and harm occasioned by forced separation could constitute inhuman and degrading treatment contrary to Article 3 of the ECHR. This prohibits treatment that humiliates or debases an individual, or which shows a lack of respect for, or diminishing of their human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance. However, several cases testify to the high severity threshold necessary to successfully mount an Article 3 claim. E.g. *In the matter of an Application by the Northern Ireland Human Rights Commission for Judicial Review* [2018] UKSC 27.
97. George Letsas (2010), "Strasbourg's Interpretive Ethic: Lessons for the International Lawyer" *European Journal of International Law* 21(3): 509–41.
98. Francis Jacobs, Robin White, and Clare Ovey (2014), *The European Convention on Human Rights* (sixth ed. Oxford: OUP) 82.
99. See, for example, *Marckx v. Belgium*, 13 June 1979, § 31; *K. and T. v. Finland* (GC), no. 25702/94, § 150, ECHR 2001–VII).
100. George Letsas (2013), "The ECHR as a living instrument: Its meaning and legitimacy" In A. Follesdal, B. Peters, & G. Ulfstein (Eds.), *Constituting Europe: The European Court of Human Rights in a National, European and Global Context* (Cambridge: CUP) 106–141.
101. *Znamenskaya v. Russia* (Application no. 77785/01) 2005; Rook "Who Gets Charlie".
102. Rook, "For the Love of Darcie" 13.
103. Sue Westwood (2016) "Institutions, they're very straight. My god I hope I don't have to go into a care home": Spatial inequalities anticipated by older lesbians and gay men" in *Revaluing care in theory, law and policy* edited by Rosie Harding, Ruth Fletcher and Christine Beasley (London: Routledge) 215–232.
104. Anne Boykin and Jill Winland-Brown (1995), "The Dark Side of Caring: Challenges of Caregiving" *Journal of Gerontological Nursing* 21(5): 13–18; Peta Bowden (1996), *Caring: Gender Sensitive Ethics* (London: Routledge).
105. Rosie Harding (2016), "Care and relationality: supported decision-making under the UN CPRD" in *Revaluing care in theory, law and policy* edited by Rosie Harding, Ruth Fletcher and Christine Beasley (London: Routledge) 114–130, 119.
106. Fineman, "The Vulnerable Subject" 253.
107. Rook, "For the Love of Darcie" 38.
108. We thank one of the anonymous reviewers for drawing this point to our attention. For some evidence of cost savings from animal interventions see Nancy E. Edwards and Alan M. Beck (2002) "Animal-Assisted Therapy and Nutrition in <https://www.ifa-fiv.org/wp-content/uploads/2014/09/Companion-Animals-and-Older-Persons-Full-Report-Online.pdf>
109. Randall Smith et al (2011), "People, pets and care homes: a story of ambivalence" *Quality in Ageing and Older Adults* 12(4): 217–228, 217.
110. Laurie, "Liminality and the Limits of Law" 49.
111. Taylor-Alexander, "Beyond Regulatory Compression" 152.
112. Nik Brown and Sian Beynon-Jones (2012), "'Reflex Regulation': An Anatomy of Promissory Science Governance" *Health, Risk & Society* 14: 223–240, 225.
113. Robert Lee and Petts Judith (2013), "Adaptive Governance for Responsible Innovation" in *Responsible Innovation: Managing the Responsible Emergence of Science and Innovation in Society* edited by Owen R, et al. (London: Wiley) 143–64.
114. Robert Baldwin and Julia Black (2008), "Really Responsive Regulation" *Modern Law Review* 71(1): 59–94,
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