Law and Policy Issues

I just don’t think we should be playing God. Dissection doesn’t help us or the animal. It doesn’t benefit medical science, and the animals are just thrown away like trash when it’s over.

—Melissa Chodan, fourteen, New Jersey student

Children should be given a choice between dissection or using a computer program. That will be done here now because of Melissa’s dedication and love for animals.

—Laura Morana, Melissa’s school principal

6.1 Introduction

From a policy standpoint, the dissection issue is one of conflicting rights. It pits the right of the student to learn using methods that are not inimical to his/her ethical beliefs against the right of the school to require the student to learn solely by the methods it decrees. One way to resolve such a conflict is to analyze relative costs and benefits to the claimants of those rights. The analysis presented in the first part of this chapter weighs clearly on the side of the student. Following this, a condensed summary of recent legal challenges mounted by student conscientious objectors against school dissection requirements is presented. Reviewed next are current laws and policies, their strengths and weaknesses, and evidence that their enforcement is poor. Finally, the elements of a good policy are discussed, and recommendations made for their adoption nationwide.
6.2 The Case for Student Choice

A major focus of the dissection debate has been on student choice: specifically, do students have the right to choose a method of learning? As the numbers of students who object to dissection have grown (Mayer and Hinton 1990; Gilmore 1991b; Orlans 1992; Solot 1995), so, too, have efforts to make student choice a legal mandate, and seven states now have laws or policies upholding a student’s right to choose (table 6.1).

Table 6.1
U.S. State Student Choice-in-Dissection Laws

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Florida</th>
<th>California</th>
<th>Maine^a</th>
<th>Louisiana^b</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grade range</td>
<td>K-12</td>
<td>K-12</td>
<td>K-12</td>
<td>K-12</td>
</tr>
<tr>
<td>Private schools</td>
<td>exempt</td>
<td>exempt</td>
<td>not mentioned</td>
<td>Parish school system non-exempt</td>
</tr>
<tr>
<td>Notification of student</td>
<td>parent/ guardian only</td>
<td>parent/ guardian and student</td>
<td>student</td>
<td>student</td>
</tr>
<tr>
<td>Written consent</td>
<td>required from parent/ guardian</td>
<td>required from parent/ guardian</td>
<td>not mentioned</td>
<td>not mentioned</td>
</tr>
<tr>
<td>Penalty for objecting</td>
<td>not mentioned</td>
<td>no penalty</td>
<td>no penalty</td>
<td>no penalty</td>
</tr>
<tr>
<td>Alternative testing^c</td>
<td>not mentioned</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>Teacher discretion to overrule</td>
<td>no</td>
<td>yes</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Definition of “animal”</td>
<td>unclear: may be only mammals and birds</td>
<td>vertebrates and invertebrates</td>
<td>vertebrates and invertebrates</td>
<td>animals (mammals?), reptiles, or amphibians</td>
</tr>
<tr>
<td>Experiments on living animals</td>
<td>no surgery on mammals and birds; otherwise, no physiological harm</td>
<td>prohibited under separate Education Code 51540</td>
<td>prohibited in public and private schools under separate law (3971)</td>
<td>none explicitly prohibited</td>
</tr>
</tbody>
</table>
Law and Policy Issues

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Pennsylvania</th>
<th>New York</th>
<th>Rhode Island</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year enacted</td>
<td>1992</td>
<td>1994</td>
<td>1997</td>
</tr>
<tr>
<td>Grade range</td>
<td>K-12</td>
<td>K-12 (implied)</td>
<td>K-12</td>
</tr>
<tr>
<td>Private schools</td>
<td>non-exempt</td>
<td>exempt</td>
<td>non-exempt</td>
</tr>
<tr>
<td>Notification of student</td>
<td>parent/guardian and student</td>
<td>none required</td>
<td>not mentioned</td>
</tr>
<tr>
<td>Written consent</td>
<td>not mentioned</td>
<td>required from parent/guardian</td>
<td>not mentioned</td>
</tr>
<tr>
<td>Penalty for objecting</td>
<td>no penalty</td>
<td>no penalty</td>
<td>no penalty</td>
</tr>
<tr>
<td>Alternative testing</td>
<td>yes</td>
<td>not mentioned</td>
<td>not mentioned</td>
</tr>
<tr>
<td>Teacher discretion to overrule</td>
<td>no</td>
<td>yes (for 10th to 12th grade)</td>
<td>no</td>
</tr>
<tr>
<td>Definition of “animal”</td>
<td>vertebrates only</td>
<td>unclear: may be only mammals and birds</td>
<td>vertebrates and invertebrates</td>
</tr>
<tr>
<td>Experiments on living animals</td>
<td>none explicitly prohibited</td>
<td>16 procedures listed as prohibited (e.g., surgery, electric shock)</td>
<td>none explicitly prohibited</td>
</tr>
</tbody>
</table>

a Bill did not pass in Maine, but was voluntarily adopted by the Maine Department of Education.

b Passed as a state resolution.

c School should also offer alternative means of testing students’ knowledge.

Note: In 1997 both Maryland and Illinois enacted a law requiring school boards to publish information on availability of, and student access to, alternatives to dissection.

Not surprisingly, students almost universally support a student’s right to choose alternatives to dissection (see table 3.1), and this includes students who themselves have no personal aversion or objection to dissection (Brown 1989; Mekerman 1991; Bennett 1994). Both the American Medical Student Association (1993) and the National Student Nurses Association (1997) have issued position statements in support of student choice regarding animal dissection. In spring 1998 Cornell University’s Undergraduate Student Assembly unanimously voted for a resolution supporting student choice (Pease 1998).

The American public also clearly favors student choice in dissection. In a recent poll (May 1999) of 1,000 randomly selected American adults, conducted by the National Anti-Vivisection Society, nearly 9 out of 10 people surveyed believed that high school students who object to dissection should be offered the choice of using other methods (ORC 1999).

Educators, on the other hand, are more inclined to feel that they should control the decision of whether students should dissect or not (Offner 1995; Schmidt 1999), though it is not clear whether or not a majority of teachers feel this way. A primary
reason why student choice bills did not pass in both the Maryland and Massachusetts legislatures during the nineties was the successful lobbying against these measures by members of the science education establishment. The only parties that officially opposed passage of California’s student choice-in-dissection bill in 1988 were science education associations (Legislative Research Inc. n.d.). Pat Davis (formerly Graham), who campaigned for this law with her daughter, Jenifer, believes that her school district’s strict adherence to the dissection requirement had more to do with the perceived threat to its authority than with its concern about Jenifer’s development as a student (personal communication, 16 June 1999).

Apparently, more than education and economic motives maintain the status quo. Because the educational establishment so values its right to academic freedom (Terry 1992), it is perhaps reluctant to recognize the right of student choice in dissection. Teachers who support and use dissection appear to view objecting students as disruptive and rebellious. Snyder et al. (1992) urge teachers to watch out for students “parroting” animal rights literature, implying that a student’s objection based on moral argument is disingenuous and insincere. But if the student has read and thought about the issues and has gone to the trouble—and assumed the risk—of voicing an objection to the teacher, then it seems proper to assume that the student is serious about the matter.

An educator’s reluctance to accommodate a student may also be attributable to a fear that capitulation to one conscientious objector could open the floodgates to a deluge of other objecting students. Francione and Charlton (1992) report that the dean of students at Ohio State University (OSU) College of Veterinary Medicine expressed his fear that if student Jennifer Kissinger—who sued the school in 1990 for the right to use humane alternatives to labs that harmed healthy animals—were allowed to use alternatives, other students would demand to do the same.

It is also worth noting that teachers routinely accommodate students with special needs, such as the hearing or visually challenged. To do otherwise would be discriminatory and illegal. But, as Buyukmihci (1991) asks: why should it be any different for students who object to harming or killing nonhuman animals in the name of education? Balcombe (1997b) likens requiring dissection of a student who objects to the practice on moral grounds to requiring a vegetarian to eat meat as part of a nutrition course. Barnard and Baron (1989) draw upon the abortion debate to present a useful analogy for a student’s right to decline on ethical grounds without penalty: no medical student would be required to perform an abortion if he/she objects to it.

Who has more to lose, students if they are not given a choice on dissection, or teachers if they are? Shapiro (1987) believes it is the student: “In commonsense terms, which violates the respective individual’s rights more: if we force an individual (a student) to injure, harm, inflict pain on, or kill an animal when his or her conscience dictates otherwise; or if we force another individual (a teacher) merely to add a supplemental noninvasive procedure to the curriculum?”

The National Association of Biology Teachers (NABT 1995) has not taken a consistent stand on this matter over the past decade. In 1990 Rosalina Hairston, NABT’s executive director, wrote that “teachers need not—indeed, should not—decide how they feel and then impose that opinion on their students. Instead, students should be given the opportunity to explore the issue themselves and come to their own conclusions” (Hairston 1990, 91). NABT’s 1995 statement on dis-

In 1997 the NABT began screening materials from some organizations planning to exhibit at their conventions. Animal protection organizations that oppose dissection were a focus of this screening. NABT’s explanation for this was to allow only “distribution of materials that do not contradict the association’s stated policies and that do not slander, libel, or interfere with other exhibitors” (NABT 1999). In 1997 NABT rejected three of the sixteen items The HSUS submitted for approval. The American Anti–Vivisection Society had eleven of twenty-three items rejected in 1997 and eleven of twenty-five items rejected in 1998. The National Anti–Vivisection Society (operators of the NAVS Dissection Hotline) had seven of thirteen items rejected in 1998 and eight of sixteen items rejected in 1999.

Academic freedom is finite, and it has a counterpart: academic duty (Kennedy 1997). Frank Rhodes, president emeritus of Cornell University, says in his review of Kennedy: “If professors are unwilling to establish reasonable norms and standards for their own professional conduct and performance, others...will do so” (Rhodes 1997, 1726). It is fair to suggest that the influx of dissection choice laws in the United States would not have taken place had not teachers and/or school administrations resisted students who believe harming animals in schools is unethical.

### 6.3 Legal Challenges

When students object conscientiously to dissection assignments, their cases are usually resolved without any resort to legal action. Occasionally, however, a student has filed a lawsuit against her/his school, usually on grounds that the student’s First Amendment rights (to freedom of religion) have been violated by a requirement that the student participate in an activity that she/he finds unethical (Francione and Charlton 1992). Legal case history in the United States indicates that the right of a student is usually upheld in cases of conscientious objection.

The most celebrated dissection lawsuit was filed in June 1987 by Jenifer Graham, a California high school student who was told by her school board to either dissect a frog or accept a lowered biology grade and negative evaluation on her school transcript. Ms. Graham’s case marked the first time that a student had made a legal challenge to required dissection exercises. Nine months after the lawsuit was filed, then California governor George Deukmejian signed into law a bill requiring that elementary and secondary students be allowed to choose whether or not to dissect animals in science classes. In August 1988 Judge Manuel Real dismissed Ms. Graham’s suit when the school agreed to reinstate her grade and to remove the notation from her transcript.

The case generated widespread publicity and set the stage for additional lawsuits and enactments of law. Maggie McCool, who refused to dissect a fetal pig, frog, and other animals in her New Jersey high school biology class, sued the school in 1989 for giving her a failing grade and declining to let her use alternatives. An out-of-court settlement required the school to recalculate Ms. McCool’s
grade without the dissection labs and required a statement in the student handbook that students with religious objections to dissection be provided with alternatives (Orlans 1993). Jennifer Kissinger, a third-year veterinary student at Ohio State University (OSU), sued her school in 1990 for refusing to allow her to use alternatives to labs that cause harm and death to healthy animals (Francione and Charlton 1992). Ms. Kissinger faced expulsion from OSU’s veterinary program at the time she filed suit. She won her case and was provided with an alternative curriculum for which she used cadavers, then assisted with and later performed surgery on sick or injured animals (PR Newswire 1991). Safia Rubaii, a medical student at the University of Colorado, sued her school for not permitting her to use a humane alternative to its terminal dog lab. She left the school to complete her training elsewhere. The courts ruled in her favor and the school was ordered to pay her $95,000 (Romano 1995). Beate Broese-Quinn, a biology student at Foothills Community College, California, sued her school in 1998 for requiring her participation in a biology exam that used prospected (already dissected) fetal pigs. This case was pending as of early 2000.

Notwithstanding the tendency for courts to side with student conscientious objectors to dissection, it is probably in a school’s better interest to accommodate such students, and most of them do. Many thousands of students request alternatives to dissection each year, and while many outcomes may be suboptimal, many others are resolved without problem for either the school/teacher or the student.

6.4 Current Laws and Policies

In spite of the evidence that dissection choice for conscientious objectors is constitutional, dissection choice laws and policies in the United States are more the exception than the rule. Since 1985, when Florida became the first state to enact a dissection choice law, seven states have implemented such laws (see table 6.1). Choice-in-dissection bills were introduced in the legislatures of New Hampshire, Illinois, Massachusetts, and New Jersey in the late nineties. In 1999 Illinois Governor George Ryan placed an amendatory veto on a student choice-in-dissection bill that had passed both state house and senate; the bill was expected to pass into law. This particular bill would have been precedent setting because it included not only kindergarten through secondary school but also post-secondary institutions. Nevertheless, such laws are not free of loopholes (Balcombe 1996), and their implementation and enforcement depend on both the diligence of school superintendents (in informing their teachers), and teacher compliance.

Most American high schools and colleges continue to have no written policy for accommodating student objections to dissection. For example, of twenty-four county school boards in the state of Maryland, only one (Prince George’s) has a written policy prescribing choice in dissection for its students. Massachusetts and Connecticut are two of the stronger states; at least six school systems in Massachusetts (Kerstetter 1993), and forty-five schools in Connecticut have dissection choice policies. Chicago public schools implemented a policy in 1993 that provides student choice in
dissection. There are others but they represent a small minority of the schools.

Gilmore (1991b) surveyed all public high schools in Connecticut, plus a few private schools. Of the eighty-one responding schools, 54 percent made dissection mandatory, 40 percent made it optional, and 6 percent gave no response to the question. In a teacher survey by the American School Board Journal (1992), 52 percent of respondents felt that dissection should be mandatory; 35 percent felt that it should be an optional activity. Thirteen percent supported abolishing dissection altogether. In a survey of 191 Canadian undergraduates, Bowd (1993) found that 69 percent had been required to perform dissections in secondary school.

The dearth of dissection-choice policies is unfortunate, for a good policy can benefit both student and teacher (Snyder et al. 1992). Students know their rights from the outset (Bekoff 1999), and potential problems are recognized early so that last-minute, seat-of-the-pants negotiating is avoided.

Dissection policies are also rare in postsecondary education, and those written policies that do exist are likely to consist of assertions that student participation is mandatory and students who do not wish to participate in a given course exercise should not enroll in the course. The HSUS maintains a list of schools with such policies. Nevertheless, universities have implemented student choice policies; one such policy, implemented by Sarah Lawrence College (Bronxville, New York) in 1994, reads as follows:

Sarah Lawrence College does not require students with ethical objections to participate in dissection. Students who choose to refrain from such activities will be given alternatives that provide similar experiences. Those who choose such alternatives will not be penalized, although they will be responsible for the material presented in these exercises. If appropriate, separate evaluations of their learning experiences may be designed. In courses where dissection is considered to be fundamental and therefore mandatory, students should be informed of this during registration.

Students who feel that undue pressure to dissect has been placed upon them, or question the designation of a course as requiring mandatory dissection, may file a complaint with the Dean of the College.

The advent of regulations governing animal research and testing has clearly been driven in part by public protest against the use of animals in these endeavors. By comparison, the level of protest against animal use in education has been substantially lower. This is perhaps because the use of animals in education has not been perceived by the public as being as serious an issue.

### 6.5 International Policy

In most of the world, animal-use practices in education go unreported and laws or policies explicitly referring to such use do not exist. There are notable exceptions, however, particularly in Europe, where the fourteen nations of the European Union (EU) prohibit invasive uses of live animals in primary and secondary schools (Orlans 1995). Animal dissection has been banned in at least
three countries: Argentina in 1987 (Stuart 1988), the Slovak Republic in 1994 (The Animals’ Agenda, July/August 1994, 7), and Israel in 1999. In 1993 the Italian parliament passed a law that grants the right of any citizen to refuse to participate in any form of animal experimentation without penalty.

In the United Kingdom, the Animals (Scientific Procedures) Act of 1986 specifically prohibits the use of animals in primary and secondary schools where that animal can be expected to suffer adverse effects (Morton 1987). Whole-animal dissection is no longer required by any of the U.K. examining boards (Reiss 1993), though a survey of English secondary school teachers in charge of biological science by Adkins and Lock (1994) showed extensive use of live and dead animals in the classroom. In Holland, dissection and live-animal experimentation in precollege education are prohibited by law, and the Experiments on Animals Act in the Netherlands forbids animal experiments if alternatives can yield equivalent results (Nab 1989).

Legislation adopted in the EU in the mid-eighties asserted that animal use for education and training is not appropriate for secondary schools; that it should be used only for students aiming to be professional scientists; and that alternatives must first be considered and found unsuitable as replacements (Morton 1987). Article 26 of the European Directive requires that persons carrying out, taking part in, or caring for animals used in live-animal use procedures—such as technicians and biomedical scientists—shall have had appropriate education and training (De Greeve 1989; van Zutphen 1989). Unfortunately, however, training requirements for animal technicians and researchers vary considerably among European countries (van Zutphen et al. 1989).

As a result of a student protest, Murdoch University, in Western Australia, adopted a university–wide policy in November 1998, formally allowing conscientious objection and agreeing to review humane alternatives for all teaching units that use animals (Knight 1998). As part of his argument against the school, veterinary student Andrew Knight cited Article 18 of the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly (1948): “Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

The continents of Asia, Africa, and South America are largely unknowns when it comes both to the practices and policies regarding animal use in education. China, for example, has no controls, no laws, and no reporting of animal use in its schools (Balcombe, Animal Use in Higher Education, in press).

India, by contrast, has shown signs of substantial change in its use of animals in education. In May 1997, the Ministry for Human Resource Development of the Government of India told the Delhi High Court that it had decided to make dissection optional for school students, and this decision was implemented in the spring of 1998. In May 1998 the state of Rajasthan banned the dissection of frogs in its schools in response to a campaign by Mahajanam, a group advocating nonviolence (Abdi 1998).
6.6 Enforcement Problems

Although laws and policies that allow students to use alternatives instead of harmful exercises are an improvement over no guidance at all, problems with implementation and enforcement remain. Teachers and students should be aware of such laws and policies, but what information there is suggests that students, especially, lack such awareness.

McKernan (1991) reported that only one-third of approximately 1,450 students she surveyed knew that they could request an alternative to dissection. Rosenthal (1994) reported that in many cases neither students nor parents received notification of their right to refuse to dissect in Pennsylvania, where a dissection-choice law was enacted in 1993. In a survey of 373 American veterinary students, 58 percent responded that they were not sure whether or not their school had a policy for students refusing to participate in student surgery (Sandquist 1991). The HSUS continues to receive complaints from students residing in states with dissection-choice laws; in some cases neither students nor the teacher is aware of the law’s existence.

Most students unaware that they may have a choice in whether or not to participate in a dissection exercise will usually dissect without openly objecting. Today, most teachers would probably accommodate a student who requests an alternative to an animal dissection assignment, but few students desire to openly question their teacher’s method. As Mayer and Hinton (1990) reported: “It should be no surprise that nearly every [teacher] using dissection felt that it was a very effective teaching tool.” Students know this, and it stifles objection.

6.7 What Constitutes a Good Policy

No two dissection policies are the same. They represent a diversity of elements and styles. For policies to be effective and fair, they must contain some elements. For precollege these are:

- Students are notified of the policy verbally and in writing prior to the start of the course
- There is no penalty for objecting conscientiously
- Alternative assignments involve a comparable amount of work
- Available alternatives cover the same basic information as does the dissection and do not merely provide a comparable amount of effort from the student
- Student conscientious objectors are tested in ways that do not harm animals
- Teachers engage their students in a discussion of the pros/cons of dissection, and students should be encouraged to express their personal viewpoints without censure
- Teachers should not be required to use dissection in the teaching of anatomy

State laws should define “animal” broadly to accommodate students who do not want to harm the animal, regardless of whether the animal in question is sentient or not. The question of where one draws the line of sentiency is unclear (Regan 1983), and it is better to err on the side of caution. The policy should apply to all animals believed capable of feeling pain or distress (this includes all vertebrates).
Finally, watching other students dissect should never be viewed as an acceptable alternative to dissection. Based on the number of complaints received by The HSUS, it is very commonplace for teachers to instruct conscientiously objecting students that they may just observe the dissection. This perceived solution suggests that the teacher assumes the student objects for reasons of squeamishness. But for students with moral objections to the practice, watching is not an acceptable practice. Only 25 percent of the respondents in a survey of 468 British high school students felt that watching other people dissect was acceptable (Lock and Millett 1991).

6.8 Recommendations

1. All students should have a legally mandated right to use humane alternatives to dissection and other classroom exercises harmful to animals. Currently, less than one in five American states have statewide laws or policies mandating student choice in dissection, with the result that some students are granted rights that others are denied. States still lacking such laws should make their enactment a high priority.

2. Dissection-choice laws should apply to students at all levels of education; currently, such laws apply only to precollege students and exclude postsecondary students, even though the validity of conscientious objection is independent of learning level.

3. IACUCs should apply more stringent restrictions on proposals for animal use in instruction and should always look for ways to piggyback teaching exercises that involve animals in ongoing research at the institution.