Some Preliminary Thoughts on Permitting Animals to Sue in Contract and Tort

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Animal protection statutes are of course extremely valuable, and they might be made even more so if they were formulated to give private rights of action to their beneficiaries—the animals themselves. But what I would like to explore here is the idea of extending common law rights of action to animals. Admittedly, permitting animals to sue in contract and tort now seems fanciful, but my hope is that this article will provide an initial step toward bringing it about.

The right to sue in contract would seem not especially useful, since animals generally lack the mental capacity to contract. However, the concept of quasi contract might be invoked on behalf of animals who were injured as a result of justified reliance on another's acts. An example might be a pet animal or a zoo animal that was abandoned after having lost its ability to survive on its own, or that was abandoned in a locale where survival on its own was impossible. The monkeys who were taught to use sign language and who were recently threatened with becoming the subjects of laboratory experiments also might have had a cause of action under this theory. Could not having taught these monkeys to use language be viewed as having created an obligation to keep them in an environment in which they could use this skill?

Actions in tort, however, present more significant possibilities, and the situations that might give rise to tort actions for animals seem much more analogous to those that give rise to tort actions for humans. They may, in fact, be identical. Suppose a man is crossing the street and is hit by a negligent motorist and suffers a broken leg. He can sue in tort for compensation for his medical bills, his pain and suffering, and any loss of income that results from the injury. Now suppose the same man had been walking his dog and had suffered the same accident, and, in addition, his dog had suffered a broken leg. Under present law, the man could recover veterinary expenses and any loss of income that resulted from the dog's injury (assuming the dog did television commercials or the like). But there could be no recovery for the dog's pain and suffering, even though the dog's pain and suffering might have been equal to or greater than the man's. Yet, as Peter Singer showed in *Animal Liberation*, there is no relevant difference between humans and animals that would justify considering the pain of one more important than the pain of the other. Incidentally, measuring a dog's pain and suffering would seem only slightly more difficult than measuring a man's.

Tort actions might also have valu-

able potential because they could lead to the questioning of conventional practices such as hunting, factory farming, and animal experimentation. Animal cruelty statutes are rarely invoked against these practices because the state's attorney must be willing to prosecute, and because criminal laws are narrowly construed. But any victim of a tort can set the wheels of justice in motion. Suppose someone, without justification, shoots your pet. If animals could sue in tort you could bring an action on behalf of your pet for his pain and suffering. Now suppose a hunter, without justification (apart from "sport") shoots a wild animal, and an animal rights activist sues on the animal's behalf for its pain and suffering. If the court attempted to rule in favor of your pet but not in favor of the wild animal, it would be faced with having to distinguish the two cases, and might realize that, from the points of view of the two animals, the cases are indistinguishable. And, since the animals would be the plaintiffs, it would be their points of view that mattered.

A final issue that must be raised is the type of remedies that should be awarded in common law actions by animals. Injunctions would be appropriate in some cases, and the species of the plaintiff would raise no conceptual problems. In cases in which monetary damages were appropriate, however, a problem would arise from the fact that animals have little use for money. A pet animal's damages could be put in trust and spent for the animal's benefit, but, unless trust expenditures were for items that the owner would not supply anyway, the damages in effect would accrue to the owners. However, spending the recovery on luxuries would not solve the problem because most animals have little need of material luxuries, and most such items (diamond studded collars, for example) are really for the owner's benefit.

Furthermore, animals should be able to recover for wrongful death as well as for personal injury, and dead animals certainly would have no use for money. (The concept of estates for animals is a can of worms that will not be opened on this occasion.) One possible way to handle monetary damages might be to have them paid to the state; awards would then still have a deterrent, though not a compensatory purpose. I would favor, however, the use of damages to fund animal rights groups working for the benefit of the injured animal's species or class (*e.g.*, zoo animals), or to fund environmental groups working for the benefit of the injured animal's habitat.

Permitting animals to sue in contract and tort would not only remedy specific injustices and provide a source of funding for animal rights groups; it might also contribute toward a change of consciousness, consisting in part of a recognition that animals' interests deserve equal consideration with humans'. As Christopher Stone wrote in *Should Trees Have Standing? — Toward Legal Rights for Natural Objects,* 45 Southern California Law Review 450, 453 (1972), "[t]hroughout legal history, each successive extension of rights to some new entity has been...a bit unthinkable." I hope that this article will at least make the extension of common law rights to animals less unthinkable.

CORRECTION — In Vol. 4, No. 3 of the *Journal*, p. 250, the reference to Dr. Peter Singer's criticisms of Australian codes on animal welfare practices was incorrectly cited as being published in the Winter 1982 edition of *Ag*: **his critique appeared in the Winter '82 edition of the Australian publication** *Outcry*.
