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

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Library of Congress
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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 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 valuable potential because they could lead to the question of whether industrial 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 in Should Trinamericans Stand? — 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 idea 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.
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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. Among other things, 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. One could not have 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 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 of 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 valuable 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 in Should Trainers Have Standing? — Toward Legal Rights for Natural Objects, 45 Southern California Law Review 450, 453 (1972), “[throughout 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 concept of common law rights to animals less unthinkable.

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