

INTRODUCTION

FINDING OUR VOICE: CHALLENGES AND OPPORTUNITIES FOR THE ANIMAL LAW COMMUNITY

By
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During a recent trip to Cornell University Law School, I had the pleasure of attending an informal question and answer session with former Supreme Court Justice Sandra Day O'Connor.¹ When asked her thoughts on what makes a successful social justice movement, she pointed to two specific elements. First, people within the movement must speak with a unified voice, and second, there must be a collective “changed mind” of the populace. Her comments were especially compelling because of two other experiences I had that same day.

On my way to Ithaca, New York, I stopped at Seneca Falls to visit the site of the nation’s first women’s rights convention convened in 1848 by leading reformers including feminist activists Elizabeth Cady Stanton and Lucretia Mott.² I also finished reading Debby Applegate’s excellent biography on Henry Ward Beecher,³ a prominent minister in the mid-1800s who was at the forefront of the anti-slavery movement. This particular convergence of events naturally resulted in my ponder-

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¹ Cornell University Law School, *Dialogue on Women in Leadership Roles with Justice Sandra Day O'Connor*, moderated by Univ. Provost Carolyn (Biddy) Martin (Oct. 22, 2007).

² Judith Wellman, *The Road to Seneca Falls* 3 (U. of Ill. Press 2004).

³ Debby Applegate, *The Most Famous Man in America: The Biography of Henry Ward Beecher* (Three Leaves Publ. 2006).

ing how the animal law movement⁴ compares to other American social justice movements, and whether it has met, or is close to meeting, the two elements for success outlined by Justice O'Connor. Is the animal law movement currently speaking with a unified voice? Are we changing the minds of the populace?

Numerous opinion polls conducted over the past ten years consistently demonstrate the public's desire for animals to be treated humanely and for animal abusers to be prosecuted aggressively.⁵ A LexisNexis search using the term "animal cruelty" resulted in 563 reported state and federal cases⁶ and 464 law review articles.⁷ The term "animal law" resulted in 82 reported state and federal cases⁸ and 393 law review articles.⁹ More generally, a Google search using the term "animal law" resulted in 9,200,200 hits.¹⁰ A similar search using the term "animal cruelty" resulted in 241,000 hits.¹¹ If these search results are an accurate indicator of public opinion and legal trends, then the public and the legal community have made their interest in the humane treatment of animals well known through polls, popular and news media, legal scholarship, and the court system. Even if we have not completely achieved the goal of changing the collective mind of the populace about issues of animal cruelty, we are certainly well on our way.

⁴ For purposes of this Introduction, the term "animal law movement" encompasses the efforts by legal professionals to "protect the lives and advance the interests of animals through the legal system" (as defined by Animal Legal Defense Fund's Mission Statement). Animal Leg. Def. Fund, *Winning the Case Against Cruelty*, <http://www.aldf.org/> (accessed Nov. 26, 2007).

⁵ David W. Moore, *Public Lukewarm on Animal Rights*, Gallup Poll (May 21, 2003) (ninety-six percent of Americans say animals deserve at least some protection from harm and exploitation, sixty-two percent of Americans support passing strict laws for the treatment of farm animals); Poll Rpt. From John Zogby, Pres., Zogby Intl., to Brad Goldberg, Pres., *Animal Welfare Trust, Nationwide Views On The Treatment Of Farm Animals* (Oct. 22, 2003) (available at <http://animalwelfareadvocacy.org/externals/AWT%20final%20%20poll%20report%2010-22.pdf>) (sixty-eight percent of Americans believe it is unacceptable to not provide farm animals protection under federal laws); Deborah J. Salem & Andrew N. Rowan, *The State of the Animals III 2005* 127 (Humane Socy. Press 2005) (in 2001, ninety percent of Americans believed it was unacceptable to confine chimpanzees in government-approved cages); Am. Prosecutors Research Inst., *Animal Cruelty Prosecution* 9 (Am. Prosecutors Research Inst. 2006) (available at http://www.ndaa-apri.org/pdf/animal_cruelty_06.pdf) (surveys show that "a large percentage of the population views the enforcement of animal cruelty laws as an important priority").

⁶ Search in LexisNexis, "Federal & State Cases, Combined" database, using the search "animal cruelty" (Nov. 10, 2007).

⁷ *Id.* using the term "animal cruelty" in the "US Law Reviews and Journals, Combined" database.

⁸ *Id.* using the term "animal law" in the "Federal and State Cases, Combined" database.

⁹ *Id.* using the term "animal law" in the "US Law Reviews and Journals, Combined" database.

¹⁰ Search in Google, using the term "animal law" (Nov. 10, 2007).

¹¹ *Id.* using the term "animal cruelty" (Nov. 10, 2007).

Whether the movement is speaking with a unified voice, however, is a more difficult question, in part, because what it means to speak with a unified voice is unclear. Does it mean that most animal protection organizations agree to focus on achieving a particular outcome, say, the universal sterilization of companion animals? Does it mean working movement-wide on achieving basic rights for a particular species, such as Great Apes? Does it mean agreeing to a broader philosophical concept, such as animal "rights" versus "welfare"? Under any of these definitions, and dozens more that we could pose, we arguably have failed to meet our goal as a movement. But let us consider another definition. Speaking with a unified voice might also mean that we agree to work toward reducing the suffering of animals by using multiple creative, and perhaps even conflicting, legal theories and methodologies to bridge the legal gap between humans and non-human animals.

David Favre, a professor at Michigan State University College of Law¹² and one of the pioneers of the field of animal law,¹³ likens the legal gap to a river.¹⁴ On one side of the river are humans, vested with the full weight and authority of being persons under the law, able to sue and be sued.¹⁵ On the other side of the river are non-human animals, firmly rooted in their status as property, enjoying none of the same protections or abilities to engage the legal system for their own benefit.¹⁶ Some writers "argue that a chasm exists between humans and animals which can be bridged only with the greatest effort, with a beach assault on the legal status quo."¹⁷ Professor Favre, however, suggests another approach: What if progress could be made without changing animals' status as property?¹⁸ Perhaps a narrower, shallower part of the river can be found, "where the property concept is not a barrier to being a participant in the legal community of today. . . ."¹⁹ Some might say that these two approaches are mutually exclusive and will work against each other in making true progress for animals. I disagree. As one saying goes, the "front is long,"²⁰ and we need the best

¹² See Mich. St. U. College L., *Faculty & Staff, David S. Favre*, http://www.law.msu.edu/faculty_staff/profile.php?prof=12 (accessed Nov. 26, 2007) (faculty profile of David S. Favre).

¹³ Leonard Egert (moderator), *Symposium: Confronting Barriers to the Courtroom for Animal Advocates: Animal Advocacy and Causes of Action*, 13 *Animal L.* 87, 88 (2006).

¹⁴ David S. Favre, *Judicial Recognition of the Interests of Animals: A New Tort*, 2005 *Mich. St. L. Rev.* 333, 336-38.

¹⁵ *Id.* at 336-37.

¹⁶ *Id.* at 336-37.

¹⁷ *Id.* at 336.

¹⁸ *Id.* at 338.

¹⁹ *Id.* at 337-38.

²⁰ See e.g. David Orton, *Is Left Biocentrism Relevant to Green Parties?*, 16 *Trumpeter* 1, 3-4 (2000), available at <http://trumpeter.athabascau.ca/index.php/trumpet/article/viewFile/144/169> (accessed Nov. 26, 2007) (stating that the founder of the deep ecology movement, Arne Naess, has a slogan that "the front is long").

legal minds looking at multiple and varied legal theories and approaches in order to find the most productive places to cross the river.

When viewed this way, this issue of *Animal Law* is evidence that the animal law movement is making significant progress toward speaking with a unified voice. Mr. Smith's treatise on the intersection between Indian law and animal law, Ms. Hilden's exploration of a contractarian view of animal rights, Ms. McCoy's critique of the recently enacted federal Animal Enterprise Terrorism Act,²¹ Ms. McNabb's discussion of the application of property law in companion animal custody disputes that arose after Hurricane Katrina, and Professor LaFrance's examination of the propriety of animal experimentation are all superb examples of the range of animal law topics being explored by legal scholars, as well as the depth and breadth of their legal and creative thinking.

We are fortunate to be witnesses to and participants in the development of the field of animal law at this particular moment in time. Although still in its infancy, animal law is rapidly changing on an almost daily basis. As the legal landscape continues to evolve, the importance of scholarly works such as those you are about to read can not be overstated. It is from this wellspring of creative legal analysis that true change will begin to occur. I hope you will enjoy reading the enclosed articles and essays and am confident you will find them as interesting, thought provoking, and inspiring as I have.

²¹ 18 U.S.C. § 43 (2006).