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## Edgy Animal Welfare

# EDGY ANIMAL WELFARE

RICHARD L. CUPP, JR.†

## ABSTRACT

Legal animal welfare proponents should not reject out-of-hand reforms that may be celebrated by some as steps toward a radical version of animal rights.<sup>1</sup> Rather, animal welfare proponents should consider the costs, risks, and benefits of all potential reforms. Some potential reforms' risks and costs outweigh their benefits. But, both to improve animals' welfare and to avoid irrelevance in an evolving society, legal animal welfare advocates should be willing to tolerate some costs and risks. Walking on the edge of slippery slopes is in some situations better than avoiding the slopes altogether. Connecticut's 2016 animal advocacy statute provides an illustration of legal reform that legal animal welfare proponents should embrace even though it presents some risks of being perceived as a step toward a radical legal personhood rights paradigm.

## I. THE SLIPPERY RHETORIC OF "ANIMAL RIGHTS"

This Essay addresses navigating slippery rhetoric and slippery slopes. A September 2017 article in the *New York Times* illustrates the kind of slippery rhetoric at issue.<sup>2</sup> The article's headline stated: *Guggenheim, Bowing to Animal Rights Activists, Pulls Works from Show*.<sup>3</sup> The article described a controversial work in a show at New York's Solomon R. Guggenheim Art Museum as "a video of 'Dogs That Cannot Touch Each Other,' in which four pairs of dogs try to fight one another but struggle to touch because they are on nonmotorized treadmills."<sup>4</sup> The article reported that the museum withdrew the show "after it had come under unrelenting pressure from animal rights supporters and critics over works in the exhibition."<sup>5</sup>

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1. For the sake of brevity, this Essay will refer to nonhuman animals as "animals."

2. See Matthew Haag, *Guggenheim, Bowing to Animal-Rights Activists, Pulls Works from Show*, N.Y. TIMES (Sept. 25, 2017), <https://nyti.ms/2ypdASP>.

3. *Id.*

4. *Id.*

5. *Id.* The reference to "critics" as well as "animal-rights supporters" in the article's text may reflect recognition that not only animal rights supporters applied pressure to the Guggenheim to pull the exhibits. However, this nuance is not reflected in the article's headline.

The People for the Ethical Treatment of Animals (PETA) was one of the organizations that challenged the Guggenheim exhibition.<sup>6</sup> PETA advocates for animal rights.<sup>7</sup> But the only other group specifically identified in the article as challenging the exhibition was the American Kennel Club (AKC).<sup>8</sup> The AKC was quoted as protesting that dogfighting “should not be displayed in any manner and certainly not as art.”<sup>9</sup>

Despite the *New York Times* headline, the AKC does not view itself as an “animal rights” organization.<sup>10</sup> The organization describes itself as “the largest purebred dog registry in the world.”<sup>11</sup> Many people who describe themselves as animal rights activists oppose breeding dogs.<sup>12</sup> In rejecting animal rights language, the AKC instead says it supports “animal welfare.”<sup>13</sup> Although it rejects animal rights, the AKC takes positions against what it views as animal cruelty, as demonstrated in the Guggenheim art exhibit protests.<sup>14</sup>

Was the *New York Times*’s headline wrong? The renowned torts scholar William Prosser wrote that the nebulous concept of proximate cause is “all things to all men.”<sup>15</sup> Few legal constructs are more slippery than proximate cause, and Dean Prosser’s quote provides an analogy. Perhaps “animal rights” in law means all things to all people.

As with proximate cause, the existence of countless shades of nuance does not prevent us from identifying in broad outline some prominent views regarding the nature of legal animal rights. Two significant interpretations of legal animal rights, one of which has a quite loose subset, may be recognized. The first, which provides a low bar, asserts that because laws exist to protect animals, animals have legal rights.<sup>16</sup> If this were the consensus definition of legal animal rights, the term’s problematic aspects would be greatly lessened, although they would still be considerable. The loose subset of this interpretation is “followed” by individuals who have not given much thought to the nature of the term *animal rights*, but

6. *Id.*

7. PETA’s mission statement describes itself as “the largest animal rights organization in the world.” *About PETA*, PETA, <https://www.peta.org/about-peta> (last visited Mar. 3, 2018).

8. *See* Haag, *supra* note 2.

9. *Id.*

10. *See About*, AM. KENNEL CLUB, <http://www.akc.org/about> (last visited Mar. 3, 2018).

11. *Id.*

12. *See, e.g., Animal Rights Uncompromised: There’s No Such Thing as a ‘Responsible Breeder,’* PETA, <https://www.peta.org/about-peta/why-peta/responsible-breeders> (last visited Mar. 18, 2018) (“[A]s long as dogs and cats are dying in animal shelters and pounds because of a lack of homes, no breeding can be considered ‘responsible.’”).

13. *See Understanding the Difference Between Animal Rights and Animal Welfare*, AM. KENNEL CLUB (Mar. 6, 2017), <http://www.akc.org/content/news/articles/difference-between-animal-rights-animal-welfare>.

14. *Id.*; Haag, *supra* note 2.

15. WILLIAM L. PROSSER, *HANDBOOK OF THE LAW OF TORTS* § 49, at 284 (3d ed. 1964).

16. The author has addressed the various meanings that might be ascribed to “animal rights” in more depth in Richard L. Cupp Jr., *Animals as More than “Mere Things,” but Still Property: A Call for Continuing Evolution of the Animal Welfare Paradigm*, 84 U. CIN. L. REV. 1023, 1041–45.

who view it simply as being good to animals. To many in the public, supporting animal rights in law may mean simply the same thing as supporting laws that promote humane treatment of animals with little or no thought given to the implications of labelling these legal protections as rights.

A much more demanding definition of legal animal rights is that they would only truly exist were animals to have some form of legal personhood and to have the power, through some form of legal guardian, to assert their interests in courts.<sup>17</sup> In addition to being more demanding, this interpretation is more explosive in its societal implications. If this version of rights were granted to all animals capable of suffering pain, society would likely undergo dramatic upheaval. Most current uses of mammals and other vertebrates (e.g., food, clothing, and the use of such animals in testing to achieve medical breakthroughs) would arguably have to end. Efforts to attain legal personhood for particularly intelligent animals such as chimpanzees are aimed at developing such rights for at least some animals to break through the legal “wall” between humans and animals.<sup>18</sup>

An animal welfare paradigm, which seeks appropriate care for animals but which rejects the notion of legal rights for animals, is presently the dominant approach to animal protection laws in the United States.<sup>19</sup> Animal welfare focuses on humans’ responsibility to balance human interests and the appropriate treatment of animals.<sup>20</sup> However, although animal welfare advocates reject rights concepts, in many or most instances the practical interests of both major groups of animal rights advocates and animal welfare may overlap.<sup>21</sup> Most plausible legal reform efforts at present are directed toward preventing animal cruelty rather than directly challenging animals’ legal status, and sincere supporters of animal welfare as well as animal rights supporters wish to prevent animal cruelty.<sup>22</sup>

Legal reform regarding animals is proceeding at a rapid pace,<sup>23</sup> and supporters of an animal rights paradigm are often its most vocal proponents. Not surprisingly, many animal rights advocates may celebrate advances in animal protection laws as steps that they hope will facilitate eventually winning recognition of legal rights and personhood for animals. As demonstrated in the *New York Times*’ Guggenheim article headline, media organizations often conflate animal welfare and animal rights.<sup>24</sup>

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17. Mary Anne Warren has provided a thoughtful discussion of the “strong” animal rights position versus a softer position still described as supporting animal rights. See generally Mary Anne Warren, *Difficulties with the Strong Animal Rights Position*, 2 BETWEEN SPECIES 163, 163–64 (1986).

18. See Richard L. Cupp, *Cognitively Impaired Humans, Intelligent Animals, and Legal Personhood*, 69 FLA. L. REV. 465, 513–17 (2017) (asserting that courts should focus on an evolving animal welfare paradigm rather than accepting animal legal personhood).

19. *Id.* at 516–17.

20. Cupp, *supra* note 16, at 1038.

21. *Id.* at 1030–34.

22. *Id.*

23. Cupp, *supra* note 18, at 470–72 (addressing the rapid evolution of public opinion and legal reform to provide more protection to animals).

24. See Haag, *supra* note 2.

This conflation may benefit proponents of more extreme interpretations of animal rights because it may promote an impression that advocating for animal protection is equivalent to advocating for a rights paradigm.

Animal welfare proponents should be concerned about the potential for a gradual slide into an animal rights paradigm, eased along by the commonplace error of conflating animal protection and animal rights advocacy. However, opposition to legal rights for animals should not equate to opposition to any reform that might be argued to provide some sort of step toward legal rights for animals. This is so even regarding reforms that may be proclaimed to be steps toward the more extreme interpretations of legal animal rights, such as support for animal legal personhood. Rather, animal welfare proponents must balance the benefits of each potential reform to animals' well-being against its risks on a case-by-case basis, and must actively support proposed reforms whose benefits in protecting animals outweigh their risks and costs. To do otherwise would not only shirk human responsibility to appropriately protect animals. It would also imperil the very existence of the animal welfare paradigm in a rapidly evolving society.

## II. CONNECTICUT'S 2016 STATUTE ALLOWING JUDGES TO APPOINT ADVOCATES FOR JUSTICE IN ANIMAL CRUELTY PROSECUTIONS: AN ILLUSTRATION OF BENEFITS OUTWEIGHING RISKS

### A. A Statute Representing the Interests of Justice

In late 2016, Connecticut enacted a statute that provides an illustration of the kind of legal reform that animal welfare proponents should embrace, despite it having some slippery-slope potential as a step toward animal legal personhood.<sup>25</sup> The 2016 law, Section 54-86n of the Connecticut General Statutes Annotated, is entitled "Appointment of advocate in proceeding re the welfare or custody of a cat or dog. Advocate's duties. Department of Agriculture to maintain list of eligible advocates"<sup>26</sup> (the Act). The Act gives judges the option of appointing a separate representative "to represent the interests of justice" in animal cruelty prosecutions involving cats and dogs.<sup>27</sup> Under the Act, judges may appoint such representatives on their own initiative or upon the motion of a party to the litigation or counsel for any party.<sup>28</sup> Judges have discretion regarding whether to appoint a representative.<sup>29</sup>

The Act provides that a list of potential representatives will be kept by the state's Department of Agriculture.<sup>30</sup> The list includes as follows:

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25. See CONN. GEN. STAT. ANN. § 54-86n (West 2016).

26. *Id.*

27. *Id.* § 54-86n(a).

28. *Id.*

29. *Id.*

30. *Id.*

[A]ttorneys with knowledge of animal law issues and the legal system and a list of law schools that have students, or anticipate having students, with an interest in animal issues and the legal system. Such attorneys and law students shall be eligible to serve on a voluntary basis as advocates under this section.<sup>31</sup>

The Act's summary described its purpose as being "[t]o permit the use of animal advocates in certain legal proceedings relating to neglected or cruelly treated animals."<sup>32</sup> Appointed advocates may do the following:

(1) Monitor the case; (2) consult any individual with information that could aid the judge or fact finder and review records relating to the condition of the cat or dog and the defendant's actions, including, but not limited to, records from animal control officers, veterinarians, and police officers; (3) attend hearings; and (4) present information or recommendations to the court pertinent to determinations that relate to the interests of justice, provided such information and recommendations shall be based solely upon the duties undertaken pursuant to this subsection.<sup>33</sup>

### *B. The Act's Slippery-Slope Risks*

Virtually all legal reforms providing stronger protections for animals have at least some potential to contribute to the slipperiness of a slope that could cause society to slide downward into a harmful animal rights legal paradigm. This is because any time law evolves to give more protections to animals it brings legal requirements regarding them at least a bit closer to legal requirements regarding humans. But, of course, the existence of some risk of harm emphatically cannot be a basis for rejecting all pro-animal reforms. Some risks are great, but many risks are manageable. Some potential reform would dramatically improve animals' welfare, and some potential reform would only marginally or debatably improve their welfare. These variables must be balanced in determining whether a particular reform measure is desirable.

Some groups that might be associated with supporting an animal welfare paradigm apparently concluded that the Connecticut Act's risks or utility costs outweighed its benefits and thus opposed the animal advocate bill at least at some point along its path toward becoming a law.<sup>34</sup> The AKC, which, as noted above, describes itself as an animal welfare proponent<sup>35</sup> and which was noted in the *New York Times* article described above as one of the groups opposing the Guggenheim exhibits on animal cruelty

31. *Id.* § 54-86n(c).

32. H.B. 5344, 2016 Gen. Assemb., Reg. Sess. (Conn. 2016) (enacted).

33. CONN. GEN. STAT. ANN. § 54-86n(b) (West 2016).

34. *See, e.g.*, Steve Pessah, *Animal "Advocates" Bill Resurrected in Connecticut Legislature, Hearing Scheduled 4/1*, AM. KENNEL CLUB (Mar. 30, 2015), <http://www.akc.org/government-relations/legislative-alerts/connecticut-house-bill-6187>.

35. *See supra* note 10 and accompanying text.

grounds,<sup>36</sup> at least initially opposed the Connecticut law.<sup>37</sup> It listed among its concerns “the potential for legal confusion about who will be ultimately responsible for making decisions impacting animals if an advocate participates in a case, and providing advocates akin to guardians ad litem that are traditionally used to protect the interests of minors and other people lacking legal capacity.”<sup>38</sup>

The Connecticut General Assembly’s Judiciary Committee released a report dated March 28, 2016, that reflected opposition from two other animal-related organizations at that time.<sup>39</sup> A representative of the Connecticut Federation of Dog Clubs and Responsible Dog Owners, Inc.’s opposition was described as follows:

The CFD believes this measure is ill advised and should be defeated. Third party interference with the ownership rights of animal owners will degrade the rights of all animal owners. Since in the case of animal cruelty allegations, animal welfare is already overseen by state and local officials, appropriate safeguards currently exist to ensure animal cruelty is identified and punished. This bill is not necessary for the adjudication process.<sup>40</sup>

The Connecticut Veterinary Medical Association (CVMA) also opposed the bill, at least at that time.<sup>41</sup> The CVMA representatives’ opposition was described as follows:

Animals already enjoy special legal protections. We have concerns that the creation of animal advocates may at some point in the future be used to interfere with medical choices made by an animal owner and if those choices, although not cruel, are perceived by another as inadequate[, w]e do not want it to interfere with the veterinary client relationship in making medical decisions.<sup>42</sup>

This Essay notes “at least at that time” regarding some groups’ opposition<sup>43</sup> because the legislature made a significant amendment to the bill after the March 2016 Judiciary Committee report that reflected some of the opposition,<sup>44</sup> and the opposition may have been voiced before this significant change.

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36. See *supra* note 8 and accompanying text.

37. See Pessah, *supra* note 34.

38. *Id.*

39. CONN. GEN. ASSEMB. J. COMM. JUDICIARY, JOINT FAVORABLE REPORT (Conn. 2016), <https://www.cga.ct.gov/2016/JFR/h/2016HB-05344-R00JUD-JFR.htm>.

40. *Id.*

41. *Id.*

42. *Id.*

43. See *supra* text accompanying note 41.

44. See *infra* notes 45–46 and accompanying text.

The amendment to the Connecticut bill's language in April 2016 significantly lessened, but did not eliminate, the law's slippery-slope potential. A version of the bill dated April 13, 2016, set forth that the appointed advocates would "advocate for an animal's best interests or the interests of justice."<sup>45</sup> Two weeks later, a revised version of the bill dropped the language addressing advocating for "an animal's best interests," and instead focused only on a charge "to advocate for the interests of justice."<sup>46</sup> This revised approach setting forth only that the advocate would represent the interests of justice is in essence reflected in the law's final version.<sup>47</sup>

As addressed below, assigning an advocate for the interests of justice is substantially different from, and substantially less problematic than, the earlier language of advocating for the animal's best interest or the interests of justice.<sup>48</sup> But part of the Act's ongoing slippery-slope risk is that even with the significantly less dangerous language, the public may believe that Connecticut has stepped closer to treating animals like humans than is actually the case. If such misperceptions develop, they could lend an unmerited sense of legitimacy to concepts such as animal legal personhood.

For example, in June 2017, National Public Radio's (NPR) website published an article entitled *In a First, Connecticut's Animals Get Advocates in the Courtroom*.<sup>49</sup> The article's first sentence read, "A Connecticut law makes it the first state to provide animals with court-appointed advocates to represent them in abuse and cruelty cases, similar to laws that provide for victim's or children's advocates."<sup>50</sup> Dr. Nancy Halpern, an attorney and veterinarian who writes for the blog *Animal Law Update* from an animal welfare perspective, challenged NPR's spin on the Act.<sup>51</sup> She blogged, "[d]espite that representation, the law is *not similar* to others providing for representation of children," and she highlighted the statute's sole focus on advocates representing the interests of justice.<sup>52</sup>

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45. CONN. GEN. ASSEMB. OFFICE LEGIS. RES., OLR BILL ANALYSIS: SHB 5344 (Conn. 2016), <https://www.cga.ct.gov/2016/BA/2016HB-05344-R000591-BA.htm>.

46. CONN. GEN. ASSEMB. OFFICE LEGIS. RES., OLR BILL ANALYSIS: SHB 5344 (AS AMENDED BY HOUSE "A") (Conn. 2016), <https://www.cga.ct.gov/2016/BA/2016HB-05344-R010740-BA.htm>.

47. The enacted Act's wording is slightly different but essentially the same: in relevant part it reads "to represent the interests of justice." CONN. GEN. STAT. ANN. § 54-86n (West 2016). The April 27, 2016 version in relevant part read "to advocate for the interests of justice in certain proceedings involving animals." CONN. GEN. ASSEMB. OFFICE LEGIS. RES., OLR BILL ANALYSIS: SHB 5344 (AS AMENDED BY HOUSE "A") (Conn. 2016), <https://www.cga.ct.gov/2016/BA/2016HB-05344-R010740-BA.htm>.

48. See *infra* notes 49–52 and accompanying text.

49. Laurel Wamsley, *In a First, Connecticut's Animals Get Advocates in the Courtroom*, NPR (June 2, 2017, 5:46 PM), <https://www.npr.org/sections/thetwo-way/2017/06/02/531283235/in-a-first-connecticuts-animals-get-advocates-in-the-courtroom>.

50. *Id.*

51. Nancy E. Halpern, *Connecticut Advocates for Justice, Not Animals*, FOX ROTHSCHILD LLP (June 14, 2017), <https://animallaw.foxrothschild.com/2017/06/14/connecticut-advocates-for-justice-not-animals>.

52. *Id.*

Dr. Halpern's concerns are legitimate. Further, to the extent that the Act is perceived as making animals more like children in the eyes of the law, it may be viewed as creating a stepping stone toward the harmful concept of animal legal personhood. No legal reform may be considered in complete isolation without regard for how it might influence other potential changes. Thus, the Connecticut Act creates a bit of a slippery slope. However, its slope is not slippery or steep enough to make support for the statute unwise, particularly in light of the law's potential benefits for animal welfare. It presents a slope that should be traversed, but thoughtfully traversed to limit the risk of harm.

### C. *The Connecticut Act's Anti-Cruelty Benefits Outweigh Its Risks*

As introduced above, while it was still a bill, the Connecticut Act's originally proposed language was more dangerous than the language the legislature ultimately adopted. The earlier draft's language that included advocating for "an animal's best interests" was deleted, and as enacted the Act focused only on a charge "to advocate for the interests of justice."<sup>53</sup> Professor Jessica Rubin, who was active in initiating the Act, has explained that this change was made in response to concerns that allowing the advocate to represent the interests of the animal "would create legal standing for animals."<sup>54</sup> Professor Rubin wrote:

Initially I was reluctant to accept this change because I feared that it would weaken the advocate's role. In fact, in practice it has proven to be an excellent change because the phrase 'interests of justice' allows consideration of a wider class of interests, including those of community safety, other animals and other potential victims.<sup>55</sup>

Directing only that the advocate pursue the interests of justice rather than including advocacy for the best interests of the animal makes the advocate's role more akin to that of a prosecutor than that of a guardian ad litem. The Animal Legal Defense Fund recognized this in an article published on its website analyzing the Connecticut Act.<sup>56</sup> The article noted:

[S]ome have compared the court-appointed advocates allowed under Desmond's Law [an informal name advocates have used for the law] to *guardians ad litem*, who can be appointed by courts to represent the interests of unborn humans, infants, minors, and mentally incompetent persons for the duration of a legal proceeding.<sup>57</sup>

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53. See CONN. GEN. ASSEMB. OFFICE LEGIS. RES., OLR BILL ANALYSIS: SHB 5344 (AS AMENDED BY HOUSE "A") (Conn. 2016), <https://www.cga.ct.gov/2016/BA/2016HB-05344-R010740-BA.htm>.

54. JESSICA RUBIN, *DESMOND'S LAW: LEGISLATION AND IMPLEMENTATION MANUAL* 7 (2017).

55. *Id.* at 7–8.

56. Nicole Pallotta, *Unique Connecticut Law Allows Court-Appointed Advocates to Represent Animals*, ANIMAL LEGAL DEF. FUND (June 21, 2017), <http://aldf.org/blog/unique-connecticut-law-allows-court-appointed-advocates-to-represent-animals>.

57. *Id.*

The article responded to these comparisons by noting the following:

Though an important and innovative legal development, the representation provided for under Desmond's Law seems to stop short of granting *guardian ad litem* status. According to the statutory language, advocates are appointed to represent the "interests of justice" rather than those of the animal. In this sense, Desmond's Law advocates share the same responsibility as prosecutors (who also have a duty to act in the interest of justice in all criminal cases) and does not specifically position the advocates as prioritizing the needs of animal victims. However, the interests of justice are likely to coincide with the interests of the animal in an abuse case, or will help prevent future victimization of other animals (e.g. rehoming the animal rather than returning her to an abusive owner, or sentencing provisions that prohibit a convicted abuser from having animals for a set period of time).<sup>58</sup>

The Act's legislative history reflects that much of the testimony offered in support of the Act focused on animal and human welfare arguments rather than on trying to make dogs' and cats' legal statuses akin to children's legal status. Two recurring themes in testimony provided in support of the Act were the belief that research resources provided by the volunteers would be helpful to prosecutors and judges in attaining appropriate convictions, and that more effective prosecutions of animal abusers would protect against abuse of humans because those who abuse animals often also abuse humans.<sup>59</sup>

The American Society for the Prevention of Cruelty to Animals (ASPCA) expressed support illustrative of the first recurring theme. The ASPCA's support was summarized as follows:

The appointment of court advocates in cruelty law prosecutions would likely result in proceedings that are more balanced, efficient, and just. 80% of all cases end in withdrawal or dismissal, while 1.5% [of the] cases are charged as felonies. This is at no cost to the legal system to quickly obtain and share information with each party and the court.<sup>60</sup>

The second recurring theme was illustrated by the Connecticut Bar Association's Animal Law Section.<sup>61</sup> This group's support was summarized as follows:

This bill will facilitate meaningful outcomes in animal abuse cases. This is critical because of the significant link between animal abuse and domestic, as well as other types, of violence. The FBI has recently decided to collect statistics on animal abuse the way it does for serious crimes. By appointing an advocate at the court's discretion, the court

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58. *Id.*

59. See *infra* notes 60–62 and accompanying text.

60. CONN. GEN. ASSEMB. J. COMM. JUDICIARY, JOINT FAVORABLE REPORT (Conn. 2016), <https://www.cga.ct.gov/2016/JFR/h/2016HB-05344-R00JUD-JFR.htm>.

61. *Id.*

has the means to avail itself of more in-depth information related to a serious offense.<sup>62</sup>

This theme, which was echoed by multiple other supporters of the bill,<sup>63</sup> reflects a primary rationale relied upon by many states when they adopted legislation allowing extreme animal abuse to be charged as a felony rather than as only a misdemeanor. Until fairly recently most states did not allow severe animal cruelty to be charged as a felony.<sup>64</sup> However, by 2014, all states had amended their laws to allow felony charges in appropriate cases.<sup>65</sup> Many states justified these enhanced penalties at least in part based on the threat animal abusers pose to other humans.<sup>66</sup> This reflects that the statute is not even solely focused on animal welfare; it is good for humans as well as for animals.

For several reasons—among them, that the Act provides free legal resources that may help remedy the very low animal cruelty conviction rate in Connecticut; that the Act focuses on the broad goal of pursuing the interests of justice rather than on using the “best interests” paradigm created for cases involving children; that attaining convictions for animal abuse may protect humans from abuse as well; and that under the Act judges have discretion regarding whether to utilize advocates<sup>67</sup>—in the author’s view, the Connecticut Act’s benefits outweigh its limited slippery-slope risks. The Act is a reminder that despite the foundational differences between animal welfare supporters and animal rights supporters, in many instances they may be able to come together regarding practical steps to help animals.

#### *D. Embracing Legal Reform from an Animal Welfare Perspective*

Animal welfare supporters should consider two realities. First, as addressed above, virtually all animal-protection legal reform entails some animal rights slippery-slope risks.<sup>68</sup> Second, humans’ moral responsibility regarding animals demands that animal welfare advocates support appropriate reform to lessen animals’ suffering. The two realities connect in consideration of whether proposed reform is appropriate. In many cases, such as with the Connecticut advocacy Act, proposed reforms that present a particularly slippery slope regarding animal personhood can and should

62. *Id.*

63. *See, e.g., id.* (providing statements from several supporters of the bill).

64. *See* ANIMAL LEGAL DEF. FUND, JURISDICTIONS WITH FELONY ANIMAL ABUSE PROVISIONS (2012), [http://aldf.org/downloads/Felony\\_Status\\_List%204-12.pdf](http://aldf.org/downloads/Felony_Status_List%204-12.pdf).

65. Chris Berry, *All 50 States Now Have Felony Animal Cruelty Provisions!*, ANIMAL LEGAL DEF. FUND (Mar. 14, 2014), <http://aldf.org/blog/50-states-now-have-felony-animal-cruelty-provisions>.

66. *See, e.g.,* Corwin R. Kruse, *Baby Steps: Minnesota Raises Certain Forms of Animal Cruelty to Felony Status*, 28 WM. MITCHELL L. REV. 1649, 1668–69 (2002) (asserting that making some forms of animal cruelty a felony in Minnesota “would have been impossible” absent evidence of a link between animal cruelty and cruelty toward humans).

67. *See* CONN. GEN. STAT. ANN. § 54-86n(a) (West 2016).

68. *See supra* Section II.B.

be altered to achieve the same concrete benefits for animals. Amending the Connecticut bill to eliminate the “animal’s best interests” language<sup>69</sup> and to focus on the advocacy for the interests of justice apparently did not weaken its effectiveness. Further, the amendment significantly lessened concerns that creating this new kind of statute could be a step toward creating legal standing for animals.

In addition to thoughtfully balancing the risks and benefits of proposed legal changes regarding animals in deciding what to support, animal welfare advocates can lessen slippery-slope concerns by communicating about them. In a 2016 article in the *Cincinnati Law Review*, the author highlighted the significance of social scientists’ paradigm of “framing” in communications relating to animals’ legal status.<sup>70</sup> Framing is “to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation.”<sup>71</sup>

The Connecticut Act illustrates the significance of framing in animal law issues. Framing the Act primarily as a step toward treating animals the way we treat humans in courts would likely lead to significantly different perceptions of the law than framing it as providing courts access to helpful legal research and assistance to further the pursuit of justice in animal cruelty cases, while highlighting that the law does not treat animals as persons.

Animal welfare proponents supporting worthy legal reforms such as the Connecticut Act can mitigate slippery-slope concerns by participating in the framing process, emphasizing how the reforms are desirable within an evolving and vibrant animal welfare paradigm. Just as the framing of sensible animal welfare reforms as steps toward animal rights makes those reforms more dangerous, framing animal welfare reforms appropriately in terms of human moral responsibility—rather than as steps toward legal rights and personhood—lessens the reforms’ risks.

In this period of rapid evolution regarding attitudes toward animals, society is appropriately demanding thoughtful reform, and those committed to an animal welfare paradigm must heed this call. Failing to walk out on some slippery slopes would not be good for animals and would lead to societal irrelevance. It must be recognized that, in addition to the dangers of walking on slippery slopes, there are costs in avoiding them altogether

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69. CONN. GEN. ASSEMB. OFFICE LEGIS. RES., OLR BILL ANALYSIS: SHB 5344 (AS AMENDED BY HOUSE “A”) (Conn. 2016), <https://www.cga.ct.gov/2016/BA/2016HB-05344-R010740-BA.htm>.

70. Cupp, *supra* note 16, at 1038–40.

71. Robert M. Entman, *Framing: Toward Clarification of a Fractured Paradigm*, 43 J. COMM. 51, 52 (1993).

when the slopes are inevitable features of good paths toward an important destination.<sup>72</sup>

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72. See Cupp, *supra* note 16, at 1050 (regarding the animal welfare paradigm's need to embrace evolution despite dangers: "Sometimes treading with thoughtful preparation on a slippery slope may be safer than trying to permanently stand still on a narrow ledge of a steep cliff.").