

Let's Look at Using the Legal Term "Guardian" Rather Than "Owner"

Is This a Necessary, or Even a Good, Idea?

Genny Wall, AFA Avian Welfare Chair

"Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficial. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding."

Louis D. Brandeis,
Justice of the
United States Supreme Court

DOES IT MAKE A DIFFERENCE WHICH WORD WE USE? ISN'T "GUARDIAN" A KINDER WORD THAN "OWNER?"

Animal Rights activists are pushing nationwide for federal, state, and local laws that use the term "Guardian" rather than "Owner" with respect to our relationship with our animals. What does this mean to us as animal owners and keepers? Is it important that we understand the legal and practical ramifications of the words "Guardian" and "Owner?" I believe that it is.

I have no argument with anyone who wants to see animals kept in a humane way, and I support legislation that is truly designed and implemented to protect animals and ensure their welfare. However, the humane treatment of animals is really not the issue when we look at what is behind this push to substitute the term "Guardian" for "Owner" in the minds of the public and in our legal system.

ROUND ONE – THE "WARM FUZZIES" CONVINCING THE PUBLIC TO ACCEPT THE USE OF THE TERM GUARDIAN INSTEAD OF "OWNER"

The animal rights public argument is that this kinder, gentler term "Guardian" more accurately reflects the position which humans should occupy with respect to animals. They say that it will make people more responsible for the animals in their care. However, despite the appealing packaging

and propaganda, animal rights activists who have an understanding of the law understand the legal and practical applications of the term "Guardian," and they use it to advance the animal rights agenda of *no use of animals by man – not for food, fiber, research, entertainment, or as pets.*

In legal terms, the rights and obligations of a "Guardian," and the Guardian's abilities to resist intrusion from outsiders, are limited when compared to the rights and abilities of an "Owner." A person who owns property has rights under the U. S. Constitution not to be deprived of that property without Due Process of Law. In contrast, a "Guardian" does not enjoy the same level of Constitutional protections afforded to an "Owner."

Due Process can require a much higher standard of proof and more structured and stringent legal

procedures to remove an animal from an "Owner" than from a "Guardian." A "Guardian" can be easily and quickly appointed, and just as easily and quickly removed, by a judge, often without a hearing or a trial.

In some courts, a simple statement by an "interested party" can suffice to allow the judge to appoint or remove a Guardian. Again, in contrast, an Owner cannot be so appointed and removed, although the physical custody of the owner's animals can be taken from him if he neglects or abuses his animals. In such a case the owner is entitled to participate in, and oppose, legal proceedings regarding his animals – legal proceedings in which he is entitled to know the evidence against him and in which he is entitled to present a defense. Despite claims by animal rights activists that tell us otherwise, an "Owner" does not have the absolute right to neglect or abuse his animals, and in most jurisdictions in this country there are laws against animal abuse and neglect. Where there are not such laws, there should be, and I support enacting such legislation in those jurisdictions.

In essence, if we are "Guardians" rather than "Owners" of our animals, it is the State (i.e. the government), and not the individual, who owns the animal.

If we are "Guardians" rather than owners, then ultimately it will be the State, and not the individual, who has the power to say who will care for the animal, how it will be cared for, where it will reside, what medical treatments it will or will not undergo, and who will make all the other decisions regarding the health, welfare, life and death, or destruction, of that animal. I do not believe animal ownership and care is a function which is, or which should be, properly exercised by the State. Further, when we say the "State" is the owner of the animal, it is unclear which arm of the "State" will have and exercise this ownership. If the federal, state, and local jurisdictions all have "Guardianship" laws, and if they conflict, who will prevail and

which laws will be effective? The confusion about who is ultimately responsible for the care of animals subject to "Guardianship" laws can lead to more hardship and suffering of the animals who are allegedly neglected or abused by their owners. Also, the humans who are subjected to these conflicting laws, who care about their animals, will also suffer as decisions regarding the care and custody of their animals remain in legal no-man's land.

At this time there is no State that has the financial or practical ability to assume this role as animal owner, or to carry it out in a way that would benefit animals. If history provides us any lessons, history has shown us that when a State is unprepared to carry out a role that has been imposed upon it, the State delegates that function. So, if the State becomes the owner of our animals, when that delegation takes place, who will the States delegate to? The former "Owners?" The citizenry at large? Animal Control? USDA? Animal Rights organizations? Local or national rescue organizations? What is the point of making the State the owner of animals if the State is not prepared to perform this function and must delegate this right and duty? It seems pointless to me to engage in this kind of useless legislation, if in fact the goal is to make things better for animals. But as I have said, that is not the real purpose behind the push for Guardianship" for animals.

So, what is the true purpose behind this push for using the term "Guardian"? From my legal perspective I see that purpose to be to achieve public acceptance for the concept of animal "Guardians" in a general sense, so that the door can be opened to animal rights activists who don't believe humans should have or keep animals and who seek the removal of animals from their owners on simple, perhaps unfounded, allegations of abuse or neglect.

Litigation to defend against such proceedings is expensive, and can be exhausting, both in financial

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terms and in terms of personal suffering. Many people will relinquish animals rather than defend themselves in a legal proceeding to remove animals from their custody.

If animal rights advocates can get the public to accept the term "Guardia" (Round One) the move to the next step (Round Two) is deceptively simple.

ROUND TWO – THE REAL BATTLE BEGINS – GUARDIANS AD LITEM

I recently attended a parrot welfare meeting at which a speaker was an animal rights attorney who has stated that he believes that his 4-year-old son is no different from a chimp, and who advocates extending legal rights to certain animals. This attorney stated that it was a goal of animal rights advocates to establish "Guardians ad Litem" for animals. The members of the audience, not being attorneys, did not seem to grasp the serious legal implications of this statement and did not seem to be alarmed by it. However, being a practicing attorney, I am quite familiar with the term "Guardian ad Litem" – literally, it is Latin for Guardian for Lawsuit. A "Guardian ad Litem" is a person appointed by a court whose sole purpose and function is to engage in litigation on behalf of an incapacitated person.

Despite the "warm fuzzies" of Round One of the Guardian campaign, there is nothing in the definition or law of Guardian ad Litem that provides for, or requires that, the Guardian ad Litem care for the incapacitated person. The sole function of the Guardian ad Litem is to engage in litigation. As this animal rights attorney made clear, the animal rights goal is to extend this function to animals so that lawsuits can be brought on behalf of animals by animal rights activists. The attorney said activists are already "waiting in the wings" to receive these appointments.

There are many existing laws and legal procedures that the federal government, the States, and local governments, can use against Owners to protect animals from abuse and neglect by their owners, within the bounds of Due Process.

Even so, animal rights activists continue to push for more federal, state, and local laws regulating animals and their care. When evaluating such proposed animal laws, I examine each proposed law with an eye to whether or not it actually helps animals, and support it or oppose it on that basis.

Animal activists claim that the government fails to use these existing animal protective laws and

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legal procedures, and that this alleged failure by our government justifies delegating that protective function to animal rights activists who are waiting to be appointed Guardians ad Litem. I do not believe that this approach is wise, or appropriate, or justified, as a response to the supposed failure of our government to enforce laws already in existence regarding animal neglect or cruelty. The appropriate response is to enforce the animal welfare laws already on the books, and where those laws are weak or non-existent, to strengthen them. It is also important to note that, whether or not such lawsuits by Guardians ad Litem for animals can be justified, they are very expensive to the animal Owner to defend against. I asked this attorney during the question and

answer period following his talk, (1) who would care for animals removed from their owners under this plan? and (2) who would finance such litigation. He did not answer either of my questions.

The powerhouse Animal Rights organizations presently spend virtually nothing from their huge annual revenues or assets on the direct care of animals. I see no reason to believe that if they are successful in removing animals from their owners in large numbers they will miraculously change their modes of operation. The smaller rescue groups are barely able to afford the care of the animals that presently come into their care. I see no reason to believe rescuers will be able to care for animals removed from their owners by Guardians ad Litem.

Perhaps the attorney did not answer my questions because the answer is obvious – if no funds are available for the care of removed animals, euthanasia is in all likelihood the only option for most removed animals. The answer to my second question is also obvious – we, the taxpayers, the financial supporters of the State, would pay for this litigation. We will all become the financial backers of the animal rights agenda if we make the State the owner of our animals.

In my view, this animal rights attorney's stated goal of creating Guardians ad Litem for animals, and of allowing litigation to be pursued on behalf of animals, will do nothing to provide for or ensure the welfare of animals in our care. On the contrary, it appears quite clear to me that the goal of Round Two is to remove animals from the care and custody of their owners, not to provide for the care of the animals. The goal of Round Two is political, not humane.

ROUND THREE – WILL WE SEE THE ULTIMATE REMOVAL OF ANIMALS FROM THEIR OWNERS, AND EUTHANASIA?

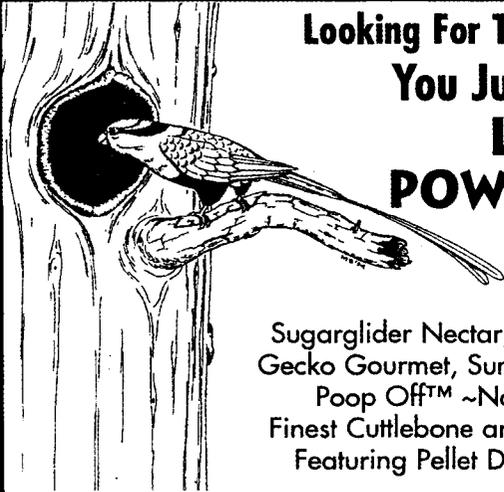
It saddens me to say it, but I believe that ultimately euthanasia

of large numbers of animals will be the end result of a switch to using the legal term "Guardian" for animals instead of using the term "Owner." Owners have a vested interest in maintaining their animals, regardless of what their purpose is in maintaining that animal, whether for food, fiber, research, entertainment, or as a pet. That vested interest cannot be taken from an Owner without proof of neglect or abuse, that is, unless the Owner voluntarily relinquishes the animal. A Guardian has no such vested interest. If we accept the concept of legal Guardians for animals, and if the legal status actually changes, I anticipate the day will come when people finally realize what the legal ramifications of that term mean, and, when they come to that realization, it will be our animals who suffer. When people finally understand that as "Guardians" their animals can be taken from them at any time, I anticipate that the human / animal bond will be diminished – not voluntarily, but out of necessity. It is common sense to me, should the day come when we are no longer "Owners," but merely "Guardians," that in order to avoid the emotional harm that would result from having his animals taken from him, a "Guardian" will become "guarded," and will not take as much interest in what happens to the animals under his care as he would if he were an "Owner." Animal rights advocates claim that "Owners" treat animals as a commodity. I see it in reverse. I see the day when "Guardians" will treat animals as a commodity, as an object not to be bonded with in the event that bond is broken by the actions of the State.

Not a pretty picture, and I hope that day never comes.

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