

Comment

A Rabbit, is a rabbit, is a rabbit....Not under the Law

By Joan E. Schaffner¹

Animals are classified under the law as property. Domestic and captive wild animals are the personal property of their human owners,² while free-roaming wildlife are deemed the property of the common and owned as a “resource” by the sovereign with jurisdiction over the land on which the free-roaming animals live.³ This property classification is fundamental to the law’s treatment of animals because it grants dominion to human owners over animals. The animal’s inherent interests, if legally recognized at all, are trumped by human interests in every case. Because property is a thing for human use, and animals are property, the law governing animals is organized around the humans’ use of the animal. The result is that a given animal will have different protection under the law depending upon the owner’s use and independent of the animal’s inherent interests. Let’s see what this means for a rabbit in the United States.

Rabbits in the United States serve virtually every human purpose. Rabbits live in the wild as a resource for the common and hunted for sport, are used in research or bred for sale, and live in our homes as our companions. Rabbit’s flesh is eaten as food and their fur used for clothing. What legal protections does a rabbit have in the United States? It depends. The rabbit used for “companionship” arguably has the most protection under U.S. law governed by state anti-cruelty statutes. State anti-cruelty statutes prohibit any person from cruelly treating, starving, tormenting, beating, overworking, or otherwise abusing an animal⁴ and require the owner to provide their animal with sufficient food and water, adequate shelter, veterinary care and humane treatment.⁵ Notably, the anti-cruelty statutes do not prohibit the killing of one’s own animal so long as the animal is killed humanely. In most states, rabbits used for any other purpose are exempted from the anti-cruelty law and must look elsewhere for legal protection.⁶

The rabbit used for research, bred for sale, or exhibited in public for entertainment, to the extent such activity affects interstate commerce, is provided some protection under the federal Animal

¹ Joan Schaffner is an Associate Professor of Law at the George Washington University Law School in Washington D.C. and a member of the Advisory Board of the Global Journal of Animal Law.

² See *Sentell v. New Orleans & C.R. Co.* 166 U.S. 698, 700-01 (1897).

³ See *Geer v. Connecticut*, 161 U.S. 519, 526 (1896) (quoting Napoleonic Code arts. 714, 715).

⁴ See e.g. 510 ILC § 70/3.01 (West 2013).

⁵ See e.g. 510 ILC § 70/3.

⁶ See Pamela Frasch, et al., *State Anti-cruelty Statutes: An Overview*, 5 ANIMAL L. 69, 75-79 (1999).

Welfare Act (AWA).⁷ The AWA requires that the Secretary of Agriculture “promulgate standards to govern the humane handling, care, treatment, and transportation of animals . . . [which] shall include minimum requirements for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species.”⁸ Dealers and exhibitors must handle animals “in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort.”⁹ Researchers shall “ensure that animal pain and distress are minimized.”¹⁰ Notably, dealers, exhibitors, and researchers may use the rabbit for such purposes so long as they do not inflict “unnecessary” discomfort, pain or suffering. In other words, the human’s use trumps the rabbit’s interest in being free from such harm.

Interestingly, the protections afforded the rabbits covered under the AWA are similar to the protections afforded the companion rabbit under the anti-cruelty statutes in that each require the owner (or another in the case of the companion animal) to refrain from inflicting unnecessary suffering on the rabbit and provide minimal humane care. The key difference for the rabbit, of course, is that to be used for companionship is significantly more humane and enjoyable than to be used for research, entertainment, or breeding. Moreover, the means of enforcement (and incentive to enforce) the respective provisions differ widely. The AWA is enforced exclusively by the U.S Department of Agriculture, historically noted for its under-funding and relatedly under-enforcement of the AWA.¹¹ The anti-cruelty statutes are enforced by the local jurisdiction humane law enforcement and/or police. While the level of enforcement varies from jurisdiction to jurisdiction; in recent years, the incentive to enforce the anti-cruelty laws has risen given the extensive study into the link between animal cruelty and human violence.¹²

The rabbit used for food and the free-roaming rabbit have very few protections. The rabbit used for food is expressly exempt from the AWA¹³ and in fact receives no legal protection while on the farm.¹⁴ The free-roaming rabbit, living in the wild, primarily is governed under state game laws which allow for the rabbit to be hunted and trapped often using any method available,¹⁵ independent of the harm caused the rabbit.

⁷ 7 U.S.C. §§ 2131-2159 (West 2013).

⁸ 7 U.S.C § 2143 (a)(1)-(2)(A).

⁹ Handling of Animals, 9 C.F.R. § 2.131(West 2013).

¹⁰ 7 U.S.C § 2143 (a)(3)(A).

¹¹ See e.g. Government Accountability Office, *USDA’s Oversight of Dealers of Random Source Dogs and Cats Would Benefit from Additional Management Information and Analysis*, GAO-10-945 (2010).

¹² See e.g. Randall Lockwood, *Animal Cruelty and Violence Against Humans: Making the Connection*, 5 ANIMAL L. 81, 81 (1999); see also National Link Coalition, <http://nationallinkcoalition.org/>.

¹³ See 7 U.S.C. § 2132(g)(3) (defining “animal” to exclude “farm animals”).

¹⁴ The Humane Methods of Slaughter Act, 7 U.S.C. § 1902, and the Twenty-Eight Hour Law, 49 U.S.C. § 80502 (a), provide minimal protections for the rabbit during slaughter and transport.

¹⁵ See e.g. *State Prohibitions on Leghold, Kill and Snare Traps* available at http://www.bancrueltraps.com/a_about.php (listing eight states out of fifty).

In sum, the law does not recognize the rabbit as a sentient being with inherent interests that must be protected independent of their owner's use for them. Instead, the patchwork of laws that govern the use of animals by humans allow humans to physically and emotionally harm animals so long as the harm imposed is necessary to achieve a legally justified purpose, virtually any purpose other than the malicious torture of an animal for pure banal pleasure.

The goal of animal advocates is to work to change this paradigm, to not only recognize animals as sentient beings,¹⁶ but to protect their inherent interests independent of their use by humans. Perhaps a first step towards this goal is to organize the law around the animal rather than their use.¹⁷ At least by doing so, the inconsistent treatment of the same animal, is made explicit, and may help move the law towards treating the rabbit, as a rabbit, and not as a thing to facilitate or satisfy human use.

¹⁶ See e.g. The Treaty on the Functioning of the European Union, art 13.

¹⁷ The United States Congress has enacted two statutes designed to protect specific animals by regulating the take and use of such animals—the Marine Mammal Protection Act (MMPA), 16 U.S.C. § 1361 *et seq.*, and the Bald and Golden Eagle Protection Act (BEPA) 16 U.S.C. § 668. In each case, these specific animals were deemed to have special significance to humans (and/or the country) and were nearing extinction because of human depredation. See the MMPA, *id.* at § 1361 (“The Congress finds that—(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities; . . . (6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem.”); Alberto Iraola, *The Bald and Golden Eagle Protection Act*, 68 ALB. L. REV. 973 (2005) (“In 1782, the Continental Congress adopted the bald eagle as the symbol of our emerging nation. In 1940, to protect this national symbol from extinction, Congress enacted legislation popularly known as the Bald Eagle Protection Act.”). While analysis of the success of these statutes in protecting the inherent interests of the specific animals covered is beyond the scope of this comment, it suggests that tailoring laws to provide the proper protection for specific animals is an alternative approach that may provide greater protection for the animals' inherent interests. Note that at least two other U.S. statutes focus on specific animals, the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 – 712 (enacted to implement treaties with other nations) and the Wild Free-Roaming Horses and Burros Act of 1971, Pub. L. 92-195, 16 U.S.C. § 1331 (enacted for the same purposes as the MMPA and BEPA with Congress finding and declaring “that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene”). However, these statutes only protect a subset of the animals noted, e.g. birds who are migratory and wild horses and burros, leaving all other birds, horses and burros unprotected under the Acts.