Introduction

This chapter provides a general overview of animal law in the United States. It begins by offering a brief overview of the United States legal system. It then discusses animals’ legal status as property and various efforts to challenge that status through law reform. Finally, it describes the principal state and federal laws that regulate human treatment of animals, including criminal anti-cruelty laws and laws regulating the use of animals in agriculture, scientific research, exhibition, the wild, and the pet trade.

Background

A discussion of animal law in the United States should begin with an acknowledgement of the influence of settler colonialism on the country’s legal and social views about the non-human world. Pre-colonial Indigenous cosmologies entailed strong commitments to the ethical significance of animals and the non-human world, viewpoints that many contemporary Native American communities continue to hold (Deer and Murphy, 2017). While it is impossible to homogenise the diversity of tribal belief systems, and we should be sceptical about stereotypes of “the ecological Indian” (Smithers, 2015), Indigenous ontologies have historically conceived of the natural world non-dualistically and non-hierarchically.

The European colonisers of North America did not recognise Indigenous orders as valid legal or moral codes (Hermes, 2008). Instead, they rationalised exploitation of both Indigenous people and animals by appealing to the Great Chain of Being, or scala naturae, which valued life according to a scale of development that placed white European males above women, other races, animals, and the rest of the natural world (Deckha, 2008). This hierarchy continues to animate some of the fundamental issues and tensions in US law (animal law and otherwise), including the classification of animals as the property of humans.

Even early animal cruelty laws, like the Massachusetts Colony’s 1641 Body of Liberties, which prohibited “any Tyrannie or Crueltie towards any bruuite Creature which are usuallie kept for man’s use” (Massachusetts Colony 1641), were concerned less with animals’ inherent moral value and more with protecting the property rights of animals’ owners and preventing the coarsening of public morals that cruelty could engender (Unti, 2002, pp. 16–19).
Key animal law in the United States

The United States legal system has long aligned itself with the anthropocentric perspectives of the country’s colonial founders over more inclusive, less dualistic approaches. But with the growth of the animal protection movement in recent decades, courts and legislatures are increasingly forced to negotiate tensions between the long-standing instrumentalist, property-based view of animals and alternative visions of justice based on respect for animal flourishing (Nussbaum, 2004). Deckha (2020) argues that this reconfiguration of human–animal relations must acknowledge North America’s legacy of colonialism, while looking to Indigenous relations for new pathways for conceiving of legal systems that respect the non-human world.

Overview of the United States legal system

Structurally speaking, the United States is a constitutional representative democracy that operates under a federalist system of government. As a federation of states, governmental power exists at both the national and state level. The United States Constitution provides for three coequal branches of the federal government: a bicameral legislature with a Senate and a House of Representatives, an executive overseen by the president, and a judiciary presided over by the Supreme Court. Under the federalist system, the federal government is one of limited powers – the US Congress may only legislate where the Constitution allows, such as regulating interstate commerce. Under the Tenth Amendment to the Constitution, all powers not delegated by the Constitution to the federal government are reserved to the states. State governments typically have plenary “police” power, which allows them to regulate all matters relating to public health, safety, and welfare.

This federalist system influences the development and nuances of animal law in the United States in important ways. The welfare of animals is within the traditional police powers of the states and so animal protection has historically been an issue of state regulation. However, the use of animals affects interstate commerce in numerous ways, especially in commercial areas such as agriculture, research, and exhibition. Because regulating interstate commerce is among Congress’s enumerated powers, it has passed federal laws concerning these industries, as discussed below.

The primary value of federal animal protection laws, compared to state regulation, is their scope: they extend nationwide, including in states that are otherwise hostile to the interests of animals. As such, animal advocates have focused much energy on federal animal protections, both through legislation and administrative regulations.

The primary value of state animal protection laws, compared to federal regulation, is the possibility of passing protections for animals that are far more progressive than would be possible at the national level. Legislation often requires consensus-building, which may be difficult in a national legislative body. States can therefore serve as so-called “laboratories of democracy”, where lawmakers and advocates can test innovative new means of protecting animals. In California, for example, the state legislature has taken steps that would be inconceivable in Congress: banning cosmetics testing, prohibiting the use of extreme confinement in animal agriculture, and outlawing the sale of dogs, cats, and rabbits at pet stores.

The patchwork of federal and state laws affecting animals is discussed in the following sections.

Animals’ legal status

Animals as property

Animals are considered property in all 50 states and under federal law. Although some commentators have argued that such status inevitably dooms animals to exploitation (Francione,
Matthew Liebman

1995), others have argued that there is much progress to be made in the US legal system within the property paradigm (Favre, 2010). Animals' status as property unquestionably supports their exploitation, as it subsumes animals' interests to those of their owners and facilitates their objectification. The culture of American individualism also tends to exalt private property rights as inviolable, which contributes to political and social hesitancy to regulate how people can use their property, especially in conservative states. But as discussed below, every state has an anti-cruelty law, which limits how owners can treat their animals, at least in some limited contexts. This protection sets animals apart as a unique form of property: no other form of property receives legal protections based on its own interests.

Animals' property status has vexed judges in cases where property-based rules would lead to unjust outcomes. For example, under general principles in tort law, compensation for destroyed property is the market value of such property. But in cases where the damaged or destroyed property is a companion animal, applying that rule leads to unjust outcomes: the market value of most dogs and cats is minimal. Recognising the injustice of failing to adequately compensate injured plaintiffs, some courts have relaxed the traditional property rules. In Martinez v. Robledo, in which the defendant had injured the plaintiffs' dog, the California Court of Appeals acknowledged that "animals are special, sentient beings, because unlike other forms of property, animals feel pain, suffer and die" (Martinez v. Robledo, 210 Cal. App. 4th 384, 392 (2012)). The court therefore held that "the usual standard of recovery for damages to personal property—market value—is inadequate when applied to injured pets". But other courts, including the Supreme Courts of Texas and Georgia, have been more conservative, treating companion animals like other forms of property in tort cases and limiting recovery when they are injured or killed (Strickland v. Medlen, 397 S.W.3d 184 (Tex. 2013); Barking Hound Village LLC v. Monyak, 787 S.E.2d 191 (Ga. 2016)). Courts have typically rejected emotional distress damages to human plaintiffs in cases where defendants negligently injured their companion animals (such as veterinary malpractice actions), but have allowed them in cases of intentional harm or abuse (McMahon v. Craig, 176 Cal. App. 4th 1502 (2009); Womack v. Von Rardon, 135 P.3d 542 (Wash. Ct. App. 2006)).

The tension between animals' legal status as property and their social status as family members also arises in custody disputes over companion animals. For example, when a married couple gets divorced, their property is typically divided based on the economic value of the property. But when the property is a beloved companion animal, courts must decide how to determine who gets custody and whether to consider the animals' interests or simply distribute them like other forms of marital property. In Travis v. Murray, a New York judge wrestled with how to resolve a custody dispute involving a dachshund named Joey, ultimately deciding to hold a hearing to determine what was “best for all concerned” (Travis v. Murray, 42 Misc. 3d 447 (N.Y. Sup. Ct. 2013)). Although the court declined to adopt a standard based on the “best interests of the animal”, it also acknowledged the need to recognise Joey as more than mere property. Other courts have refused to consider animals as anything other than chattel, to be allocated according to traditional property rules (Bennett v. Bennett, 655 So. 2d 109 (Fla. Dist. Ct. App. 1995)).

Animals as persons

The animal protection movement has used several strategies to try to transform animals' legal status. One strategy for promoting a more just legal status for animals has been to legislatively recognise animals' sentience, that is, their capacity to feel pleasure and pain. Of course, every statute that prohibits cruelty to animals implicitly recognises that at least some animals are sentient: how could one cause unjustifiable suffering to animals if they were not sentient? Nevertheless, express legislative recognition of animal sentience and an acknowledgement of the relevance
of sentience to legal protection may prove symbolically valuable and lay the groundwork for a more robust recognition of animals’ legal rights (Blattner, 2019). In 2013, the Oregon legislature found and declared that “[a]nimals are sentient beings capable of experiencing pain, stress and fear” and that “[a]nimals should be cared for in ways that minimize pain, stress, fear and suffering” (Oregon Revised Statutes § 167.305). Although such findings are scientifically uncontentious, they have proven to be legally significant, with the Oregon Supreme Court citing them as evidence that animals’ legal status is changing and expanding (State v. Newcomb, 359 Or. 756, 758 (2016); State v. Fessenden, 355 Or. 759, 768 (2014)).

Animal advocates in the United States have also used litigation to try to establish animals’ status as legal persons. The Nonhuman Rights Project has filed several petitions for writs of habeas corpus on behalf of chimpanzees and elephants. The writ of habeas corpus is an ancient common law writ that challenges unlawful detentions and deprivations of liberty. The Nonhuman Rights Project has filed cases in New York and Connecticut, arguing that the confinement of chimpanzees and elephants at research facilities, private homes, and zoos violates the animals’ rights to bodily liberty and autonomy. The Nonhuman Rights Project contends that these animals’ sophisticated and complex cognitive abilities entitle them to fundamental rights and that the American legal system’s purported commitment to liberty and equality demands recognition of their personhood (Wise, 2019). So far, courts have rejected this theory, relying on social contract theory to exclude non-humans from the community of legal rights holders. In Nonhuman Rights Project v. R.W. Commerford and Sons, a case brought on behalf of elephants confined at a zoo, the Connecticut appellate court had little difficulty concluding that the elephants—who are incapable of bearing legal duties, submitting to societal responsibilities, or being held legally accountable for failing to uphold those duties and responsibilities—do not have standing to file a petition for a writ of habeas corpus because they have no legally protected interest that possibly can be adversely affected.


New York’s intermediate appellate court reached the same conclusion in a case concerning chimpanzees, holding that their incapability to bear any legal responsibilities and societal duties … renders it inappropriate to confer upon chimpanzees the legal rights—such as the fundamental right to liberty protected by the writ of habeas corpus—that have been afforded to human beings.


But one member of the New York Court of Appeals, the state’s highest court, has expressed doubts about this reasoning (Nonhuman Rts. Project, Inc., on Behalf of Tommy v. Lavery, 31 N.Y.3d 1054 (2018) (Fahey, J, concurring), and at the time of this writing, the New York high court had granted review in Nonhuman Rights Project v. Breheny, a case concerning an elephant named Happy confined at the Bronx Zoo, to address the question of animals’ personhood (Nonhuman Rts. Project, Inc. v. Breheny, 36 N.Y.3d 912 (2021)).
Another significant animal personhood case is *Justice v. Vercher*, which seeks to establish animals’ right to sue their abusers for civil damages (*Justice v. Vercher*, No. 18CV17601 (Or. Cir. Ct., filed 1 May 2018)). The case, filed in Oregon by the Animal Legal Defense Fund on behalf of a horse named Justice who was a victim of animal cruelty, argues that the anti-cruelty law provides Justice with substantive rights to be free from cruelty. The lawsuit argues that Justice, like any other victim of a crime, should have the procedural right to initiate a civil suit to recover damages caused by the defendant. The trial court dismissed the case for lack of standing, holding that a horse cannot be a plaintiff. As of this writing, the case is awaiting a decision from the Oregon Court of Appeal. (The author discloses that he is the lead counsel on the case.)

Other animal personhood cases include two high-profile cases filed by PETA: *Tilikum v. Sea World*, which argued that SeaWorld’s confinement of orcas violated the Thirteenth Amendment to the US Constitution’s prohibition on slavery, and *Naruto v. Slater*, which argued that a macaque monkey held the copyright to a photograph he took of himself (*Tilikum ex rel. People for the Ethical Treatment of Animals, Inc. v. Sea World Parks & Ent., Inc.*, 842 F Supp. 2d 1259 (S.D. Cal., 2012); *Naruto v. Slater*, 888 F.3d 418, 420 (9th Cir. 2018)). In each case, the court held that the operative law – the Thirteenth Amendment and the Copyright Act – applies only to humans and does not provide substantive rights to animals.

Thus far, efforts to establish animal personhood through legislation and litigation have not succeeded in changing animals’ status, but with cases pending and more to come, the issue remains a lively one. As Judge Eugene Fahey of the New York Court of Appeals put it, “the question will have to be addressed eventually [:] Should [a non-human animal] be treated as a person or as property, in essence a thing?” (*Nonhuman Rts. Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1056 (2018) (Fahey, J, concurring)).

**Criminal anti-cruelty law**

Although courts have not yet recognised animals as legal persons, animals do receive legal protections against some forms of cruelty, a limitation on the absolute or unqualified property rights of animals’ owners.

Protecting animals falls within individual states’ “police power”, that is, the plenary authority of state governments to regulate the health, safety, morals, and welfare of their citizens. As such, criminalising animal cruelty has traditionally been the province of the 50 states, each of which has passed an anti-cruelty law. In 2019, Congress passed the Preventing Animal Cruelty and Torture (PACT) Act, effectively creating a federal animal cruelty law, though one riddled with exceptions (18 U.S.C. § 48).

State criminal laws prohibiting cruelty to animals date back to the 1820s when Maine passed the country’s first anti-cruelty law. Early anti-cruelty laws were primarily concerned with two human-centred interests: protecting the property rights of animals’ owners and guarding against the coarsening of public morals that public cruelty could cause. Beginning in the 1860s and following the influence of developments in English anti-cruelty laws, however, a new breed of anti-cruelty law emerged (Favre and Tsang, 1993). Led by the activism of Henry Bergh and the newly formed American Society for the Prevention of Cruelty to Animals, New York became the first state to shift the focus towards the experiential welfare of individual animals and the wrongness of suffering itself, though concerns about property rights and public morals also continue to animate anti-cruelty laws, even to this day (Priest, 2019).

Animal cruelty laws vary significantly from state to state (Animal Legal Defense Fund, 2020). The important elements of anti-cruelty laws are: what animals are covered, what conduct is prohibited, what conduct is exempted, and what criminal sentences are possible.
The first key element of anti-cruelty laws is which animals they protect. Some states adopt broad definitions, such as California, which defines “animal” to include “every dumb creature” (Cal. Penal Code § 599b), and New York, which defines it to include “every living creature except a human being” (N.Y. Agric. & Mkts. Law § 350(1)). Other states are more limited, such as North Carolina, which restricts its protection to “every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings”, excluding invertebrates and fish (N.C. Gen. Stat. Ann. § 14-360(c)). The federal PACT Act adopts a similarly narrow definition, applying to only “living non-human mammals, birds, reptiles, or amphibians” (18 U.S.C. § 48(f)(1)). Some states expressly exclude classes of animal from the definition of animal, such as Texas, which defines animal to leave out “an uncaptured wild living creature” (Tex. Penal Code Ann. § 42.092(2)). Where the term “animal” is not defined by statute, courts may have to determine the scope of the law, as in the 1981 Massachusetts case Knox v. Massachusetts Society for the Prevention of Cruelty to Animals (12 Mass. App. Ct. 407 (1981)), which interpreted “animal” to include goldfish, or the 1963 Oklahoma case Lock v. Falkenstine (380 P.2d 278 (Ok. Ct. Crim. App. 1963)), which interpreted “animal” to exclude roosters used in cockfighting.

The second key element of anti-cruelty laws is what conduct they proscribe. Most state anti-cruelty laws constellate around the norm of prohibiting activities that cause “unjustifiable” or “unnecessary” suffering. New York, for example, defines cruelty to include “every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted” (N.Y. Agric. & Mkts. Law § 350(2)). Anti-cruelty laws typically prohibit both acts of commission, such as beating or torturing an animal, as well as acts of omission, such as neglecting an animal by failing to provide them adequate food, water, shelter, or veterinary care. In California, for example, “every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of a crime”, illustrating the prohibition on affirmative acts of cruelty (Cal. Penal Code § 597(a)). California law also criminalises someone who “having the charge or custody of any animal, either as owner or otherwise, … fails to provide the animal with proper food, drink, or shelter or protection from the weather”, illustrating the prohibition on omission-based acts of cruelty (Cal. Penal Code § 597(b)). The federal PACT Act applies only to affirmative acts of cruelty in which an animal is “purposely crushed, burned, drowned, suffocated, impaled, or otherwise subjected to serious bodily injury” (18 U.S.C. § 48(f)(1)). Whether a particular infliction of animal suffering is unnecessary or unjustifiably cruel is typically a question of fact to be decided by a jury, although some courts may conclude that certain forms of suffering are necessary or justifiable as a matter of law.

The third key element of anti-cruelty laws is what conduct they exclude from coverage. As many animal law scholars have noted, anti-cruelty laws have historically targeted aberrant, socially marginal, and irrational acts of abuse, not institutionalised and socially accepted forms of animal suffering, such as those caused by animal agriculture, biomedical research, hunting, or pest control (Francione, 1996). Animal cruelty laws typically include exemption sections, which delineate allowable forms of animal treatment, even if they would otherwise violate the statutes’ prohibitions on causing unjustifiable or unnecessary cruelty. As Taimie Bryant observes, “current legal definitions of ‘cruelty’ allow institutional exploiters of animals to claim that their practices are not ‘cruel’ no matter how excruciatingly painful they may be for the animals” (Bryant, 2006, 72). In the context of animal agriculture, many states exempt common agricultural practices. In Texas, for example, although it is unlawful to “torture” “livestock”, the anti-cruelty law creates an exception for conduct that is “a generally accepted and otherwise lawful … animal husbandry or agriculture practice involving livestock animals” (Tex. Penal Code Ann. § 42.09(f)(2)). Not all states, however, categorically exempt industrial abuse from their anti-cruelty laws.
California, for example, does not exclude animal agriculture, although prosecutions for farmed animal cruelty are still exceedingly rare.

The fourth key element of anti-cruelty laws is what the consequences are for violating them. In all 50 states, at least some forms of animal cruelty are punishable as a felony, meaning offenders could receive sentences that exceed a year in prison. States vary on which conduct is punishable as a felony: in some states, only repeat offenders may be charged with felonies; in other states, a first offense, if egregious enough, could be charged as a felony. Some states allow for felony charges in neglect cases, while others deem only intentional cruelty a felony. In addition to jail or prison sentences, people convicted of animal cruelty may be sentenced to community service, probation, restitution, and fines. Other sentencing options may focus less on punishing the offender and more on protecting future victims. For example, many states now permit or require judges to ban offenders from owning more animals in the future or to order offenders to undergo psychological evaluation and counselling.

Some scholars have criticised efforts to address animal abuse through tougher criminal anti-cruelty laws and stricter penalties. Lori Gruen and Justin Marceau (2022, Marceau, 2019) argue that this carceral approach to animal law has failed to deter crimes against animals, contributed to institutional racism in the criminal justice system, reduced accountability for institutional animal abusers such as factory farms, and put the animal protection movement out of step with other social justice movements, which are increasingly moving away from retributive and carceral approaches to crime.

Federal and state laws have not only criminalised certain forms of cruelty to animals, but – from the other direction – criminalised efforts by animal activists to contest animal exploitation. The federal Animal Enterprise Terrorism Act (AETA) prohibits anyone from damaging an animal enterprise, causing the loss of an animal enterprise's property (including liberating animals from labs or farms), or putting someone in reasonable fear of death or serious bodily injury with the intent to interfere with an enterprise's operations (18 U.S.C. § 43). Federal courts have upheld the AETA against constitutional challenge, holding that the statute does not prohibit protected free speech activity or campaigns, but merely prohibits unprotected conduct, such as property destruction and animal liberations (Blum v. Holder, 744 F.3d 790 (1st Cir. 2014)). States have also passed anti-activist laws, including so-called “Ag-Gag” laws, which criminalise undercover investigations at factory farms and slaughterhouses. Federal courts have struck down Ag-Gag laws – in whole or in part – as unconstitutional restraints on protected free speech rights established by the First Amendment, although the decisions have not been entirely consistent (Animal Legal Def. Fund v. Wasden, 878 F.3d 1184 (9th Cir. 2018); Animal Legal Def. Fund v. Reynolds, 8 F.4th 781 (8th Cir., 2021); Animal Legal Def. Fund v. Kelly, 9 F.4th 1219 (10th Cir., 2021)).

**Laws regulating animal use**

While the general animal cruelty statutes are the oldest and most common form of legal regulation of animal treatment, state and federal governments have also enacted statutes to regulate specific commercial and recreational uses of animals, including in agriculture, research, exhibition, the wild, and the pet trade.

**Animals in agriculture**

In the United States, there are no federal laws regulating the treatment of animals during their lives on farms. Federal law regulates only the transportation and slaughter of farmed animals.
The federal 28-Hour Law, passed in 1873, requires anyone transporting animals to unload them for food, water, and rest after 28 consecutive hours of confinement (49 U.S.C. § 80502). According to animal protection advocates, the law is virtually never enforced (Animal Welfare Institute, 2020).

The main federal law covering farmed animals is the Humane Methods of Slaughter Act (HMSA). The statute, initially passed in 1958, declares that it is “the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods” (7 U.S.C. § 1901). In passing the law, Congress found that humane slaughter prevents needless animal suffering, is safer for workers, and improves meat products, thus “expedit[ing] an orderly flow of livestock and livestock products” (7 U.S.C. § 1901). Substantively, the HMSA declares slaughter humane if the animal is “rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut” (7 U.S.C. § 1902(a)). The HMSA also declares religious slaughter to be per se humane so long as “the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument” (7 U.S.C. § 1902(b)). The HMSA initially did not ban inhumane slaughter outright, but merely prohibited the federal government from purchasing products from inhumanely slaughtered animals. But in 1978, Congress passed a new HMSA, which amended the Federal Meat Inspection Act to prohibit inhumane slaughter at all federally inspected slaughterhouses. The HMSA of 1978 tasked inspectors from the United States Department of Agriculture’s (USDA) Food Safety Inspection Service (FSIS) with ensuring compliance with humane slaughter regulations.

Animal protection advocates have criticised the scope of the HMSA. The Act applies only to “livestock”, which the USDA interprets to exclude birds. The United States slaughters more than 9 billion birds annually, more than 90% of the animals slaughtered for meat. This means that the federal law charged with ensuring the humane slaughter of farmed animals applies to less than 10% of the farmed animals who are slaughtered each year. Another major concern about the HMSA is its under-enforcement by the USDA. Undercover investigations by animal protection organisations have repeatedly exposed inhumane methods of slaughter, despite the presence of FSIS inspectors. Reports from the USDA’s inspector general have also repeatedly identified significant gaps in the agency’s enforcement of the HMSA (USDA OIG, 2013).

In the absence of federal on-farm regulations, some states have enacted laws regulating how animals are treated on farms. Most legislation concerns confinement methods that are common on factory farms – battery cages for egg-laying hens, gestation crates for pregnant pigs, and veal crates for calves. In 2008, California voters passed a ballot initiative (a form of direct democracy) to prohibit these forms of confinement by requiring that animals have sufficient space to be able to lie down, extend their limbs, and turn around. Voters amended the legislation in 2018, again by ballot initiative, to provide more specific numeric space requirements and to ban the sale of non-compliant products produced in other states (Cal. Health & Safety Code § 25990–25994). At the time of publication, however, the new law was pending review by the United States Supreme Court (Nat’l Pork Producers Council v. Ross, 142 S. Ct. 1413 (2022)). As of 2022, 14 states had passed laws limiting intensive confinement.

**Animals in research**

The federal law governing research on animals in the United States is the Animal Welfare Act (AWA), originally passed in 1966 as the Laboratory Animal Welfare Act in response to widespread public concern about the theft of companion animals and their sale to research facilities. In passing the AWA, Congress stated its policy “to insure that animals intended for use in research facilities … are provided humane care and treatment” (7 U.S.C. § 2131). The AWA
creates a licensing and inspection scheme, whereby research facilities must register with the Department of Agriculture and submit to periodic inspections to ensure compliance with welfare standards promulgated by the Secretary of Agriculture. These standards concern “handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species” (7 U.S.C. § 2143(a)(2)(A)). The AWA also requires special consideration for dogs, who should receive exercise, and for primates, who should receive “a physical environment adequate to promote the[ir] psychological well-being” (7 U.S.C. § 2143(a)(2)(B)). The AWA requires researchers to endeavour to minimise animals’ pain and distress when doing so is consistent with the experimental design of the research and to consider alternatives to procedures that cause pain and distress. (7 U.S.C. § 2143(a)(3)). The AWA requires research facilities to establish an internal review board, called an Institutional Animal Care and Use Committee (IACUC), to review and approve animal research protocols and ensure they comply with the standards of the AWA. (7 U.S.C. § 2143(b)).

Animal protection advocates have criticised the AWA on multiple grounds. First, the scope of the statute has been criticised as overly narrow. The AWA defines “animal” to exclude rats, mice, birds, and cold-blooded animals (including fish and invertebrates), who collectively make up the vast majority of animals used in research (7 U.S.C. § 2132(g)). (These excluded animals are covered by the Public Health Service Policy on Humane Care and Use of Laboratory Animals pursuant to the Health Research Extension Act of 1985, which applies to research facilities that receive federal funding. This Policy itself, however, lacks the force of law, and there are no penalties for its violation aside from the possibility of losing federal grants.) The AWA is also limited in the substantive protections it provides to animals. The AWA does not authorise the promulgation of regulations concerning the design or performance “of actual research or experimentation by a research facility as determined by such research facility”. (7 U.S.C. § 2143(a)(6)(A)). In other words, aside from encouraging reductions in animal pain (unless required by the nature of the research) and the consideration of alternatives, the AWA does not affect the conduct, methods, or implementation of research projects involving animals. Advocates have also expressed concern about the oversight mechanisms of the AWA. Although the statute does require periodic inspections of facilities by the USDA, advocates complain that USDA’s enforcement of the AWA against research facilities is lax and that penalties are insufficient to deter mistreatment of animals. Moreover, the AWA’s reliance on internal review boards to authorise and oversee research protocols raises concerns about thoroughness and consistency, with some commentators expressing concern that many IACUCs are staffed primarily by animal researchers who too readily approve research protocols (Hansen et al., 2012).

At the state level, four states, California, New Jersey, New York, and Virginia, have banned cosmetics testing on animals. These statutes make it unlawful to test cosmetics on animals if there exists a scientifically validated alternative testing method approved by the Inter-Agency Coordinating Committee for the Validation of Alternative Methods (ICCVAM).

**Animals in exhibitions**

The Animal Welfare Act also governs the exhibition of animals at zoos and circuses (7 U.S.C. § 2133). The AWA requires exhibitors to register with the USDA and to submit to inspections to ensure compliance with the AWA’s implementing regulations, which establish minimal standards of husbandry for exhibited animals. The USDA has promulgated some species-specific standards, but many animals are governed by vague and general standards, such as the requirement that enclosures have “sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement” or that animals receive food that is
“wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health” (9 C.F.R. §§ 3.128, 3.129). Critics complain that the vagueness of these standards leads to inconsistent enforcement and fails to adequately protect exhibited animals, especially at substandard roadside zoos.

State and local governments have also passed laws concerning animal exhibition. In 2016, for example, California passed the Orca Protection Act, which bans holding orcas in captivity, although it exempts those orcas already in captivity before 2017, limiting their use to “educational presentations” (Cal. Fish & Game Code § 4502.5). In 2018, New Jersey became the first state to ban the use of wild animals in circuses (N.J. Stat. Ann. § 23:2A–16). In 2019, California passed the Circus Cruelty Prevention Act, which bans the use of animals in circuses, except for dogs, cats, and horses (Cal. Fish & Game Code § 2207). Hawaii and Colorado have similar bans, as do more than 100 localities and municipalities across the United States.

Animals in the wild

The federal and state governments also regulate human use of wild animals.

Federally, the Lacey Act, passed in 1900, targets wildlife trafficking. The Act prohibits trade in any wildlife “taken, possessed, transported, or sold in violation of any law, treaty, or regulation”, including those of the United States, individual states, Indian nations, foreign nations, or international agreements (16 U.S.C. § 3372). For instance, an individual transporting the body of an unlawfully hunted animal in interstate or foreign commerce would be subjected to federal prosecution or civil penalties under the law.

In 1956, Congress passed the Fish and Wildlife Act to federally manage the commercial and recreational use of fish and other wildlife, although the Act is concerned with the efficient exploitation of these animals as resources, rather than with their welfare or inherent value (16 U.S.C. § 742a).

In 1971, Congress unanimously enacted the Wild Free-Roaming Horses and Burros Act to protect wild horses and burros from capture, branding, harassment, and death, and to recognise them “as an integral part of the natural system of the public lands” (16 U.S.C. § 1331). Although the Act offers some legal protections to these wild animals, it also authorises the Department of the Interior and the Bureau of Land Management to capture, remove, sell, and, in some cases, kill “excess” wild horses and burros (16 U.S.C. § 1333).

In 1973, the United States passed the Endangered Species Act (ESA), which domestically implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The ESA empowers the Secretary of the Interior through the United States Fish & Wildlife Service (and in the case of marine species, the Secretary of Commerce through the National Marine Fisheries Service) to list a species as endangered if it is “in danger of extinction throughout all or a significant portion of its range” or as threatened if it “is likely to become an endangered species within the foreseeable future” (16 U.S.C. § 1532(6),(20)). The Secretaries must make listing decision based solely on the best available scientific evidence, without regard to economic considerations (16 U.S.C. § 1533(b)(1)(A)). They may also designate “critical habitat”, that is, habitat that must be conserved to avoid the extinction of the species, although critical habitat designations do include economic considerations (16 U.S.C. § 1533(b)(2)). Listed species receive special protection against governmental actions that jeopardise their continued existence or the habitats upon which they rely (16 U.S.C. § 1536(a)(2)). The Act further prohibits actions that may “take” members of listed species (16 U.S.C. § 1538(a)(1)(B)). “Take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. § 1532(19). The ESA provides
robust protections to listed species and their habitats. Its protections, however, are not absolute: a federal committee may authorise governmental activities that jeopardise listed species (16 U.S.C. § 1536(h)). Individuals may also receive take permits that allow otherwise-prohibited activities for scientific purposes or to enhance the propagation of listed species, or where a take is only incidental (16 U.S.C. § 1539(a)). Although the ESA has traditionally been seen as a conservation-based statute, it also protects animals’ individual welfare, by prohibiting activities that “harm” or “harass” animals (Waltz, 2020; Winders et al., 2021). The ESA applies to captive members of listed species, and animal protection advocates have used the ESA to target roadside zoos that inhumanely confine members of listed species (Kuehl v. Sellner, 887 F.3d 845 (8th Cir. 2018)).

The Marine Mammal Protection Act provides similar protections against “takes” of marine mammals (16 U.S.C. § 1361 et seq.).

The management of wild animals also falls within the police power of the states, who are obligated under the public trust doctrine to regulate the use of “natural resources” for the benefit of the public. Most states treat animal populations as exploitable resources, allowing for hunting and trapping (and in some cases, enshrining the right to hunt and trap in state constitutions). States place some limitations on uses of wild animals, such as by creating hunting and trapping seasons, restricting the quantity of animals that may be taken, and regulating methods of hunting and trapping. In 2019, California became the first state to ban commercial trapping (it had banned body-gripping traps by ballot initiative in 1998) (Cal. Fish & Game Code § 3003.1). In 2021, New Mexico banned trapping on public lands (N.M. Stat. Ann. § 17-11-3).

**Animals in the pet trade**

The AWA, in addition to governing research and exhibition, regulates the commercial pet trade (7 U.S.C. § 2133). The AWA applies to pet dealers and breeders with five or more breeding female animals, but it does not apply to retail pet stores (9 C.F.R. § 2.1(a)(3)(iii); 7 U.S.C. § 2132(f)). As with research facilities and exhibitors, pet breeders are subject to licensing and inspection to ensure compliance with standards promulgated by the USDA. But animal protection advocates have criticised these standards as insufficient, as they still allow wire flooring, small cages, and exposure to extreme temperatures, among other welfare concerns (HSUS, 2020). As a result of poor regulations and lax enforcement, puppy mills remain widespread through the United States.

At the state level, several states have banned the commercial sale of animals as pets. California became the first state to do so in 2017 when it banned retail sales of cats, dogs, and rabbits at pet stores (Cal. Health & Safety Code § 122354.5). (In case the pattern is not yet clear: California is often the first state to break new ground when it comes to animal protection legislation.) Maryland followed suit in 2018 (Md. Code Ann., Bus. Reg. § 19-703). More than 300 cities and counties have banned pet sales, including large cities such as Boston and Philadelphia.

Other state and local laws and regulations concerning companion animals include the following: cruelty-reporting laws, which permit (and in some cases, require) veterinarians and other animal professionals to report suspected animal cruelty to authorities; bans on certain veterinary procedures and mutilations, such as declawing cats or cropping the ears of dogs; laws requiring companion animals to be spayed or neutered; and breed-specific legislation, in which municipalities prohibit possession of certain breeds of dogs, typically pit-bulls. The proposal or enactment of such laws in a number of jurisdictions has occasioned important debates – and in some cases litigation – about the legal regulation of companion animals.
Key animal law in the United States

Conclusions

From ambitious efforts to transform animals’ legal status to more moderate reforms of animal protection statutes, animal law is a rapidly growing field in the United States, deeply influenced by competing philosophical views of the proper relationship between humans and the non-human world. Despite these reform efforts by the animal protection movement, animal laws in the United States still assume that animals are exploitable resources that humans are allowed to use. Nevertheless, the states and the federal government have passed legislation to prohibit some forms of animal cruelty and to regulate human uses of animals across a broad range of areas, including the use of animals in agriculture, scientific research, exhibitions, the wild, and the pet trade. As societal concern for the well-being of animals increases, legal restraints on human use of animals are likely to become more pervasive and more consequential.

References


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