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Law, Zoology, and Statutory Interpretaton: Is a Six Pound Wallaby Dangerous in Georgia?

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LAW, ZOOLOGY, AND STATUTORY INTERPRETATION: IS A SIX POUND WALLABY DANGEROUS IN GEORGIA?

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ABSTRACT

American courts of law have ruled in cases which required interpretation of statutory laws concerning animals. Confronted with ambiguous wording, the presiding judge or judges may need to analyze such statutes to determine whether a particular type of animal is encompassed or excluded by the law. While such a function may sit uncomfortably with courts lacking zoological knowledge, a thoughtful analysis using readily available literature may be helpful to define both the legal and scientific scope of animal related statutes. This article considers a Georgia law listing species of wild animals considered "dangerous as a matter of law" as a case study in which a statute is examined both legally and scientifically to attempt resolution of a structural ambiguity.

Key words: animal law, Georgia law, statutory interpretation

INTRODUCTION

American courts of law have sometimes been enmeshed in disputes over the scope of zoological terms defined vaguely in statutes. For example, the Illinois Supreme Court ruled that a man had violated a law prohibiting personal possession of "any poisonous or life-threatening reptile" by owning two large pythons, but that his ownership of a smaller boa was not illegal (1). A lower Illinois court held that a local ordinance prohibiting ownership of any animals save "household pets" did not prevent a couple from owning a tame monkey (2). Finally, an appellate court in Georgia ruled that cockfighting was banned by a law prohibiting "cruelty to animals" in the face of an argument that the anti-cruelty law was not intended to apply to birds (3).

Litigation such as these cases brings the principles of one particular branch of science, zoology, into the realm of law. The relationship - and often conflict -between law and science has elicited a good deal of scholarly comment. In the late nineteenth and early twentieth centuries, law itself was often hailed as a type of science with the soundness of judicial rulings based on how closely they fit a pre-conceived model of deductive or inductive reasoning (4). This legal philosophy waned by the 1930's, and today literature analyzing the interaction between law and science tends to emphasize the gap between these two disciplines, sometimes taking law to task for its purported misuse of science in both legislation and adjudication (5).

Because law is not bound by science, oddities or even apparent contradictions may occur in the courts or legislatures that would not arise in the scientific arena. For instance in Georgia, legally speaking, grizzly bears are not wildlife but black bears are; white-tailed deer are not wild animals while mule deer are. While these sample pairings consist of closely related mammals, state law does not define either "wildlife" or "wild animal" based on taxonomy, but instead on geography. Only an animal native to or introduced to Georgia is "wildlife;" only animals alien to the state are "wild animals" (6).

Common law adjudication may perplex the scientist even more than legislative acts. While the Georgia cockfighting case held that gamecocks are covered under that state's anti-cruelty statute, the New Mexico Supreme Court issued the opposite ruling in a similar case (3, 7). In effect, these decisions meant that at least where anti-cruelty law was concerned; gamecocks were animals in Georgia but not in New Mexico.

To the zoologist, of course, gamecocks are birds, and birds are animals, whether they are in Georgia, New Mexico, or anywhere else. Yet while it may be tempting to deride law as sometimes unscientific, at times it may be beneficial for lawmakers to put aside a purely scientific perspective in the interest of public policy. Thus while the scientist would point out that cranes, doves, and ducks are in three separate orders of birds, each order distinguishable by certain morphological characteristics, statutes in Georgia and elsewhere categorize all three types of fowl as "migratory game birds," thereby using a familiar sportsman's classification for the law rather than zoological systematics which may be only understood by the specialist (6).

This article is a case study; it attempts a two-way analysis of a particular Georgia statute that concerns zoology as well as law. The specific question this analysis seeks to answer is whether an individual holding in captivity a certain type of animal, in this case wallabies, is required to purchase liability insurance. The statute will first be examined from a legal perspective, then from a zoological viewpoint, in effort to answer the question posed in the title: is a six-pound wallaby legally dangerous in Georgia? It must be stressed that while the statute is real, the question asked is hypothetical and is posed by one whose professional background is in science, not law. Accordingly, this paper should not be construed as legal commentary, but rather as an exercise in interdisciplinary reasoning.

The Statute

Section 27-5 et seq. of the Official Georgia Code Annotated considers legal obligations where wild animals are concerned. The first portion of the statute is entitled "Legislative intent and findings" and reads, in part:

> The General Assembly finds and declares that it is in the public interest to ensure the public health, safety, and welfare by strictly regulating in this state the importation, transportation, sale, transfer, and possession of those wild animals which pose a possibility of:
>
> (1) Harmful competition for wildlife;
>
> (2) The introduction of a disease or pest harmful to wildlife;
>
> (3) Problems of enforcing laws and regulations relative to wildlife;
>
> (4) Threatening wildlife or other natural resources; or
>
> (5) Endangering the physical safety of human beings. (8)

Given these concerns, it is small wonder that a portion of the law covers permitting concerns; this is done in section 27-5-5 entitled "Wild animals for which license or permit required." The section is further broken down into three subsections designated by the small letters a, b, and c. Subsection c is not significant to the analysis here (9).

Subsections a and b of the law consist of brief explanatory text followed by lists of vertebrate animals. In some instances entire orders, families, or genera are listed, in other instances particular species are designated. The genesis of both lists was a legislative act of 1979 that was slightly modified in 1985 (10, 11).

Possession of any or the animal types in b requires the owner to acquire a "license or permit" from the state. Preceding the list of animals in subsection a is this

introductory text distinguishing it from b:

> The following animals are considered to be *inherently dangerous to human beings* and are subject to the license or permit *and insurance requirements* provided... (Emphases mine).

Those insurance requirements are found in 27-5-4; they require any holder of an animal on list a to maintain insurance for injury or damage to persons or property in an amount equal to $40,000.00 for each inherently dangerous animal up to a maximum of $500,000.00. Governmental agencies and university research facilities are exempt from the insurance requirement (12).

Thus, while animal types included on list b may be designated because they meet one of the first four concerns listed by the General Assembly in 27-5-1, it is clearly specified that the designations on list a are placed there because of the fifth expressed concern; these are animals regulated because of their potential for "endangering the physical safety of human beings." It must be remembered, however, that some types of animals are on both lists; in other words, a taxa may be regulated because of one of the first four concerns *and* because it is a hazard to humans.

The Wallaby Question—the Legal Perspective

Having dealt with the particulars of section 27-5-5, its breadth can now be evaluated in an ambiguous instance. Suppose one owns wallabies. Is liability insurance required, or simply a permit? In other words, are wallabies on a, the dangerous animals list, or b, the animals not specially designated as dangerous but for which the holder must have a license?

This exercise begins with an examination of the wallaby question from a legal perspective. It is a canon that the process of interpretation begins with the actual words of the statute. It is presumed that the words of a law are used in their common and normal sense (13).

List b contains the entry "Order Marsupialia (opossum, wallabies, etc.) – All species." The clear mention of wallabies would enable even those not familiar with the animal's classification to readily see that this is an animal requiring a permit. The analysis does not end here, however, for as famed U.S. Supreme Court Justice Benjamin Cardozo wrote: "(T)he meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view" (14). All of 27-5-5 must be examined in determining the status of wallabies under this law.

In list a, animals inherently dangerous for which liability insurance is required, this entry is encountered: "Order Marsupialia: Family Macropodidae: Genus Macropus (Kangaroos) – All species." Thus, any animal species contained within the genus *Macropus* is presumed dangerous as a matter of law, since the statute's wording clearly embraces all members of this taxon. A slightly different conclusion, that the word "kangaroo" in parentheses is the controlling term rather than *Macropus,* is rejected on the grounds that it is assumed parenthetical words are included in the statute as an aid to understanding for those not versed in zoological taxonomy. This conclusion is enhanced by the observation that several of the common names listed in parentheses in 27-5-5 are followed by the non-exclusive abbreviation "etc." as well as by the logical grounds suggested by the inclusion of scientific names; why, after all, use the Latin at all unless it was to provide greater precision than English common names? *Macropus*, the legal perspective decides, is more significant here than the word kangaroo.

Use of scientific names may put the non-science oriented legal perspective in some doubt. The legal mind might know as a matter of general knowledge that wallabies are like kangaroos, but are they little kangaroos, potentially embraced by the wording of the b list, or are they something different – something enough unlike a kangaroo that they do not fall under the same scientific designation *Macropus*?

The legal perspective might seek information outside the normal law literature, consulting a standard zoological reference for guidance. This has occurred in actual cases. For example, in *Gallick v. Barto*, a federal district court in Pennsylvania faced the question whether ferrets were wild or domestic animals. The court turned to *Walker's Mammals of the World*, even citing in their opinion a long passage from the book (15).

Suppose the legal perspective now does the same as the *Gallick* court and consults *Walker's Mammals of the World* for information on wallabies, kangaroos, and genus *Macropus*. In the sixth and most recent edition of this reference work the genus *Macropus* appears with a list of its members. The kangaroos are part of *Macropus*, but so too according to the book are eight animals all with the common name "wallaby" (16). If the legal perspective ended here, the conclusion to be drawn is that as written, the Georgia law includes wallabies as dangerous animals, thereby triggering the requirement for a wallaby owner to carry liability insurance.

This conclusion might be enhanced by a comparison between Georgia law and similar legislation elsewhere. Georgia's list of "inherently dangerous animals" is quite extensive compared to some other states. For example, among the mammals, Illinois and Missouri list as dangerous only certain large and medium sized members of the order Carnivora: bears, lions, tigers, wolves, hyenas, and their kin (17, 18). Texas considers these mammals dangerous as well, but adds to its list certain primates: gorillas, chimpanzees, orangutans, and baboons (19). Georgia's enumeration of legally dangerous mammals includes not only large carnivores and primates, but also elephants, rhinoceroses, hippopotamuses, warthogs, kangaroos, and several species of antelope and wild cattle (9). These differences between Georgia's expansive list and the more limited designations adopted by other states might suggest a legislative intent to give the phrase *inherently dangerous animals* as broad a scope as possible.

In a common law jurisdiction such as Georgia, case law precedent is consulted for guidance, so at some point the legal perspective on the wallaby question does exactly this. In 1992, *Department of Natural Resources v. Blue Ridge Mt. Fisheries* concerned a seizure of fish imported into Georgia from California. The court ruled that a portion of 27-5-5 was void for vagueness; the disallowed text referred to "exotic fish" but did not define the phrase, leaving uncertainty as to whether California fish were "exotic" (20). (The relevant portion of 27-5-5 was subsequently clarified with the addition of the sentence "For purposes of this paragraph, exotic fish are all fish species not native to Georgia").

Unlike the controversy in *Blue Ridge*, with the wallaby question there is no appearance of vagueness. The use of the Latin name *Macropus* is not vague, but precise to at least the generic level. On the basis of *Blue Ridge,* a strict interpretation of wallabies as legally dangerous might again seem warranted. After all, having been dealt a loss in court because of imprecise language in part of 27-5-5, would not the state have carefully reviewed the entire statute and modified or deleted any potential area of confusion at the same time that "exotic fish" was given its precise definition?

The legal perspective may nevertheless feel uncomfortable with the notion of a small, nonvenomous, harmless-looking animal such as a wallaby being labeled "legally dangerous." Offhand, the legal mind might recall hearing of people attacked by

lions, bears, or elephants, but cannot ever remember hearing of a fatal or near fatal encounter between humans and wallabies. At this point, the interpreter of the statute might ask if the situation here is analogous to that faced by the medieval court in Bologna, faced with a law prohibiting the shedding of blood on the streets. That court held that the law was intended to prevent brawls and duels; it was not meant to apply to a physician bleeding a patient as part of a medical treatment (21). Is the relationship of the wallaby to the dangerous animals statute like the position of the doctor in the anti bloodshed ordinance? In other words, might the inclusion of wallabies suggested by the specific word *Macropus* be unintended?

Perhaps the legal perspective decides that a search of case law related to 27-5-5 is too narrow and a more generalized examination of litigation involving human injuries caused by captive wild animals is in order. The leading captive animal liability cases reported in Georgia concerned a baboon, a chimpanzee, and a tiger, but no wallabies (22, 23, 24).

For expanding the search beyond Georgia to other states, a 1968 annotation in *American Law Reports* and kept updated by the issuance of regular supplements is particularly helpful. Summarized are cases in which the animals responsible for the injury were not only bears, buffalo, elephants, leopards, lions, rattlesnakes, tigers, sharks, and wolves; but also coyotes, deer, guanacos, hyenas, monkeys, and zebras (25). No liability cases involving wallabies are cited (nor kangaroos, for that matter).

A key element of the common law tradition is that judges have some power to consider the facts of an actual case before them, and as a result alleviate the harshness of strict statutory application. The intent of such a legal culture is to achieve substantial justice for the parties involved (26). As Cardozo put it: "(T)he juristic philosophy of the common law is at bottom the philosophy of pragmatism. Its truth is relative, not absolute" (27). Where the present inquiry is concerned, after completing the case law search sketched above and considering the stated legislative intent that the purpose of placing an animal on list a is to designate those creatures which might endanger the physical safety of human beings, the legal perspective may now seriously question whether a "philosophy of pragmatism" truly endorses a position that wallabies are inherently dangerous.

Alternatively, the legal perspective might conclude from the actual words of the statute, the breadth of Georgia's law compared to other states, and the inclusion of the Latin word *Macropus* which a standard zoological reference declares to include wallabies, that these animals are dangerous and he who keeps wallabies must meet the liability insurance requirements mandated by the law. After all, if legal analysis never led to two positions, there would never be dissenting opinions in cases.

The Zoological Perspective

In attempting to determine whether Georgia 27-5-5 requires a wallaby owner to maintain liability insurance, the zoological perspective does not consult case law or engage in a searching inquiry as to the meaning of the statute or its legislative intent. Instead, this perspective engages in a study of the animal taxa on list a, in an effort to spot trends, omissions, and possible ambiguities.

As in the legal inquiry, the most recent edition of *Walker's Mammals of the World* is consulted. While the zoological perspective is aware that *Walker's* is a secondary source, gleaning its information from several thousand books and scientific journal articles, the perspective nevertheless recognizes the importance of the volume as an initial step in research. Indeed, if what is desired is not a thorough understanding of a mammal's natural history, but only a summary of what is known

of the animal, *Walker's* may be the only source referenced.

Thus, the zoological perspective encounters the same text as its legal counterpart, a designation of the genus *Macropus* that includes a number of wallabies, including three species, the Parma *(Macropus parma)*, the red-necked, (*M. rufogriseus*), and the tammar (*M. eugenii*) that are among the most common wallabies in captivity (16, 28).

The zoological perspective is skeptical of the statutory implication that all species of *Macropus* should be considered inherently dangerous. Parma wallabies, for instance, are small mammals, weighing from 2.6 to 5.9 kg (16). Perhaps the zoological perspective does further research and learns that there is an extensive resource manual published on the care of Parma wallabies in captivity. The section discussing capture and transport of the wallabies declares:

> In small enclosures or holding stalls, or once the animal is somewhat confined, a quick keeper can grasp and hold the base of the tail for initial control... Lifting the rear of the body slightly off the ground also lessens their ability to use their powerful rear legs in an attempt to escape. One person can temporarily control a small parma by restraining the front legs with one hand and grasping the base of the tail with the other, effectively tipping the animal off-balance (29).

This simply is not the kind of husbandry a competent animal caretaker would undertake if the relevant animal was dangerous. Needless to say, there is no lion resource manual that advises grabbing the king of beasts at the base of its tail; nor is there a grizzly bear manual that advocates one person attempting to manipulate the bear in such a manner to tip it off-balance.

The zoological perspective could at this point examine other entries on the lists in 27-5-5, with an eye focused on inconsistencies regarding which animals are included compared to those excluded. The inclusions and exclusions among the family Bovidae can be considered in this context. Seven taxa of antelope—three genera and four additional species—are named on the list, as well as two other Bovidae that are typically called wild cattle (9). Since unlike lions or tigers, antelope are not carnivorous animals that might view humans as potential prey, the danger presented by antelope could most logically be considered a function of size; an angry cornered wildebeest is obviously more of a hazard than a similarly perturbed dik-dik. A check of the typical adult weights of the antelope in the a list shows that the smallest "dangerous" antelope is the addax (*Addax nasomaculatus*), a North African species that weighs about 122 kg (30). One might therefore assume that the addax marked the low end of the danger scale, and that any antelope larger than an addax would properly be classed as dangerous.

This assumption is not borne out by an examination of the facts. Twelve species of antelope larger than the addax are not included on the list. Some of these species also have longer horns than the addax, dispelling any notion that perhaps horn length was used to determine which antelope species are considered hazardous (30). Exactly what criteria were used in designating certain antelope "dangerous" is not clear from any biological comparison of the listed species versus unlisted ones.

Furthermore, among the *Bovidae* on list a is an inclusion that truly perplexes and even amuses the zoological perspective, that of the kouprey (*Bos sauveli*), a small Asian wild cattle. It is not a question of whether or not captive kouprey can be hazardous to humans; it is simply a matter of no opportunity for the potential danger to manifest itself. There are no koupreys in captivity in Georgia or anywhere else,

and this animal is so critically endangered in its native Indochina that none have been observed there since 1988 (31, 32).

The zoological perspective at this point might conclude that the law was carelessly drafted and its inclusion of small wallabies as *inherently dangerous* is a result of legal minds showing inattentiveness to science. The analysis might end here, but suppose the zoological perspective is now curious enough to research further. As the legal perspective strayed from its normal reference sources to consult *Walker's Mammals of the World*, its zoological counterpart now acts in like fashion by examining the citations in *Georgia Laws* that are referenced at the end of 27-5-5. The zoological perspective thus learns that with few exceptions, the determinations as to which taxa would be included on the inherently dangerous list were made in 1979 (10).

Aware that *Walker's Mammals of the World* has gone through six editions, the zoological perspective now checks the publishing history of the work to discover which edition was most recent when the 1979 list was formulated. This investigation reveals that *Walker's* was then in its third edition, published in 1975. In 1975, *Walker's* described a genus *Macropus* that included only three large species of kangaroos. The common captive wallabies such as the parma, red-necked, and tammar were at that time assigned to a different genus, *Wallabia* (33). Not until the fourth edition, published in 1983, did *Walker's* recognize an enlarged genus *Macropus* that included eight species of wallabies (34).

Neither 27-5-5 nor *Georgia Laws 1979* contains any comment on whether a scientific reference was consulted for composition of the inherently dangerous animals list, and if so, what particular source. Nevertheless, the zoological perspective presumes that some reference work was examined, and *Walker's* seems a likely candidate. If so, this would answer the wallaby question. By this reasoning, the conclusion drawn is that the law was not intended to designate little wallabies as inherently dangerous; their inclusion is simply an accident of taxonomic change. "*Macropus* all species," the zoological perspective concludes, should be read to mean all animals that were commonly assigned to that genus in 1979 – just the large kangaroos but not the wallabies, in other words.

Up to this point, the zoological analysis has seen little reason to assume that there was an actual intent to classify wallabies as inherently dangerous. Nevertheless, just as the legal perspective noted a possible basis to interpret the statute so that wallabies are included, so might the zoological view think it wise to make wallaby ownership reasonably difficult in the welfare interests of the animals themselves. If 27-5-5 did not exist, the zoological perspective might even advocate passage of a law requiring special insurance for keeping captive wild animals of any type, be they gentle wallabies or fearsome tigers.

CONCLUSION

In conducting this dual analysis, a slight cheat was made both ways in that each perspective consulted a source outside its normal purview. The legal viewpoint sought guidance from *Walker's Mammals of the World*, while its zoological counterpart inspected *Georgia Laws*. This crossover foray by each perspective is presented quite unapologetically, in order to demonstrate that where law and science merge, each side benefits from even a cursory attempt to understand the interpretive processes of the other (5).

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Appendix: Excerpt from Georgia Code 27-5-5

(only the portion relevant to the discussion in the text is included)

27-5-5: Wild animals for which license or permit required

(a) The following animals are considered to be inherently dangerous to human beings and are subject to the license or permit and insurance requirements provided for in subsection (f) of Code Section 27-5-4:

(1) Class Mammalia:

(A) Order Marsupialia: Family Macropodidae: Genus Macropus (Kangaroos) – All species;

.....

(F) Order Artiodactyla

.....

(iii) Family Bovidae:

(I) Genus *Taurotragus* (elands)—All species;
(II) *Boselaphus tragocamelus* (nilgais);
(III) *Bos sauveli* (kouprey);
(IV) *Syncerus caffer* (African buffalo);
(V) *Hippotragus niger* (sable)
(VI) *Oryx gazella* (gemsbok);
(VII) *Addax nasomaculatus* (addax);
(VIII) Genus *Alcelaphus* (hartebeests)—All species;
(IX) Genus *Connochaetes* (gnu, wildebeest)—All species;

.....

(b) Except as provided in this Code section, a license or permit is required for the following wild animals and any others specified by regulation of the board:

(1) Class Mammalia:

(A) Order Marsupialia (opossum, wallabies, etc.) – All species...