

The Inequality of Animal Cruelty Laws

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North Carolina environmental laws often take animal wellbeing and ethical concerns into consideration. Regulations on the taking of marine mammals allow regulators to control the number of marine mammals that may be taken in a calendar year, as well as the age, size, and sex of the mammals, and the manner, location, and periods of time during the year in which they may be taken.¹ The regulations also prohibit fishing techniques that have been found to cause undue fatalities.² Additionally, the North Carolina Endangered Species Act states: “The General Assembly finds that the recreation and aesthetic needs of the people, the interests of science, the quality of the environment, and the best interests of the State require that endangered and threatened species of wild animals and wild animals of special concern be protected and conserved, that their numbers should be enhanced and that conservation techniques be developed for them.”³ Here the law points out that the recreation and aesthetic needs of the people are outweighed by those of the environment and concern for animals and the way we treat them.

One such example of the law showing concern for animal interest is seen in *Gibbs v. Babbitt*,⁴ in which a federal court held that private land owners could not kill endangered red wolves that wandered onto their land.⁵ There were only an estimated seventy-five total red wolves, forty-one of which were thought to be on private land.⁶ The court decided that the interest of society in conserving the species outweighed the interest of land owners.⁷

¹ 16 U.S.C. § 1373 (2010).

² *Id.*

³ N.C. GEN. STAT. § 113-332 (2009).

⁴ *Gibbs v. Babbitt*, 214 F.3d 483 (4th Cir. 2000).

⁵ *Id.* at 498.

⁶ *Id.*

⁷ *Id.*

Additionally, in *Animal Welfare Inst. v. Beech Ridge Energy LLC*,⁸ the Supreme Court ruled in favor of an injunction stopping construction of wind turbines that would endanger Indiana bats, a protected species.⁹ In this case the court granted injunctive relief to stop the building of wind turbines that would provide power to people, because it would kill an endangered species and endangered species should take the highest priority.¹⁰

For the purpose of this inquiry into the law I will focus on laws dealing with dog fighting, which has become an activity at the forefront of the American consciousness in recent years. I will also inquire into the way we treat cock fighting, which is an equally intolerable act about which little is known to many people. Dog fighting has been described as “a sadistic ‘contest’ in which two dogs—specifically bred, conditioned, and trained to fight—are placed in a pit (generally a small arena enclosed by plywood walls) to fight each other for the spectators' entertainment and gambling.”¹¹ Cock fighting is described as “two roosters fight[ing] each other to the death while people place bets.”¹² Additionally, “[c]ockfighters let the birds suffer untreated injuries.”¹³ “[T]he birds often wear razor-sharp blades on their legs and get injuries like punctured lungs, broken bones and pierced eyes.”¹⁴ As we can see, both activities constitute the same treatment of animals, forcing them to fight till the death for entertainment. However there is an obvious difference in how we value the two species.

In accordance with the idea that we should be concerned with the wellbeing and treatment of animals, North Carolina has enacted animal protection laws against dog and cock

⁸ *Animal Welfare Inst. v. Beech Ridge Energy LLC*, 675 F. Supp. 2d 540 (D. Md. 2009).

⁹ *Id.* at 581

¹⁰ *Id.* at 581.

¹¹ *Dogfighting Fact Sheet*, THE HUMANE SOCIETY OF THE UNITED STATES (Nov. 2, 2009), http://www.humanesociety.org/issues/dogfighting/facts/dogfighting_fact_sheet.html.

¹² *Cockfighting*, THE HUMANE SOCIETY OF THE UNITED STATES, <http://www.humanesociety.org/issues/cockfighting/> (last visited Nov. 7, 2010).

¹³ *Id.*

¹⁴ *Id.*

fighting. In North Carolina, “[a] person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under the person's ownership or control to be used for, gambles on, or profits from an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is guilty of a Class H felony.”¹⁵ Additionally in North Carolina, “A person who instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, or profits from an exhibition featuring the fighting of a cock is guilty of a Class I felony.”¹⁶ The question that arises is why are identical activities, the only difference between them being what animals are used, classified as different types of felonies. The answer lies in the possible sentencing for offenders.

Under the North Carolina General Statutes, dog fighting is classified as a class H felony and cock fighting is classified as a class I felony.¹⁷ According to section 15A-1340.17 of the North Carolina General Statutes, a person charged with a class H felony can receive four to five months for a mitigated offence, five to six months for a presumptive offence, and six to eight months for an aggravated first offence.¹⁸ Alternatively, a person charged under a class I felony can receive three to four months for a mitigated offence, four to six months for a presumptive offence, and six to eight for an aggravated offence.¹⁹ It is visible that there is a legislatively created difference between the ways we treat those who harm dogs and those who harm roosters. The query is why have we as a society chosen to do so. If the laws against animal fighting are there because we don't approve of the idea of making animals fight to the death for our amusement, then why should it matter what animals are being forced to fight? Is it because we

¹⁵ N.C. GEN. STAT. § 14-362.2 (2009).

¹⁶ *Id.* at § 14-362.

¹⁷ *Id.*

¹⁸ *Id.* at § 15A-1340.17.

¹⁹ *Id.*

have much more intimate contact with dogs than roosters? On one hand dogs are pets that live in our home and sleep in our rooms, but for roosters, the limited contact we have with them is usually at the dinner table. Does the idea of dogs being forced to fight stir stronger emotions than roosters? Both animals are forced to fight to the death, and suffer a substantial amount.²⁰

There is also a difference in how the federal system treats animal fighting. Federal statutes give a lot of room for states to set a high prison term for animal fighting offenders.²¹ North Carolina, if it were so inclined, could require offenders to serve a lot more time than it currently requires.²² Federal statute says: “Whoever violates subsection (a), (b), (c), or (e) of section 26 of the Animal Welfare Act shall be fined under this title, imprisoned for not more than 5 years, or both, for each violation.”²³ North Carolina only applies a maximum of six to eight months for a first time offence, but the prison term can be as low as four to five months for dog fighting or three to four months for cock fighting.²⁴ The question should then be why do states choose not to exercise the full range of punishment available to them under the federal system? North Carolina makes offenders serve less than half of the amount of time it could require them to serve under federal law.²⁵ While the federal system allows a maximum punishment of five years for animal fighting violations, North Carolina, even when faced with the most repeat offenders, such as someone who has eighteen or more felony violation points, still does not apply the maximum federal punishment.²⁶ Instead, North Carolina sets a standard of ten to twelve months for an aggravated class I felony involved with cock fighting and twenty to twenty-five

²⁰ *Dogfighting Fact Sheet*, THE HUMANE SOCIETY OF THE UNITED STATES (Nov. 2, 2009), http://www.humanesociety.org/issues/dogfighting/facts/dogfighting_fact_sheet.html; *Cockfighting*, THE HUMANE SOCIETY OF THE UNITED STATES, <http://www.humanesociety.org/issues/cockfighting/> (last visited Nov. 7, 2010).

²¹ 18 U.S.C. § 49 (2010).

²² *Id.*

²³ *Id.*

²⁴ N.C. GEN. STAT. § 15A-1340.17 (2009).

²⁵ N.C. GEN. STAT. § 14-362.2 (2009); N.C. GEN. STAT. § 14-362 (2009)

²⁶ *Id.*

months for an aggravated class H felony dealing with dog fighting.²⁷ Once again we see the growing inequality between the way the state of North Carolina treats dog and cock fighting.

North Carolina could do more to discourage animal fighting and close the disparity between the way it treats dog and cock fights. New Mexico, which was one of the last states in the Union to outlaw cock fighting in 2007, has longer possible prison terms for cock fighting but not dog fighting, even though it is classified as a felony.²⁸ A first time conviction of cock fighting is classified as a petty misdemeanor, a second conviction is a misdemeanor, and a third or subsequent conviction is a fourth degree felony.²⁹ Any kind of dog fighting classifies as a fourth degree felony.³⁰ A fourth degree felony carries with it a maximum sentencing period of up to zero to eight months,³¹ while a petty misdemeanor can carry a sentence of up to zero to six months and a \$500 fine, and a misdemeanor can carry up to a zero to twelve month sentencing and a \$1000 fine.³²

Virginia has a more encompassing statute to deal with animal fighting without discriminating between dog and cock fighting.³³ In Virginia someone who is just a spectator can be convicted of a class 1 misdemeanor, but anyone who takes an active role in the event or attends an event when a dog is used or any damage enhancing weapon is used (as is customary in cock fights) can be guilty of a class 6 felony,³⁴ which carries a minimum sentence of twelve months and a maximum sentence of five years along with a \$2500 fine.³⁵ Virginia is the only state that has in its statute the ability to exercise the full range given to the states by the federal

²⁷ *Id.*

²⁸ N.M. STAT. ANN. § 30-18-9 (2010).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* § 31-18-15.

³² *Id.* § 31-19-1 (2003).

³³ VA. CODE ANN. § 3.2-6571 (2010).

³⁴ *Id.*

³⁵ *Id.* § 18.2-10 (2009).

government.³⁶ Additionally, the Virginia law also prohibits anyone who is convicted under section 3.2-6571 of the Code of Virginia from ever having a companion pet again;³⁷ this provision helps prevent repeat offenders by making it illegal for them to ever possess an animal again.³⁸ The most exemplarity part of this rule is the fact that it allows for dogs and roosters to receive equal protection under the law.³⁹ Virginia law does not provide different categories for roosters and dogs; instead, it allows anyone who engages in any animal fighting, be it dog, rooster or cat, to receive the same punishment under the law.⁴⁰ This helps protect all classes of animals equally since there is no incentive to use one type of animal over another.⁴¹ If someone who provided a location for animal fighting and betting wanted to minimize his or her risk in North Carolina, he or she could hold cock fights instead of dog fights because of the difference in possible jail time.⁴²

North Carolina's stated purpose is to deter and punish those who subject animals to unnecessary cruelty.⁴³ The laws do not literally single out specific animals nor do they classify animals into more protected and less protected categories, but for some reason this distinction none the less exists.⁴⁴ So if what the laws really prohibit is the conduct on a moral level, then states may want to follow Virginia's example and provide true equal protection to all animals, especially those that are regularly used for animal fighting like roosters, under the laws that already exist.⁴⁵

³⁶ 18 U.S.C. § 49 (2010).

³⁷ VA. CODE ANN. § 3.2-6571 (2010).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² N.C. GEN. STAT. § 14-362.2 (2009); N.C. GEN. STAT. § 15A-1340.17 (2009)

⁴³ N.C. GEN. STAT. § 14-362.2 (2009); N.C. GEN. STAT. § 14-362 (2009)

⁴⁴ *Id.*

⁴⁵ VA. CODE ANN. § 3.2-6571 (2010)

This means that Virginians who may want to minimize their risk of receiving extensive jail time for animal fighting could drive to North Carolina where the law is less strict.⁴⁶ This could create a problem for North Carolina by possibly encouraging and providing an incentive for individuals involved in animal fighting to enter the state in search more lenient laws.⁴⁷ States know that animal fights usually deal with illegal gambling, and this is why most animal fighting laws have provisions in the statutes that make it illegal to bet at such events.⁴⁸ Further, the differences between punishments for rooster and dog fighting could encourage individuals to organize cock fights instead of dog fights to additionally reduce their risk.⁴⁹

If North Carolina chooses to close the disparity between the way its laws treat dog and cock fighting, it should provide true equality of protection for such animals from the cruelty of animal fighting. Additionally, if North Carolina allowed courts and juries to exercise the full extent of the federal regulation, it could deter individuals from choosing North Carolina as a forum for illegal activities because of lenient laws.⁵⁰ These actions could bring the law closer to its intended goal of deterring unnecessary cruelty to all animals, not just some animals.

⁴⁶ N.C. GEN. STAT. § 14-362.2 (2009); N.C. GEN. STAT. § 15A-1340.17 (2009)

⁴⁷ N.C. GEN. STAT. § 15A-1340.17 (2009); VA. CODE ANN. § 3.2-6571 (2010).

⁴⁸ *Id.*

⁴⁹ N.C. GEN. STAT. § 14-362 (2009); N.C. GEN. STAT. § 15A-1340.17 (2009)

⁵⁰ 18 U.S.C. § 49 (2010).