

Animals as Assets in Debt Collection Procedures: A Comparative Analysis of American and German Law

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Abstract

The paper outlines the legal rules pertaining to the treatment of animals as assets for debt collection in Germany and America. A comparative analysis reveals striking similarities and fundamental differences at the same time, which are explained against the background of both legal systems' wider context. Finally, the paper turns to the lessons to be learned for the further development of animal law. Especially sections 811(3) and 765a(1) of the German Code of Civil Procedure are identified as commendable examples of laws that protect animals without neglecting the legitimate interests of humans.

Most legal systems contain rules for the execution of judgments if a debtor is still unwilling to pay in spite of a binding decision. Typically, the debt is collected by seizing assets from the debtor and utilizing them to pay out the creditor. While in agricultural societies, animals naturally form an important part of most debt collection efforts, in contemporary industrial and service-oriented western societies, their role has been diminished. This, however, could be bound to change again as keeping valuable and exotic pets is becoming ever more prevalent.¹ While plans to further regulate and suppress the trade in exotic wildlife for reasons of species conservation, animal welfare and disease prevention have gained some momentum in Europe,² regarding highly expensive breeds of dogs, cats, or horses, a trend reversal is nowhere to be seen on the horizon.

The inclusion of animals and pets in particular as potential assets for debt collection raises intriguing questions regarding their treatment under the law. Whereas an

¹ cf Samantha Chestney, 'Red Rover, Red Rover, Please Let Me Keep Red Rover: Pet Exemptions in Chapter 7 Bankruptcy Proceedings' (2019) 58 Washington University Journal of Law & Policy 297, 300 et seq.

² European Parliament resolution of 24 November 2022 on improving EU regulations on wild and exotic animals to be kept as pet in the European Union through an EU positive list (2022/2809(RSP)).

inanimate object or a bank account could not care less about being seized, transferred, or auctioned off, an animal is a sentient being affected by the situation surrounding it. Many pets form close mutual bonds with their owners and severing them would inflict emotional harm on both. A creditor, on the other hand, might reasonably perceive it as very unfair to let a debtor off the hook just because he invested his money in expensive pets. These issues shall be explored through a comparative lens, with American and German law as the prime samples. Examining and comparing them will hold valuable lessons for the field of animal law as a whole.

A primer on terminology

Every work of comparative law faces the problem that it is next to impossible to precisely translate legal terminology. While there is often a translation roughly equivalent to the respective term, it is never exactly the same. A single word of “legalese” usually embodies complex concepts developed over centuries – the explanation of which can fill entire books. Even in different jurisdictions sharing a common language, the very same term rarely conveys exactly the same meaning in every detail and every respect.

The execution of judgments typically includes formal acts by which certain assets of the debtor are designated for the execution of said judgment. In legal systems of the Common Law tradition, such formal acts come under a wide variety of English names: attachment, lien, garnishment, levy, distraint, sequestration etc. Which one a lawyer would find most appropriate depends on the jurisdiction of his training, the particular type of assets, and the circumstances of the case. Hence, all these terms come with heavy doctrinal baggage and may raise different expectations depending on the reader’s background.

I have, therefore, decided to employ *mainly* the term I consider the most neutral yet still fitting: “seizure” and “to seize” respectively. Even if the formal executory act leaves an asset in the debtor’s factual possession for the time being, it will legally bar the debtor from selling or otherwise enacting his property rights over the asset, thereby formally if not factually “seizing” the asset to the creditor’s benefit. While I will still introduce some core terms of US and German law relevant to animals and the

execution of judgments, I hope that my approach will allow for the least obstructed view possible on the actual issues at hand.

The American example

American legal doctrine generally classifies animals as property just like inanimate objects,³ although in *Corso v. Crawford Dog & Cat Hospital, Inc*, a judge once held that “a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property” in order to award the plaintiff damages exceeding the market value of her dog. Concluding, he staunchly added that “[t]o say it is a piece of personal property and no more is a repudiation of our humaneness”.⁴ This line of reasoning, however, has not taken precedent. While some courts followed suit, harsh rebuttals such as that “the Corso opinion, and the few cases that follow it, are aberrations flying in the face of overwhelming authority to the contrary”⁵ gained the upper hand.⁶ Thus, the classification as property stands.

This is not to say, of course, that American law completely disregards animals as sentient beings: Legislation such as the Animal Welfare Act, the Humane Slaughter Act, or the Preventing Animal Cruelty and Torture Act have set certain protective standards and introduced criminal offences covering severe forms of mistreatment. However, the protection afforded to animals under public and criminal law has not affected their status as property for matters of private law and civil procedure.

If an American court awards a creditor money and the debtor does not satisfy the judgment, the court may impose a lien, i.e. a legal interest of the creditor, on specific property owned and possessed by the debtor, and instruct the local sheriff to seize said property, monetize it and turn over the proceeds to the creditor.⁷ As property, animals are suitable to be seized under a lien.⁸ The aforementioned animal welfare laws

³ Sande L Buhai, ‘Pets as Property: Signs of Change in the Law of Judgment Collections’ (2020) 26 *Animal Law Review* 171, 172.

⁴ *Corso v. Crawford Dog & Cat Hospital, Inc*, Civil Court of the City of New York, Queens County, 415 NYS 2d (182 NY City Civ Ct, 1979).

⁵ *Gluckman v. Am. Airlines, Inc.*, US District Court for the Southern District of New York, 844 F Supp 151, 158 (SDNY 1994).

⁶ Sabrina DeFabritiis, ‘Barking up the Wrong Tree: Companion Animals, Emotional Damages and the Judiciary’s Failure to Keep Pace’ (2012) 32 *Northern Illinois University Law Review* 237, 247 et seqq.

⁷ *Black’s Law Dictionary* (10th edn, 2014), ‘judicial lien’, 1065; Sande L Buhai (n 3) 186.

⁸ Sande L Buhai (n 3) 186.

certainly are applicable to the mode of their subsequent safe-keeping by the sheriff and their monetization. For instance, if the seized animal is auctioned off,⁹ the regulations put in place in accordance with section 12 of the Animal Welfare Act must be observed. Or if it is transported to another place, the sheriff ought to comply with the so-called “Twenty-Eight Hour Law”.¹⁰ However, the decision whether an animal is suitable for seizure in the first place is governed by the specific statutes on the execution of judgments which each state has enacted. They regulate this matter conclusively and do not require courts to make considerations such as if taking a particular animal from its home would constitute cruelty towards it. Yet, a number of states – though far from all – have provided for the exemption of animals from execution under certain conditions, some aiming at pets specifically, others exempting animals in general.¹¹ Sadly, they cannot all be examined here in detail. A few examples ought to suffice for illustrative purposes.

For instance, section 5205 of the New York Civil Practice Law and Rules renders “domestic animals with the necessary food” immune from debt collection procedures “provided that the total value of such animals and food does not exceed one thousand dollars”, but not “where the judgment is for the purchase price of the exempt property”. In Alaska, debtors are “entitled to the exemption of pets to the extent of a value not exceeding \$1,000”.¹² Like in New York, this does not apply in case the debt consists of the purchase price of the exempted property and, further, if the debt consists of a loan given for the purchase of the exempted property.¹³ Moreover, Alaska recognizes grounds like e.g. the enforcement of child support or restitution of a crime to tilt the rules in favour of the creditor again.¹⁴

Montana grants residents¹⁵ the privilege to retain animals of up to 7,000 dollars worth collectively and not exceeding 1,250 dollars each,¹⁶ as long as the enforced claim is not

⁹ As commanded for sales of property under execution by e.g. Montana Code Annotated 2021, s 25-13-704.

¹⁰ United States Code, Title 49, s 80502.

¹¹ Sande L Buhai (n 3) 186 et seq.

¹² Alaskan Code of Civil Procedure, s 09.38.20(d).

¹³ *ibid* s 09.38.65(a)(2)(A).

¹⁴ *ibid* ss 09.38.65(a)(1)(A), 09.38.65(a)(3).

¹⁵ Montana Code Annotated 2021, s 25-13-606.

¹⁶ *ibid*, s 25-13-609(1).

for the purchase price of those exact animals or a loan to cover the purchase¹⁷. In Idaho, the exemption of animals of up to a value of 1,000 dollars each and 7,500 dollars in total is subject to the condition that they are held *reasonably for personal use*.¹⁸ This standard was found to be satisfied in the case of a horse kept as a companion and intended for riding. The court remarked that exemption statutes should be liberally construed in favour of the debtor and argued rather humorously:

Would it be more reasonable for Debtors to own a fish, bird, turtle, or hamster? Those pets would surely be more difficult to ride. All things considered, owning a horse for personal use is not irrational.¹⁹

However, not all judges have shared the opinion that exemption clauses ought to be liberally construed in favour of the debtor. In the 1938 case of *Bertozzi v Swisher*, the Californian Court of Appeal for the first District rejected the claim that a racing horse fell under the scope of a statutory provision exempting “[t]wo horses [...] by the use of which a cartman, drayman, truckman, huckster, peddler, hackman, teamster or other laborer habitually earns his living” from execution, even though the owner made his living by professionally racing said horse. While the trial court had followed the owner’s reasoning that he was an “other laborer”, the Court of Appeal opted for a narrow interpretation: Given the enumeration of specific occupations, the judges concluded that “other laborer[s]” encompassed only people partaking in labors similar to those enumerated ones. Furthermore, if the owner’s claim were to be accepted ...

[...] any person in failing circumstances might invest his whole estate in two valuable race horses, each worth ten or twenty thousand dollars, or more, and then by claiming them as exempt from execution defraud his creditors under the color of law [...] and thus pervert the benevolent design of the statute.²⁰

¹⁷ *ibid*, s 25-13-607.

¹⁸ Idaho Statutes Title 11: Enforcement of Judgments in Civil Actions, s 11-605(1)(b).

¹⁹ *In re Gallegos*, United States Bankruptcy Court, D Idaho, 226 BR 111 (Bankr D Idaho 1998).

²⁰ *Bertozzi v Swisher*, Court of Appeal of California, First District, Division One, 27 Cal App 2d 739 (Cal Ct App 1938).

Apart from some more instances concerning horses under varying statutory regimes,²¹ US case law relevant to the utilization of animals in debt collection is actually sparse.²² Unsurprisingly so, since in most cases it is economically unattractive for creditors to have animals seized: Their resale value is often dubious at best and until then, they need to be cared for.²³ Hence, the legislators enacting statutory rules to regulate the matter seem to have been influenced not so much by pressing issues of legal reality but rather by changing cultural attitudes that are increasingly empathetic toward animals and particularly toward people's emotional investment in their pets.²⁴ Consequently, the exemptions for pets appear to resemble exemptions for other property of sentimental value such as photos.²⁵ Even Montana's exemption for any kind of animals lists them along with jewellery, firearms, sporting goods, and musical instruments,²⁶ which hints at the protection of emotional attachment as at least one of the rationales behind the law. In line with this, a certain concern that creditors might use the seizure of beloved pets to gain extortive leverage on debtors might also have played a part, as there have been analogous instances of creditors seizing "monetarily worthless but emotionally priceless" family photos to compel the cooperation of debtors beyond the requirements of law and discourage further resistance.²⁷

Nevertheless, the legislative decisions on whether and up to which amount certain animals are exempt from execution might yet turn out to be more practically relevant than expected since – as noted above – habits of investing huge sums of money to acquire expensive pet breeds or exotic animals imported from far away regions are becoming ever more prevalent throughout western societies including the United States. If the current rules will stand the test of time, however, remains to be seen: They implement ultimately arbitrary yet strict value caps of typically USD 1,000 for a single animal without leaving any discretion for courts to consider the circumstances of the individual case. Given the aforementioned change in cultural attitudes, undoubtedly the question will arise, whether it can be just that a mongrel is always

²¹ See e.g. *In re Canutt*, United States District Court, D Idaho, 264 F Supp 919 (D Or 1967); *In re Cass*, United States Bankruptcy Court, ND Oklahoma, 104 BR 382 (Bankr ND Okla 1989).

²² Sande L Buhai (n 3) 186 et seqq.

²³ *ibid* 188.

²⁴ *ibid*.

²⁵ *ibid*.

²⁶ Montana Code Annotated 2021, s 25-13-609(1).

²⁷ Sande L Buhai (n 3) 189 et seq.

exempt from debt collection, whereas a prized Tibetan mastiff never is, although one side of the equation, the relationship between owner and dog, is just the same. On the other hand, it might disproportionately affect a financially struggling creditor to be strictly barred from monetizing a debtor's dog or cat which is worth only USD 999 if the money cannot otherwise be generated.

The German example

The legal status of animals in Germany is defined in section 90a of the German Civil Code (*Bürgerliches Gesetzbuch*):

Animals are no objects. They are protected by special laws. The provisions concerning objects shall apply *mutatis mutandis*, insofar as not provided otherwise.²⁸

It was introduced in 1990 as part of a larger reform aiming to elevate and improve the legal position of animals in German private law because they had come to be regarded as “fellow creature[s] of man and susceptible to pain”.²⁹ Thus, the traditional equation with objects rooted in Roman law³⁰ was formally replaced with the solution given in translation above, whereby animals, henceforth, would *in principle* be no objects yet, *for practical purposes*, mostly be treated as such. Although the legislative history does not mention it, the draft was presumably modelled after section 285a of the Austrian Civil Code, which had been introduced two years prior with almost the same wording.³¹ Both legislative endeavours were met with opposition and ridicule in Austria and Germany respectively.³² However, that this stance on animals in the context of private law is neither a mere sentimental statement nor doctrinally inconsistent, is beautifully

²⁸ This is the author's own translation; another translation by the German Federal Ministry of Justice can be found at <https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p0273> accessed 26 August 2023.

²⁹ German Parliament, Document Nos (*Drucksachen*) 11/5463 and 11/7369; the direct quote stems from the former.

³⁰ *Institutiones Iustiniani 2 pr et seqq*; printed in: Rolf Knütel and others (eds and trs), *Corpus Iuris Civilis: Die Institutionen: Text und Übersetzung* (4th edn, C.F. Müller 2013) 47 et seqq.

³¹ Bernd Pütz, ‘Zur Notwendigkeit der Verbesserung der Rechtsstellung des Tieres im Bürgerlichen Recht’ (1989) 22 *Zeitschrift für Rechtspolitik* 171.

³² Malte Stieper, ‘§ 90a’, *Julius von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen* (new rendition 2021) para 1.

demonstrated in the rules pertaining to the execution of judgments, where due consideration is given to humans' and animals' interests alike.

Once a court in Germany has ordered a debtor to pay a certain sum to the creditor and the debtor is still unwilling to comply, the creditor may apply for the judgment's execution through a bailiff (*Gerichtsvollzieher*),³³ who is authorized to seize sufficient assets of the debtor,³⁴ monetize them,³⁵ and finally pay out the creditor. Movable objects as laid out in sections 808 et seqq of the German Code of Civil Procedure (*Zivilprozessordnung*) are seized through a formal act called *Pfändung*. Since the rules pertaining to objects also apply to animals, they fall within the scope of section 808 and are suitable to be seized. This is limited, however, by section 811(1)(8) of the German Code of Civil Procedure, which exempts animals from *Pfändung* that are (a) either kept for non-commercial purposes or (b) required for the trade of the debtor or a person of his household. The first limb encompasses pets in the traditional sense, but also assistance animals like guide dogs, or animals for self-supply.³⁶ The second limb protects main and side trades alike; the debtor must be left with enough animals to continue in an economically feasible way.³⁷

In turn, the limitations of seizure are themselves restricted: An animal protected by the second limb may still be seized in case it was sold under retention of ownership and now the vendor seeks execution of a judgment awarding him the purchase price.³⁸ Upon the creditor's petition, pursuant to section 811(3) of the German Code of Civil Procedure, a court may allow to seize an animal falling within the scope of the first limb, if it is of high value and exempting it would be so severely detrimental to the creditor that it cannot be justified by animal welfare concerns and the debtor's legitimate interests. To assess the detrimental effect on the creditor, the court takes into account the debt's quantity, the creditor's financial situation, and other available means of enforcement. This is weighed against the debtor's situation, especially his

³³ German Code of Civil Procedure (*Zivilprozessordnung*), s 753.

³⁴ *ibid* ss. 802a(2), 803.

³⁵ *ibid* ss 814 et seqq.

³⁶ Jasmin Flockenhaus, '§ 811' in Hans-Joachim Musielak and Wolfgang Voit (eds), *Zivilprozessordnung mit Gerichtsverfassungsgesetz: Kommentar* (20th edn, Verlag Franz Vahlen 2023) para 24d.

³⁷ *ibid.* para 25.

³⁸ German Code of Civil Procedure, s 811(2).

emotional attachment to the animal, and against the impact its seizure would have on the animal itself,³⁹ particularly with regard to its own emotional attachment to the owner⁴⁰. Naturally, the debtor's interests are not legitimate and to be disregarded if he purposefully attempts to prevent enforcement measures by exploiting the exemption, which was a major concern during the legislative process.⁴¹ In case of *doubt*, the petition ought to be *denied*.⁴²

The petition has been granted, for instance, regarding valuable koi carps and parrots, which constituted the debtor's *sole valuable assets* for monetization. Besides this, the court of first instance stressed that the creditor actually depended on collecting this debt, that other measures of enforcement had failed, and that the owner had not claimed to be emotionally attached to her pets.⁴³ When the owner appealed the decision and finally claimed emotional attachment, the argument was most laconically rejected, stating only that this could not outweigh the creditor's hardship and that it was up to the debtor to pay in order to prevent the seizure of her pets.⁴⁴ It is to be assumed that the court of appeal never took the argument of the owner's emotional attachment seriously for it was only raised in the appeal, which is indeed odd. One would expect the owner to know her emotions already in the first instance. Sadly, the courts did not comment on issues of animal welfare, particularly emotional attachment of the involved animals toward their owner or toward each other. Regarding the koi carps, this seems reasonable since we can certainly presume that they do not care at all about their owner and only about the living conditions they are offered. There is no indication that the latter would have been impaired. Parrots, on the other hand, are capable of forming close bonds with people,⁴⁵ hence a careful case-to-case deliberation is required.

³⁹ Jasmin Flockenhaus, '§ 811' (n 36), para 26.

⁴⁰ Christian Seiler, '§ 811' in Heinz Thomas and Hans Putzo (eds), *Zivilprozessordnung: Kommentar* (43rd edn, C.H.Beck 2022) para 19.

⁴¹ German Parliament, Document No (*Drucksachen*) 11/5463, 7; see also Silvia Deuring, 'Vom Mops in der Zwangsvollstreckung: Ein Beitrag zur Verwertung von Haustieren in der Zwangsvollstreckung am Beispiel des "Ahlener Mops-Skandals"' (2020) 135 *Deutsche Gerichtsvollzieher-Zeitung* 1, 3.

⁴² Jasmin Flockenhaus, '§ 811' (n 36), para 26.

⁴³ Amtsgericht Neukölln, Order of 2 August 2006 – 33 M 8027/06.

⁴⁴ Landgericht Berlin, Order of 16 March 2007 – 81 T B859/06.

⁴⁵ Matt Cameron, *Parrots: The Animal Answer Guide* (The John Hopkins University Press 2012) 150 et seq.

A petition for seizure was denied in the case of an old horse in “retirement” because it was of little value and the judge, who described himself as an “interested observer of horse racing and trading” had reservations with regard to animal welfare.⁴⁶ What the judge based these concerns on besides his affection for horses, remains somewhat opaque. Most likely it was the fact that the horse was basically living out its last days upon the mercy of its owner.

Much attention was aroused by the case of a young pug seized from an unemployed family with little children and a paraplegic father by municipal officers in the German town of Ahlen in 2018 due to debts with the town resulting from dog tax and childcare fees – of all days on St. Nicholas day, when usually children in Germany receive gifts.⁴⁷ The Code of Civil Procedure was applicable *mutatis mutandis* in this situation as well, with the administrative authority taking up the powers that normally the court of execution would wield.⁴⁸ Unfortunately, the family did not seek protection in the administrative courts,⁴⁹ but the matter was received as illegal in scholarly literature because refraining from collecting the pug’s mediocre value of EUR 750 immediately through its seizure and monetization would have hardly constituted more than a minor nuisance to the municipality, whereas the children and disabled father as well as the pug, which had already lived with the family for over a year, were very vulnerable to emotional distress caused by separation.⁵⁰

From the examination of the rules contained in section 811 of the German Code of Civil Procedure it may seem as if animal welfare concerns mattered only in the seizure and monetization of animals kept for *non-commercial* purposes. However, such a gap would make the rules on the seizure of animals incompatible with Article 20a of the German Constitution, which commits the German State to the protection of animals; and indeed the gap left in section 811 is filled by a more general provision: Pursuant to

⁴⁶ Amtsgericht Paderborn, Order of 8 December 1995 – 12 M 2848/95, (1996) 111 Deutsche Gerichtsvollzieher-Zeitung 44.

⁴⁷ Silvia Deuring (n 41) 1 et seq.

⁴⁸ Administrative Enforcement Act of North Rhine-Westphalia (*Verwaltungsvollstreckungsgesetz NRW*), s 27; s 295 of the German Fiscal Code (*Abgabenordnung*) is not applicable to dog tax pursuant to s 1 of the German Fiscal Code.

⁴⁹ However, the pug’s purchaser sued the town as vendor due to allegedly undisclosed illnesses of the pug: Landgericht Münster, Judgment of 5 April 2023 – 02 O 376/19.

⁵⁰ Silvia Deuring (n 41) 3 et seq; see also Caroline Meller-Hannich, ‘Die Pfändbarkeit und Verwertbarkeit von Tieren’ [2019] Monatsschrift für Deutsches Recht 713, 715.

section 765a(1) of the German Code of Civil Procedure, the court of execution may, upon the debtor's petition, disallow any act of execution, if it would constitute a hardship incompatible with public morals due to extraordinary circumstances. Even if an act of execution does not constitute a sufficiently severe hardship for the debtor himself, the court may still be obliged to intervene for animal welfare reasons since it is added in the third sentence of section 765a(1) that in case the executory measure concerns an animal, the court must take "the responsibility of humans for animals" into consideration.⁵¹ Thereby the Code of Civil Procedure alludes to the identically worded section 1 of the German Animal Welfare Act (*Tierschutzgesetz*),⁵² which mandates, *firstly*, to choose among different possible interpretations of the law that which serves animal welfare best and, *secondly*, in case of a conflict between animal welfare and other legal fields to construe the law in a way that facilitates animal welfare as far as possible without disproportionately pushing back the conflicting law⁵³.

Comparative analysis

Although the American legal situation differs immensely between states, one cannot help but notice intriguing resemblances between the developments in those states, which have chosen to adopt specific legislation, and Germany. The latter as well as the former provide generous statutory exemptions for animals. Even some of the caveats to such exemptions appear to be rather universal. For instance, the principle that the purchaser of an animal should not be allowed to avoid paying the due price by resorting to execution exemptions. And always, the animal's value can play out as a limitation or is at least an important factor for consideration in the creditor's interest. Moreover, the fear that debtors may abuse exemption provisions by purposefully stashing away their money in valuable animals, which can be seen in the Court of Appeal's reasoning in *Bertozzi v Swisher*,⁵⁴ is also present in the German legislative

⁵¹ Mark Seibel, '§ 765a' in Richard Zöller (ed), *Zivilprozessordnung: Kommentar* (34th edn, Verlag Dr. Otto Schmidt 2022) para 10; Christian Seiler, '§ 765a' in Heinz Thomas and Hans Putzo (eds), *Zivilprozessordnung: Kommentar* (43rd edn, C.H.Beck 2022) para 12.

⁵² Mark Seibel, (n 51) para 10; Christian Seiler (n 51) para 12; Rolf Lackmann, '§ 765a' in Hans-Joachim Musielak and Wolfgang Voit (eds), *Zivilprozessordnung mit Gerichtsverfassungsgesetz: Kommentar* (20th edn, Verlag Franz Vahlen 2023) para 12.

⁵³ Ernst Metzger, 'TierSchG § 1 [Zweck und Grundsatz des Gesetzes]' in Georg Erbs, Max Kohlhaas, and Peter Häberle (eds), *Strafrechtliche Nebengesetze* (245th delivery, C.H.Beck 2023) para 3.

⁵⁴ n 20.

history⁵⁵, where it appears to be the main reason for allowing courts to override an exemption severely detrimental to the creditor as enshrined today in section 811(3) of the German Code of Civil Procedure.

One must not, however, overstate the similarities: While German law aims to protect animals' interests not only for their owner's but also for their own sake as demanded by Article 20a of the German Constitution and section 90a of the German Civil Code, the American law of civil procedure is concerned with the owner's needs and sentiments alone. Even in the aforementioned instance of an American judge ruling animals to "occup[y] a special place somewhere in between a person and a piece of personal property"⁵⁶, this was primarily born out of concern for the emotional distress a pet owner may suffer from losing the pet, which the Judge considered to be of another quality than losing inanimate property. It is exactly this concern for pet owners which appears to have driven more recent legislative efforts in a number of American states. Accordingly, New York and Alaska limit their exemptions to domestic animals and pets respectively, Idaho to animals held reasonably for personal use, i.e. to such animals to which an owner would usually be emotionally attached. German law distinguishes between animals kept for non-commercial purposes and those that are required for the trade of the debtor or a person of his household yet stipulates specific exemptions for both. Since there are also American states with general animal exemptions like Montana, the German solution seems like a crossover of the different American approaches, combining differentiation with an ultimately wide scope of application for exemptions.

Following through on the principle established in section 90a of the German Civil Code, under the German debt collection regime, animals are sorted into the system of asset monetization like objects would be, yet generous exemptions are provided in consideration of the animal's and owner's situation, especially their attachment to each other, as long as it does not unjustifiably disadvantage the creditor. The law recognizes that, when animals are involved, there are not only two but three sentient entities with own interests at stake and tries to strike a sensible balance between them.

⁵⁵ German Parliament, Document No (*Drucksachen*) 11/5463, 7.

⁵⁶ *Corso v. Crawford Dog & Cat Hospital, Inc* (n 4).

The American legislative efforts have, thus far, been aimed at striking a balance solely between the two human actors.

This does not mean that animal welfare considerations play no role at all in the process of execution under American law: Various protective regulations are applicable to the implementation of executory measures, i.e. to the “how” of seizure and monetization. Unlike in Germany, however, they – or animal welfare as a general principle – are not tied into the decision on whether to impose a lien on an animal or not in the first place.

Furthermore, while the American statutes stipulate fixed value limits, the German Code of Civil Procedure leaves that question open for jurisprudence to decide through consideration of all circumstances on a case-by-case basis. Notably, a former version of section 811 of the German Code of Civil Procedure in force until 31 August 1990 also included an exemption for “dogs and other animals not meant for sale and kept in the domestic sphere, if their value does not exceed 500 German Mark” (under no 14). This provision was repealed and replaced with one that already closely resembled today’s solution in the course of the same reform that introduced section 90a of the German Civil Code and put an end to the categorization of animals as objects.⁵⁷ It did not seem justifiable anymore to indiscriminately deny any protection to the relationship of owner and animal simply because the latter’s economic value exceeds a certain amount.⁵⁸ It is important to note here that while the principle enshrined in the new section 90a of the German Civil Code called for this accompanying change in the law of procedure, it was by no means a logical prerequisite thereof. Wherefore American law could perfectly emulate the more flexible German approach even without reclassifying animals on a fundamental level first.

Lessons to be learned

American Judges have, on occasion, expressed frustration with their inability to go against deeply rooted precedent classifying animals as mere property and have called upon the legislature for reforms.⁵⁹ The statutory exemptions from debt collection may act as models for even more meaningful legislation to come and eventually work as the

⁵⁷ Federal Law Gazette (*Bundesgesetzblatt*) 1990, 1762 et seqq; for the legislative history see n 28.

⁵⁸ German Parliament, Document No (*Drucksache*) 11/5463, 7.

⁵⁹ Sabrina DeFabritiis (n 6) 251 et seqq.

spark of a doctrinal U-turn in the long run. The example of German law, which has already backed away from formally equating animals with objects, illustrates that this development need not necessarily mean elevating animals' status to persons or to illusorily ignore economic reality. Especially sections 811(3) and 765a(1) of the German Code of Civil Procedure are laudable examples of a solution that protects animals without neglecting the legitimate interests of humans. It is a workable compromise, which might still occasionally be the target of ridicule for allegedly lacking consistency, but I know of no contemporary voices demanding to go back to the Roman classification of animals as objects. Part of the reason why this compromise has come to be widely accepted or at least tolerated, is the fact that it was not imposed on society by a select few judges and jurists but developed in a democratic fashion and enacted through legislation.

The fact that some American states have expressly exempted animals to a certain degree from the execution of judgments, while others have – as of yet – chosen not to, indicates disparities in the pace at which cultural perceptions of animals and their relationship with humans is changing in different parts of the country, which ought to be respected. In democratic societies like Germany and the United States, it cannot – and should not – be “outsourced” to the courts to create animal welfare policy under the guise of law in order to avoid the tedious task of finding majorities on controversial issues. American Judges are reasonable to tread with care instead of pressing ahead in a rush of judicial activism. The examples of legislation discussed herein, however, show that substantial and balanced advances are achievable once society is ready for it.

Conclusion and Research Desiderata

The execution of judgments does not only put debtors in a vulnerable position, but also animals if they are considered suitable assets for monetization. Being ripped out of their environment and social context, being separated from their “pack” or “flock” might inflict severe harm on their wellbeing. At the same time, the threat of losing a perhaps beloved companion also adds another layer to the debtor's distress.

The comparison of American and German law has demonstrated that there are very different ways to deal with this situation: From ignoring it like in some American states

to affording quite a substantial level of protection to animals and to their relationship with their owners in Germany; and in between various middle-ways of American states that do not incorporate animal welfare concerns into the execution decision, yet at least recognize the owner's emotional attachment as worthy of protection. These approaches are closely linked to and sometimes inextricably intertwined with more general doctrinal stances on animals. Nevertheless, German debt collection law has emerged as an overall suitable model for future developments in the United States.

Hopefully, this paper will inspire other scholars to investigate the role and legal position of animals in the debt collection procedures of further jurisdictions as well as in other modes of the execution of judgments, for instance in the enforcement of a specific animal's surrender due to its purchase or ownership claims, or in evictions from apartments and real estate.⁶⁰ If done in a comparative fashion, such research might teach us a lot about the state of animal law in the world and global tendencies of development.

⁶⁰ Already existing e.g. an overview of Israeli law: Pablo Lerner, 'Execution of Judgments and Animal Law: The Attachment of Pet Animals in Israel' (2013) available at <<https://ssrn.com/abstract=2263199>> accessed 26 August 2023; focusing on US bankruptcy proceedings: Samantha Chestney (n 1).