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MAX-PLANCK-INSTITUT
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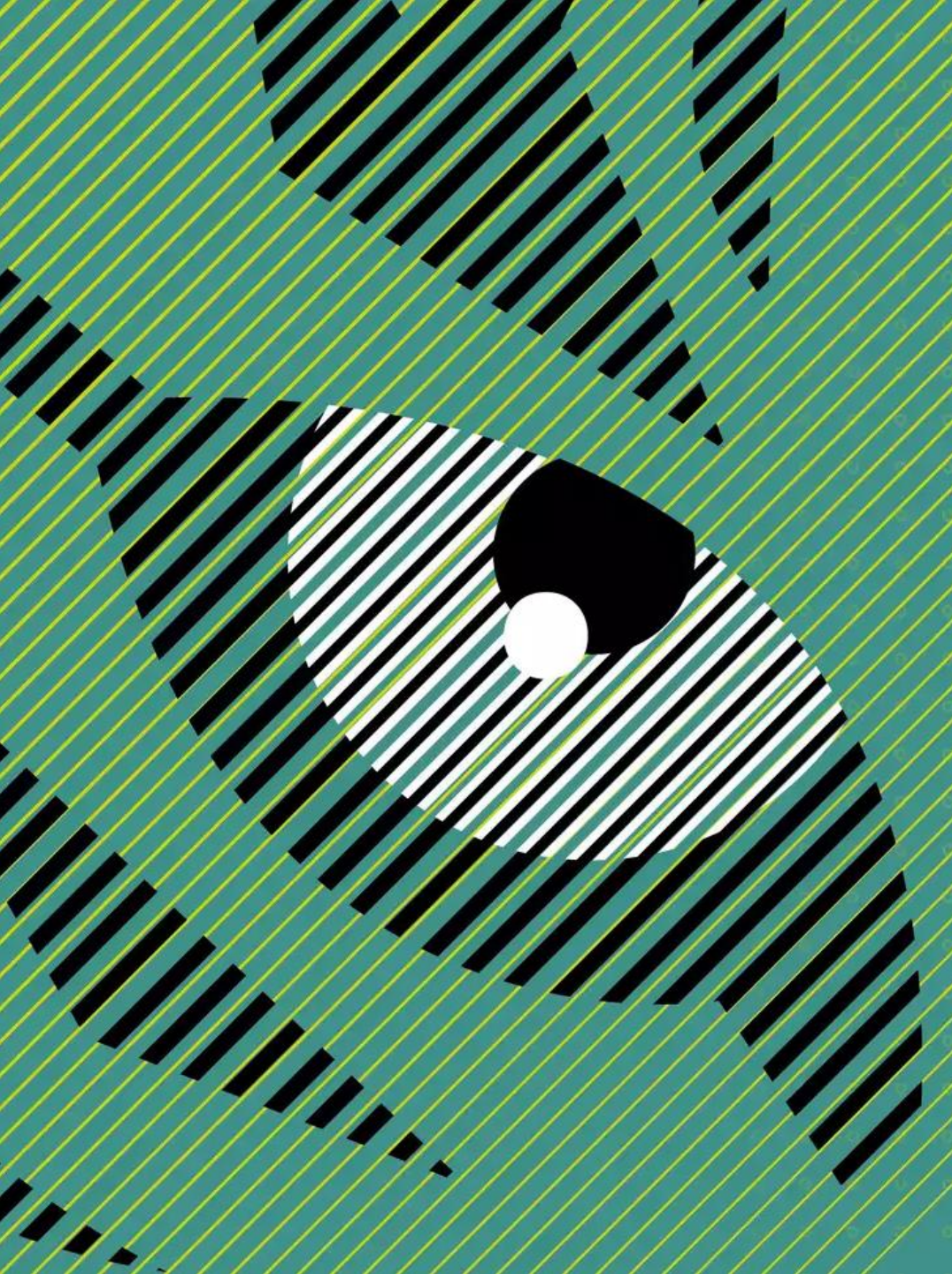


Animal Rights Law

SS 2026

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Unit 3:
Animals as tradable products

Overview

- 1) Animal welfare vs. free trade (*student presentation 1*)
- 2) Animals in the production process
 - “Surplus animals”
 - Modification of animals (esp. breeding, surgeries)
- 3) Animals in the supply chain
 - Animal transports
 - Ritual slaughter

Case 5: Culling of male chicks

H runs a hatchery where fertilised eggs are incubated artificially in order to breed laying hens that will lay as many eggs as possible for human consumption. Approximately half of the hatched eggs produce male chicks, which are unprofitable to rear as so-called "broiler chickens" for meat production because they are not bred to yield as much meat as possible. Therefore, B sorts them out shortly after hatching and disposes of them in a shredder. In 2012, about 45 million male chicks were killed this way in Germany.

On 18 December 2013, the competent veterinary agency issues an order against H prohibiting the culling of male chicks not suitable for slaughter. H challenges this order before the administrative court.

Will H's action be successful?



Case 5: Culling of male chicks

(adapted from [BVerwGE 166, 32](#), see also [here](#))

A. Admissibility

- Action challenging an administrative act (§ 42 (1) Code of Administrative Court Procedure)

B. Merits

Legal basis for order: § 16a (1) TierSchG

⇒ Infringement of § 1 TierSchG: "without good reason"? ⇒ Balancing of interests:

- *Animal interest: life*
 - ⇒ German TierSchG built on **ethically motivated** animal protection
 - ⇒ Enshrined in **Art. 20a Basic Law** ⇒ guides interpretation of "good reason"
 - ⇒ Male chicks are **denied any intrinsic value**, life is seen as useless from the start
- *Human interest: economic interest in reducing production costs*
 - ⇒ **Art. 12 (1) Basic Law**: freedom to exercise a profession
 - ⇒ **Competitive disadvantage** vis-à-vis companies abroad
 - ⇒ Alternatives:
 - Keep and rear the male chicks: very burdensome
 - Breeding lines for both laying eggs and meat production: less suitable than "pure" lines
 - In-ovo sexing of chicks: development of technology in sight (2019)

C. Result (Federal Administrative Court): Animal interests prevail, but protection of producers' legitimate expectations ⇒ transitional period until in-ovo sexing can be implemented

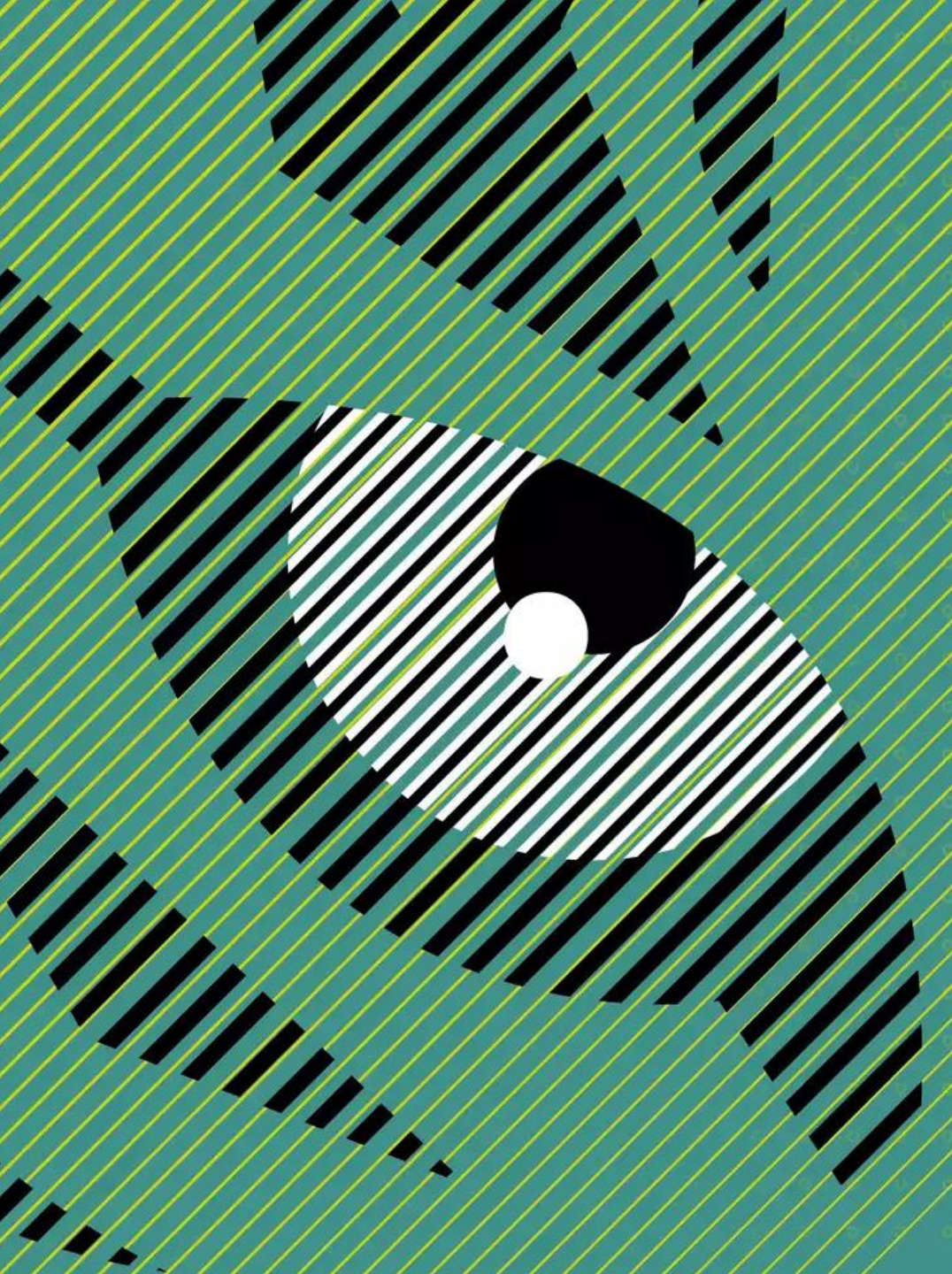
Animals in the production process

- Economic efficiency vs. animal protection
- "Surplus animals"
 - Male chicks: Due to selective breeding, male chicks of laying hens are **of no use** either for egg or meat production ⇒ **Culling** of male chicks (usually by maceration = "shredding") → *Case 5*
 - Lab animals: Due to breeding requirements or changes in research agendas, the number of animals bred for scientific purposes exceeds the number of animals required for experiments ⇒ **Killing of animals not utilisable in experiments** (> 1 million animals in Germany per year)
 - Zoo animals:
Animals **unfit for breeding programmes + lack of space** ⇒ killed (eg baboons in Nuremberg zoo)
- Modification of animals
 - Selective breeding: Techniques used to generate animals with desired characteristics
 - Aimed at **maximum output/performance** (eg maximum amount of meat, milk, eggs)
 - Aimed at **supposed cuteness** (eg dog and cat breeds with extreme deformations)⇒ Prohibition of "**torture breeds**" ⇒ problem: (proof of) foreseeability
 - Surgeries: modifications of animals' bodies to **prevent mutual injury due to limited space** (eg debeaking, dehorning, clipping tails of pigs)

⇒ Animals are adjusted to the production process and not the other way round

Animals in the supply chain

- **Animal transports: *Export of animals for breeding or slaughter***
 - Long transports through different countries ⇒ hard to supervise, evidence for poor compliance
 - ⇒ ECJ, Zuchtvieh-Export GmbH v Stadt Kempten (2015): transports starting in the EU must comply with **EU Transport Regulation even outside the EU**
 - Animal welfare violations in certain **countries of destination** highly likely
 - ⇒ Prohibition of transports leading to violations of German animal protection law in third countries?
 - Order under § 16a (1) TierSchG: "**concrete danger**" of violations ⇒ practically impossible to prove
 - Federal ministry could issue an **ordinance** under § 12 (2) TierSchG, but has not done so yet
 - Compliance with **international trade law**: animal protection as justification (→ **presentation 1**)
- **Ritual slaughter: *Animal protection vs. freedom of religion***
 - ECJ, Centraal Israëlitisch Consistorie van België and Others v Vlaamse Regering (2020):
 - Freedom of religion in Art. 10 (1) Charter of Fundamental Rights of the EU
 - Animal protection as "objective of general interest" of the EU according to Art. 13 TFEU
 - Broad discretion of member states, **prohibition of slaughter without prior stunning proportionate**
 - ECtHR, Executief van de Moslims van België and Others v. Belgium (2024):
 - Freedom of religion in Art. 9 (1) ECHR
 - Animal protection as matter of "public morals" under Art. 9 (2) ECHR
 - **Prohibition of slaughter without prior stunning justified** within the member states' discretion
 - ECHR as **living instrument**, allowing to account for changes in society regarding animal welfare



Unit 4:
Theories of subjective rights
for animals

Overview

- 1) Simple vs. fundamental rights (*student presentation 2*)
- 2) Hohfeldian analysis of rights
- 3) Who can have rights?
 - Constructivist views
 - Will theory vs. interest theory
- 4) Rights vs. obligations
 - Symmetry/reciprocity vs. correlativity of rights and obligations
 - Obligations of animals?
 - Historical animal trials (*student presentation 3*)



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