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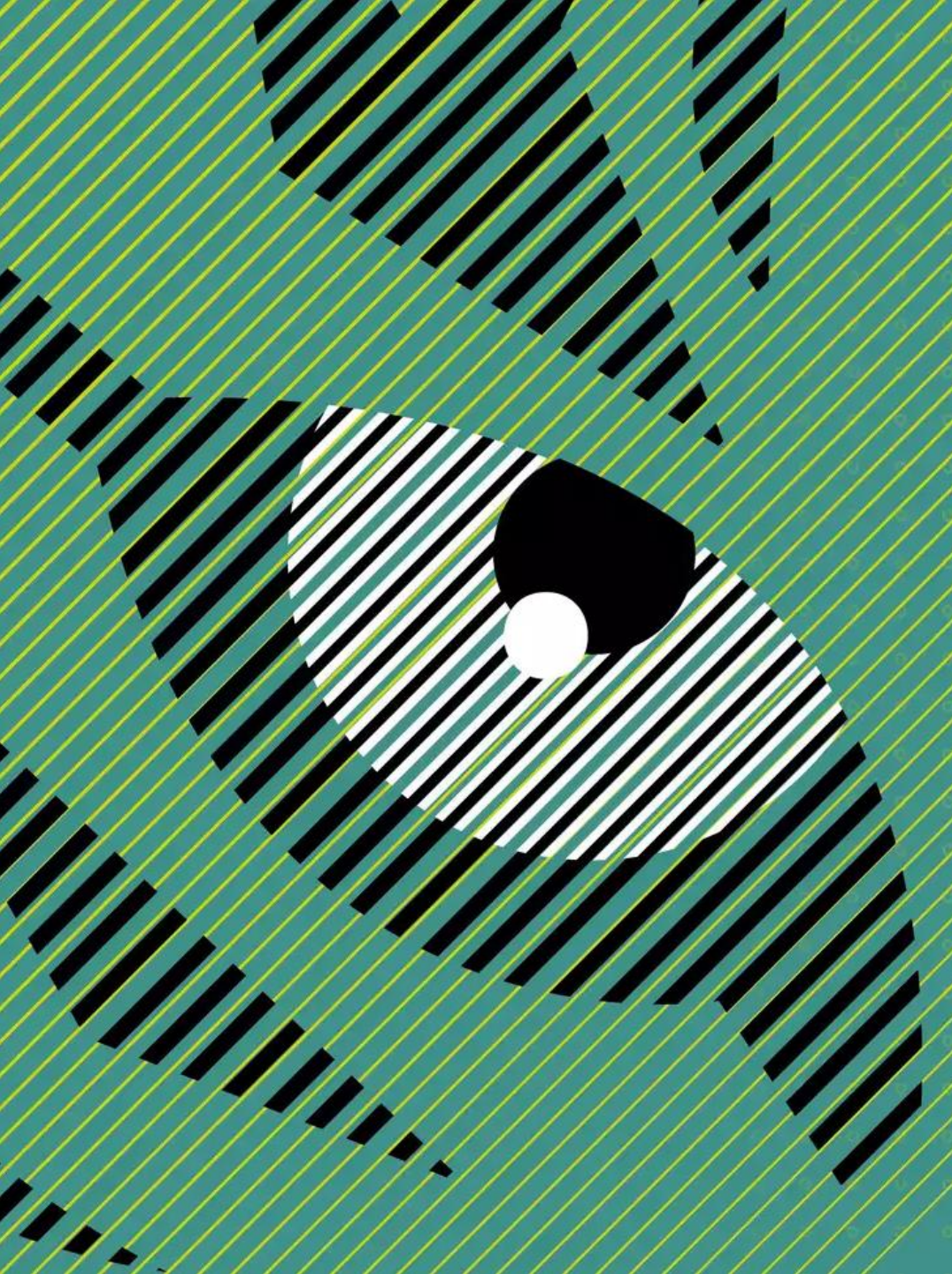


Animal Rights Law

SS 2026

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Unit 5:

Personhood for animals

Overview

- 1) Animals as Persons or Things
 - Abolitionism and its critique (student presentation 4)
 - New welfarism: Things holding rights (student presentation 5)
- 2) The current in-between status of animals as neither things nor persons
 - The dereification of animals
 - Social membership of animals (student presentation 6)
 - Animals as family members
- 3) Avenues to personhood for animals
 - Traditional views of personhood
 - The bundle theory of personhood (student presentation 7)
 - Habeas corpus petitions for animals (student presentations 8 + 9)

Animals as family members

- Growing number of court decisions across jurisdictions on the allocation of **custody for jointly owned companion animals** (mostly dogs) between ex-spouses/ex-partners (esp. Belgium, France, Israel, Italy, Netherlands)
- Application of provisions pertaining to **household objects**:
 - in case of separation of spouses (*GER*: § 1361a Civil Code)
 - in case of divorce of spouses (*GER*: § 1568b Civil Code)
 - in case of separation of unmarried partners (*GER*: § 753 Civil Code)
- Dereification of animals ⇒ Decisive criterion: **Interests of the animal**
 - Home environment, quality of care, stability, past performance / relative fitness / financial status / mental health of each partner
 - Proof through expert evidence or inspection by the court

District Court Bad Mergentheim, 19 December 1996 – 1 F 143/95:

"Moreover, it proved to be quite impressive at the hearing that the dog W, after being taken off the lead, immediately went purposefully to the applicant, willingly allowed himself to be taken onto the applicant's lap and gave clear signs of approval; for example, he licked the applicant's face several times."

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- Dereification of animals ⇒ Decisive criterion: **Interests of the animal**
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 - Proof through expert evidence or inspection by the court
 - Subsidiarily: affectionate interests of each partner
 - In some cases: *shared custody/joint residence* (allocation of time slots to partners) (*GER*: § 745 BGB)
- In some jurisdictions, **specific provisions** on the custody for companion animals have been enacted (Portugal, Spain, Switzerland, some US states)
- Use of **terminology from child custody disputes**: "custody", "visitation rights", "best interests", "shared residence"

Traditional views of personhood

- Lat. *persona* = **mask, role** (in theatre)
- Legal personhood as a **precondition for holding rights** ($\Leftrightarrow$ capacity to enforce rights)
- Distinction between natural and juristic persons
 - Natural persons: status of humans in law; not by nature, but **artificially assigned** (Hans Kelsen, Gustav Radbruch)
 - Juristic persons: **ecclesiastical** origin, later adapted to **economic** purposes (organisation of capital, limited liability); fiction theory vs. realist theory (anthropomorphising juristic persons)
- Legal personhood and **legal subjecthood** often used synonymously (esp. in US law), but in many European legal systems: legal personhood > legal subjecthood
 - Legal subjecthood: emerging from 17th century on; referring to individual subjective rights; also applied to certain partnerships and associations without legal personhood
 - Legal personhood:
 - Natural persons: grounded in modern **human rights discourse** and human dignity
 - Juristic persons: more **independent from its members**, own (minimum) capital
- **Partial legal personhood/subjecthood** (limited to certain categories of rights)
 - One view: partial personhood is possible (e.g. unborn children, certain associations, potentially AI)
 - Traditional view: personhood indivisible, no gradation possible $\Rightarrow$ type/number of rights irrelevant

Habeas corpus petitions for animals

- Lat. *habeas corpus* ≈ "deliver the body" (to court); origin in 12th century English law
⇒ Habeas Corpus Act 1679; today mostly in common law legal systems
- Writ of habeas corpus = legal instrument to challenge the imprisonment or captivity of a person (today eg used in child custody cases)
- Petition can be directed against the state or another private individual
- Petition can be brought by third parties on behalf of detained person because detained person is not able to go to court
- Tool for strategic litigation:
 - Historically used to free slaves (habeas corpus granted by the English Court of King's Bench in 1772 in Somerset v Stewart)
 - First petitions for animals in 1972 in Brazil
 - "Nonhuman Rights Project" in the USA: Focus on scientific evidence for common features of humans and animals; charismatic animals as "clients"; strategic choice of cases and courts; amicus briefs (official statements to the court under US law) by famous philosophers, scientists, legal scholars
 - Similar initiatives in other countries
 - Strategic goal: Recognition of an animal as a person
 - Practical goal: Transfer of animal to sanctuary (removal into the wild usually not possible)

The Nonhuman Rights Project

https://www.youtube.com/watch?v=MXI_Zozl8Vw

Habeas corpus petitions for animals: overview of selected cases

Tommy and Kiko (New York 2013)

- Chimpanzees privately kept in cages in New York
- Dismissal in first instance
- Appellate Court:
 - No rights without duties (reference to social contract)
 - Human beings at least collectively able to bear duties
- [New York Court of Appeals](#) (third instance, 2018): procedural failure; but opinion of Judge Fahey:
 - Argument of Appellate Court is questionable and speciesist
 - "refusal to confront a manifest injustice"

Hercules and Leo (New York 2013)

- Chimpanzees kept at a university in New York
- Extensive scientific evidence on cognitive abilities of chimpanzees
- Dismissals in first and second instance
- [Other first instance court](#): bound by precedent in Tommy case, but open to idea:
 - Practical burdens do not count as argument
 - "some day they may even succeed"

Habeas corpus petitions for animals: overview of selected cases

Cecilia (Argentina 2016)

- Chimpanzee as legal person
 - Protection of animal interests serves a collective good (right to a healthy and balanced environment, preservation of natural and cultural heritage)
- student presentation 9

Chucho (Colombia 2017)

- Andean spectacled bear kept in zoo
- Dismissal in first instance
- Supreme Court: animals as subjects of rights ⇒ arguments similar to Cecilia case:
 - Ecological balance for human survival
 - Reference to dereification. sentience as sufficient condition, duties of animals not required
 - Species-specific rights, not the same as human rights
- Overruled by Constitutional Court (2020):
 - Habeas corpus limited to humans
 - Animal welfare law sufficient
 - 2 dissenting opinions

Habeas corpus petitions for animals: overview of selected cases

Beulah, Karen, and Minnie (Connecticut 2017)

- Elephants born in the wild, but kept in zoo in Connecticut
- Dismissal in first instance due to lack of relationship between NGO and elephants
- [Appellate Court](#) (2019): elephants as property rather than legal persons + inability to bear duties
- Further proceedings before the Appellate Court and State Supreme Court unsuccessful

Happy (New York 2018)

- Elephant solitarily kept in zoo in New York
 - First instance: bound by precedent in Tommy case
 - Appellate Court: "better suited to the legislative process"
 - [New York Court of Appeals](#) (third instance, 2022): 5-2 decision against legal personhood
- student presentation 8

Jambo, Kimba, LouLou, Lucky, and Missy (Colorado 2023)

- African elephants born in the wild, kept in zoo in Colorado
- Dismissal in first instance: law affords rights only to humans, no violation of animal welfare law
- [State Supreme Court](#) (2025): historical will of legislator + references to previous decisions



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