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MAX-PLANCK-INSTITUT
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PRIVATRECHT HAMBURG

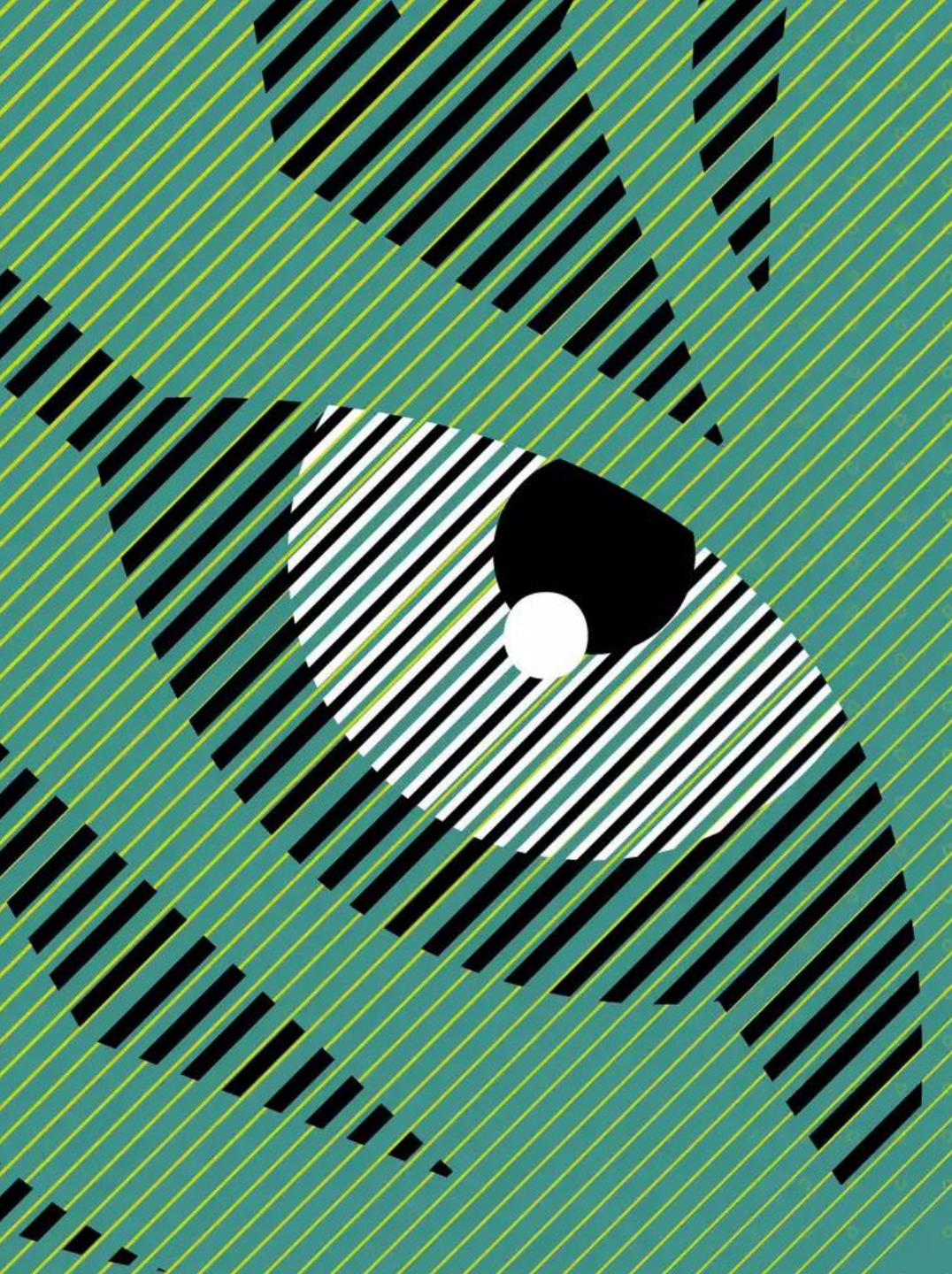


Animal Rights Law

SS 2026

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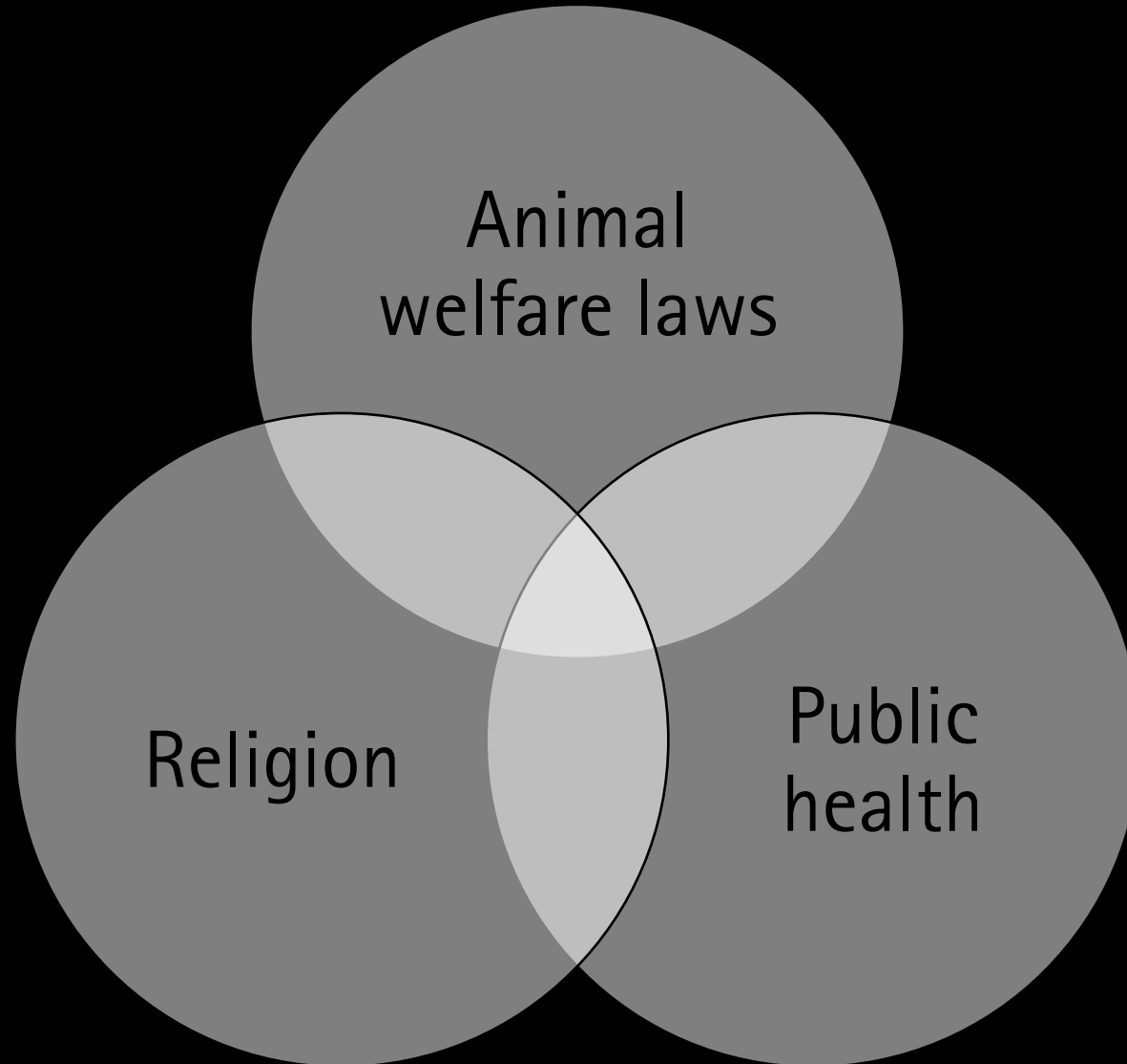
Unit 6:

Practical animal rights and rights of nature

Overview

- 1) Eclectic approaches to animals rights (student presentation 10)
 - Extracting animal rights from animal welfare laws
 - Religious justifications of animal rights
 - Public health justifications of animals rights
- 2) Rights of nature as animal rights
 - What are rights of nature?
 - Individual animals as part of nature
 - Limitations to rights of nature

Eclectic approaches to animal rights



Extracting animal rights from animal welfare laws: Cases from India

- Supreme Court of India, Animal Welfare Board of India v Nagaraja & Ors. (2014):
*"[The Prevention of Cruelty to Animals Act] deals with **duties** of persons having charge of animals, which is mandatory in nature and hence confer **corresponding rights on animals**."*
- Elevated to status of **fundamental rights** (Art. 51A(g)(h) Indian Constitution)
- Application of the constitutional **right to life** to animals (broad interpretation of Art. 21 Indian Constitution)
- High Court of Punjab and Haryana (India), Karnail Singh v State of Haryana (2019):
*"The entire animal kingdom including avian and aquatic are **declared as legal entities having a distinct persona** with corresponding **rights, duties and liabilities** of a living person. All the citizens throughout the State of Haryana are hereby declared persons **in loco parentis** as the human face for the welfare/protection of animals."*
- Flowery and vague language $\Rightarrow$ scope of rights unclear

Religious and public health justifications of animal rights

- *Religious* justifications of animal rights

- Extensive references to Hinduism, Islam, Buddhism, Jainism, Judaism, Christianity:
 - [Islamabad High Court \(Pakistan\), Wildlife Management Board v Metropolitan Corp. & Ors. \(2020\)](#)
 - [High Court of Punjab and Haryana \(India\), Karnail Singh v State of Haryana \(2019\)](#)
- [Uttarakhand High Court \(India\), Narayan Dutt Bhatt v Union of India \(2018\)](#): "In Hindu Mythology, every animal is associated with god."

- *Public health* justifications of animal rights

- [Islamabad High Court \(Pakistan\), Wildlife Management Board v Metropolitan Corp. & Ors. \(2020\)](#): "[...] the right to life of humans is dependent on the welfare, wellbeing, preservation and conservation of all animal species. [...] The destruction and loss of habitat also violates the fundamental right to life of a human."

⇒ *Indirect* justifications (mostly not based on intrinsic value/interests of animals)

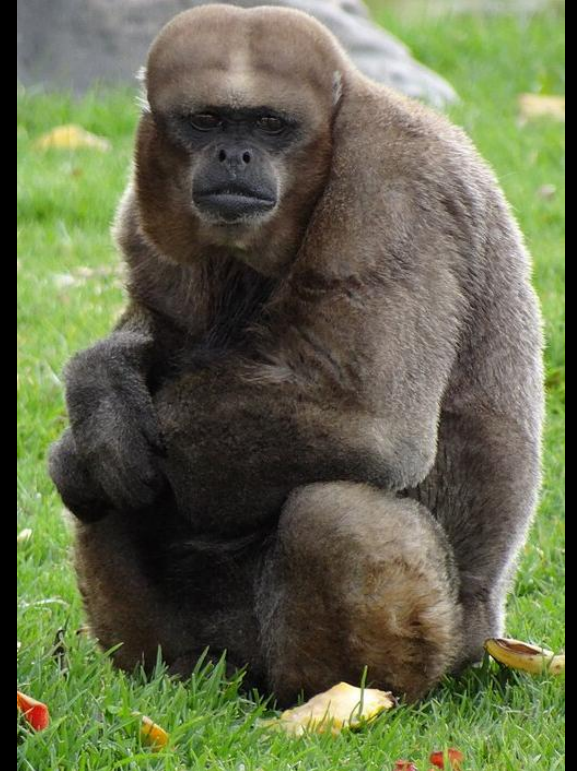
Rights of nature as animal rights: What are rights of nature?

- Rights of nature are not a uniform concept, but take **highly diverse forms** in the context of highly diverse legal systems (esp. Latin America, New Zealand, India, Spain)
- **What is meant by "nature"?**
 - Nature as a whole / the whole planet (**holism**), eg Ecuador; Germany (Regional Court of Erfurt 2025)
 - Individual ecosystems (**ecocentrism**), eg rights of nature in New Zealand
- **How is the group of rightsholders defined?**
 - In a **general** way, eg all ecosystems
 - In a **specific** way, eg the Mar Menor as a particular ecosystem in Spain
- **What is the source for rights of nature?**
 - **Court decisions**, eg rights of the Atrato River in Colombia conferred by Constitutional Court
 - **Legislative acts**, eg *Ley de Derechos de la Madre Tierra* (2010) in Bolivia
- **At what legislative level are rights of nature established?**
 - ⇒ **Constitutional** level (eg Ecuadorian constitution) / simple act of parliament / local ordinance
- **Which types of rights/status are granted to nature?**
 - ⇒ Broad, **fundamental rights** (eg Ecuador) / general **personhood** (eg Te Awa Tupua Act in New Zealand)
- **How are rights of nature enforced?**
 - ⇒ Representation by specific **committees** (eg Spain, New Zealand) or **any person** (eg Ecuador, Spain)

Individual animals as part of nature: The Estrellita Case

Constitutional Court of Ecuador, Judgement of 27 January 2022

- Facts of the case:
 - Chorongo monkey (protected as endangered species) living at the home of a private person for over 18 years without official permit
 - Seizure by authorities and placement in a zoo
 - Habeas corpus petition of Estrellita's previous owner
⇒ unsuccessful in two instances
 - Complaint before the constitutional court
⇒ majority opinion declaring Estrellita a subject of fundamental rights (despite her passing away in the meantime)



Individual animals as part of nature: The Estrellita Case

Constitutional Court of Ecuador, Judgement of 27 January 2022

- Findings of the court under the Ecuadorian constitution:
 - Constitutional principles of "**Pacha Mama**" (Mother Earth) and "**sumak kawsay**" (good living)
 - Nature as "a subject of rights with an intrinsic value"

*"Within the levels of ecological organization, an animal is a **basic unit of ecological organization**, and being an **element of Nature**, it is protected by the rights of Nature and enjoys an inherent individual value."*

- Specific rights: right to life, to bodily and mental integrity, to food, to the free development of their animal behaviour; "right not to be hunted, fished, captured, collected, extracted, kept, retained, trafficked, traded or exchanged"
- "Interspecies principle": Shape of rights depends on characteristics and qualities of each species
- "Principle of ecological interpretation": **Legitimate interactions** between species must be respected (including use of animals for food, transport, work, clothing, recreation and to control pests)
- Call to legislator to create a law on animal rights



Case 9: Seals of the North Sea

The Federal Republic of Germany, represented by the Federal Minister for Transport – who is in turn represented by the German Hydrographic Institute – grants the corporation C the permission to discharge waste into the North Sea or to incinerate waste on the high seas. The nature protection organisation N objects to this, presenting itself as "agent without authorization" ("Geschäftsführer ohne Auftrag") on behalf of the "seals in the North Sea". After the objection is rejected by the administration as inadmissible, N pursues its case before the Administrative Court.



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Will N's action on behalf of the seals be successful?

NORDSEE

Wie absurd

Hamburger Richter müssen in Kürze entscheiden, ob Nordsee-Robben gegen den Bonner Verkehrsminister Jürgen Warnke klagen dürfen. Naturschützer erwarten einen Prozeß von rechtshistorischer Bedeutung. *

11.09.1988, 13.00 Uhr • aus **DER SPIEGEL 37/1988**

Case 9: Seals of the North Sea

(adapted from VG Hamburg, 7 VG 2499/88)

A. Admissibility

I. Specificity of the action

⇒ Unclear which species and which individuals are represented by N

II. Capacity to be a party to administrative court proceedings

- § 61 No. 1 Code of Administrative Court Procedure: "natural person"
- Definition in § 1 Civil Code ⇒ natural persons = (only?) humans
- Legal tradition of human legal personhood

Administrative Court of Hamburg: "The fundamental reason why the legal system attributes legal capacity – and thus, in particular, the capacity to be the holder of rights – solely to human beings lies in the recognition that **only human beings possess that special personal dignity**, "by virtue of their mind, which sets them apart from impersonal nature and, through their own decision, enables them to become **self-aware**, to **determine their own course** and to shape themselves and their environment" (Maunz-Dürig, GG, Art. 1, para. 17), which distinguishes them from all other living beings in nature."

- § 61 No. 2 Code of Administrative Court Procedure: "associations insofar as they can be entitled to a right" ⇒ rights of seals corresponding to duties under Animal Protection Act?
⇒ Administrative Court of Hamburg (-)
- Judicial gap-filling? ⇒ (-) no gap

B. Result: The seals do not have the capacity to be a party. The action is inadmissible.

Individual animals as part of nature: Legislation

- Panama (2023): Rights of **sea turtles** due to cultural significance

Art. 29 Law on the Protection of the Rights of Sea Turtles and their Habitats, Law No. 371/2023 (Panama)
The State shall guarantee that natural and legal persons protect the rights of sea turtles and their habitats, such as the right to life and the right to have free passage in a healthy environment [...].

- Peru (two municipalities, 2025): Rights of **stingless bees** (significance for local indigenous communities, ancestral beekeeping practices)

Art. 1 Municipal Ordinance 33-2025-CM (Satipo, Peru): Objective

To promote and formally recognise Amazonian stingless bees and their habitat as rights-holders, acknowledging their intrinsic rights – such as the right to exist, to maintain healthy populations, to live in a healthy environment, and to conserve and regenerate their habitat – and linking their protection to the holistic conservation of the Amazon.

⇔ Unsuccessful litigation:

- Germany (1988): Administrative Court of Hamburg – **Seals of the North Sea** → Case 9
- USA (2004): Cetacean Community v. Bush (US Court of Appeals for the 9th Circuit) ⇒ **Whales, porpoises, dolphins** ("Animals are not authorised to sue in their own names to protect themselves")
- Switzerland (2025): Federal Supreme Court, 1C_607/2024 ⇒ **Wild bees** do not have (voting) rights

Limitations to rights of nature

- Different views underpinning rights of nature:
 - **Animism**: nature and its elements have interests
 - **Anthropocentrism**: protection of the interests of humans (dependence of human survival on biodiversity, indigenous communities and their cultural practices)
- Conservationist ethics/land ethic: Protection of **ecosystems, biodiversity and species** as the highest value (Aldo Leopold, J. Baird Callicott)
 - ⇒ Environmental framework of rights (habitat, role in ecosystem)
 - ⇒ **Subordination of individual animal interests**
- Applicability of rights of nature to **domesticated animals**?
 - Do not have positive effect on ecosystems
 - Are not envisioned by legislation/case law on rights of nature
 - But: comparable in terms of **vulnerability**
- Combination with animal rights with conservationism: **compassionate conservation** (intrinsic value of individuals + value of ecosystems)



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