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MAX-PLANCK-INSTITUT
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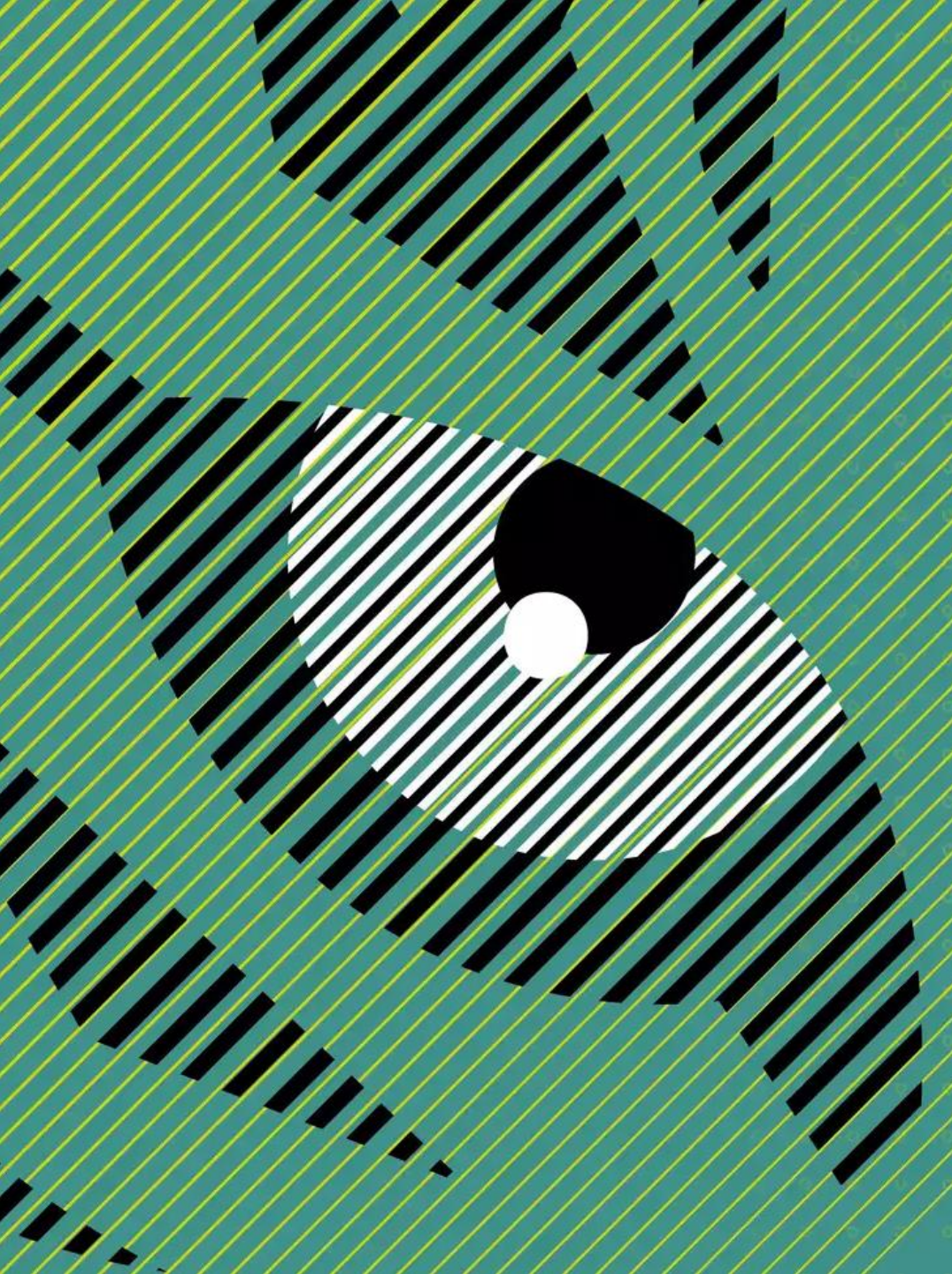


Animal Rights Law

SS 2026

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Unit 7:

Drafting animal rights

Overview

- 1) Proposals for animal rights laws
 - Proposals on the domestic level
 - Proposals on the international level (student presentation 11)
- 2) Scope and design of animal rights
- 3) Solving conflicts between rights
- 4) Content of animal rights
 - Human rights for animals?
 - Substantive rights for animals (student presentation 12)

Proposals on the domestic level

The Swiss Primate Rights Initiative (2016)

- Popular initiative to amend the constitution of the Swiss Canton of Basel-Stadt

Art. 11 Constitution of the Canton of Basel-Stadt: Guarantees of fundamental rights

(2) This Constitution also protects:

[...]

[proposal:] c) the right of non-human primates to life and bodily and mental integrity.

- Limited to **core interests** to enhance chances of success
- Federal Supreme Court, 1C_105/2019 (2020): admissible to turn animals into **legal subjects of public law** under cantonal law
- Citizens' vote: 25.3% approval / 74.7% rejection

Proposals on the domestic level

The Finnish Citizens' Initiative (2019)

- Proposal by the Finnish Animal Rights Lawyers Society to add a **new chapter to the Constitution of Finland** ("Chapter 2A on the fundamental rights of animals")
- Scope: **all sentient animals + precautionary principle** in favour of sentience:

Chapter 2A, Section 1 Constitution of Finland (proposal)

Sentient animals are individuals whose fundamental rights and welfare requirements must be fully respected by humans. All animals shall be **presumed to be sentient unless otherwise can be determined**.

- **Specific rights** for wild animals, animal dependent of human care and prohibition of breeding animals in ways that cause harm
- "Right to be euthanised" if "keeping the animal alive is obviously cruel"
- **Procedural rights** of animals (legal standing, right to be heard)
- Duty to protect fundamental rights for **public authorities and companies**
- Limitations to fundamental rights subject to **proportionality test**
- Citizens' initiative successful ⇒ submitted to parliament ⇒ recommendation to reject the initiative by Constitutional Law Committee (2026)

Proposals on the international level

Universal Declaration of Animal Rights (1978, 1990)

- Drafted by member of the Secretariat of the Director General of UNESCO
- First version (1978) proclaimed at UNESCO headquarters; revised version (1990)
- Broad scope of protection:

Art. 1 Universal Declaration of Animal Rights (1990)

All animals have equal rights to exist within the context of biological equilibrium [...]

- Specific rights for wild animals, animals dependent on humans, animals used in entertainment, animals used in experimentation
- Systematic killing of animals: "crime against the species"/"genocide"

Declaration of Rights for Cetaceans (2010)

- Adopted under the leadership of philosopher Paola Cavalieri
- Cetaceans as persons (abolition of property status)
- Rights of cetaceans to life, liberty, freedom of movement, protection of their natural environment, not to be subject to the disruption of their cultures

Scope and design of animal rights

- Domestic or international level / level of legislation (constitutional, statutory)
- **Scope of animals** holding rights
 - All animals
 - Dependent on certain capacity or characteristic
- Legal certainty requires a certain degree of **generalisation and abstraction**
 - Sentience or interests cannot be tested in each individual case
 - Species Membership Approach: same rights for all members of a species
 - Elite Species Approach: Focusing on charismatic animals with public appeal and with limited economic and cultural impact (strategic considerations)
- Categories of rights:
 - **Negative** rights (rights against...) or **positive** rights (rights to...)
 - **Absolute** rights (inviolable) or **relative** rights (can be limited by countervailing rights)
 - Gradual spectrum from **abstract** rights to **concrete** rights
 - **Substantive** and **procedural** rights (eg legal standing, being a party to proceedings, right to have one's interests considered)
 - Directed against **state** or against **private individuals**

Solving conflicts between rights

- Constellations:
 - Animal right(s) vs. human right(s)
 - Animal right(s) + human right(s) vs. human right(s)
 - Animal right(s) + human right(s) vs. animal right(s)
 - Animal right(s) + human right(s) vs. animal right(s) + human right(s)
 - Animal right(s) vs. animal right(s) $\Rightarrow$ outside the scope of (human) law?
- Proportionality test:
 - **Suitability** to promote a **legitimate aim** $\approx$ *welfare law*: not "without good reason"
 - **Necessity** to achieve the aim: less intrusive **alternatives**? $\approx$ *welfare law*: no "unnecessary suffering"
 - **Balancing of interests (proportionality in the narrow sense)**
 - **Weight/importance** of interests $\Rightarrow$ eg taste/entertainment as trivial human interests
 - **Severity** of infringement $\Rightarrow$ eg duration of an experiment/amount of suffering
- Coordination of multipolar conflicts (eg planning the use of a public area)
- Consistency between different balancing cases

Human rights for animals?

Animal rights according to interests of animals (→ interest theory of rights, Unit 4)

⇒ **Negative rights** held against the state for conscious animals (Paola Cavalieri)

⇒ **"Sentient rights"** instead of "human rights" (Alasdair Cochrane)

⚠ **Levelling down/watering down human rights?** (Richard Cupp)

- Rights not as something that is granted and dependent on certain capacities
- Less resources for rights of humans (eg court proceedings)
- "Inflation" of rights making them less valuable, depriving humans of "special status"

But: Empirical evidence that animal rights not harmful, but **supportive of human rights**

- Social Dominance Orientation: People who are speciesist likely to discriminate against humans
- Moral Expansiveness: Expansion of moral boundaries increases the deference to others' rights

⇒ Animal rights not as a zero-sum game, rights not as a scarce "resource"

Drafting approaches

Analogous application of
existing human rights
(≈ Art. 19 (3) German Basic Law)

Separate catalogue of
distinct animal rights
(→ proposals)

Substantive rights for animals

- Drawing on list of **5 Freedoms** (1979) → Unit 2
- Drawing on **Capabilities Approach** (Martha Nussbaum)
 - Animals have specific capabilities, whose realisation allows them to flourish and live in dignity
 - "Species norm": capabilities characteristic of and essential for a species
 - 10 basic capabilities: life; bodily health; bodily integrity; senses, imagination, and thought; emotions; practical reason; affiliation (social bonds); other species; play; control over one's environment
- Drawing on **human rights**:
 - **Animal Dignity** (cf Swiss constitution → Unit 2):
 - As foundational value
 - As prohibition of instrumentalization
 - As absolute protection allowing for no exception
 - Right to bodily **liberty**:



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§ 5-4.1001 Ojai Municipal Code (USA)

[...] (b) "Designated species" means all animals under the family *Elephantidae*. [...]

§ 5-4.1002 Ojai Municipal Code (USA)

(a) Each member of the designated species within the City of Ojai, California has the right to bodily liberty. [...]

Substantive rights for animals

- Labour rights
 - Ban of highly problematic practices
 - Labour rights protections (workplace safety, rest and leisure time, workplace participation, representation by a labour union, retirement; financially: fair wages, retirement pensions ⇒ funds of animals managed by trustee)
 - Potential to promote esteem for animals?
- Property rights
 - Wild animals as owners of their habitats, managed by human representatives (Karen Bradshaw)
 - Intellectual property/copyright: US Court of Appeals for the 9th Circuit, Naruto v. Slater (2018) → student presentation 12
- Remedies
 - Injunction against violation of rights
 - Monetary compensation (damages) for violations: Oregon Court of Appeals, Justice v. Vercher (2022):

"An animal such as a horse inherently lacks self-determination and the ability to express its wishes in a manner that the legal system would recognize. [...] A person purporting to represent the interest of an animal in court necessarily projects an assumed interest onto the animal and therefore acts upon a legal fiction."

"The statutory duty to provide minimum care to an animal in the custody and control of a person does not confer substantive or procedural legal rights on the animal; [...]"

Substantive rights for animals

<https://www.youtube.com/watch?v=ZG0tgz17Lb0>



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