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MAX-PLANCK-INSTITUT  
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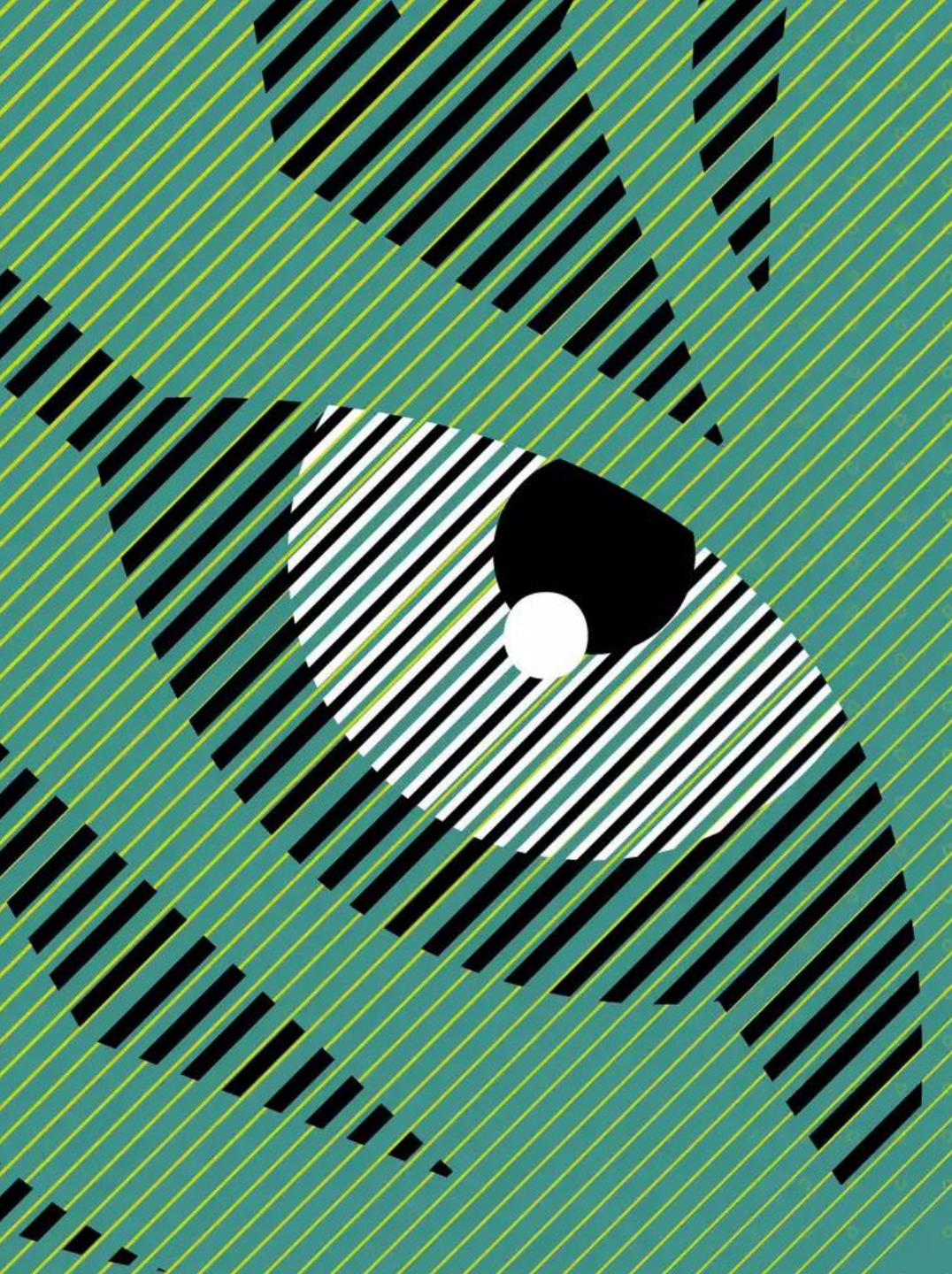


# Animal Rights Law

## SS 2026

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## **Unit 9:**

# **Animal rights as a social justice movement**

# Overview

- 1) The role of animal rights activism
- 2) Direct action and civil disobedience
  - The necessity defence (student presentation 14)
  - Ag-gag laws and SLAPPs
- 3) Animal law and societal change

# The role of animal rights activism

- Abolitionist ideas:
  - Commonalities between the **oppression of human slaves** and the oppression of most animals (Henry Salt, 1894), eg slaves as property, slave welfare laws
  - *Tilikum et al. v. Sea World* (US District Court for the Southern District of California 2012): PETA as "next friends" of five orcas kept at Sea World Orlando and San Diego, invoking a violation of the **prohibition of slavery** (13th Amendment of the US Constitution)
    - ⇒ dismissal (historical and textual interpretation of the term "slavery")
- Problematic comparisons:
  - Campaign juxtaposing images of animals and slaves
  - Campaign "Holocaust on your Plate" (PETA 2006):
    - ⇒ German civil courts/Federal Constitutional Court:  
Violation of **personality rights** of Holocaust survivors
    - ⇒ ECtHR, PETA v. Germany (2012):

*"The Court [...] observes that a reference to the Holocaust must also be seen in **the specific context of the German past** [...] In the light of this, the Court considers that the domestic courts gave relevant and sufficient reasons for granting the civil injunction against the publication of the posters. This is not called into question by the fact that **courts in other jurisdictions might address similar issues in a different way.**"*

- ⇒ **Instrumentalisation** of one cause for the other
- ⇒ **Provocation** as a means to instigate a cultural shift?

## ***Case 11: Undercover in the stable***

A and B are members of an animal protection organisation. In early 2013, they are tipped off by E, an employee at X's animal breeding facilities, about various breaches of the Ordinance on the Protection of Farmed Animals in the stables there. When A and B approach the relevant veterinary authority with this information, the authority refuses to investigate the matter further and, in particular, to carry out an inspection of the farm in question, as no conclusive evidence, such as photographic material, was available. A and B therefore decide to secretly enter S's premises to take photographs. Properly equipped and wearing the necessary sanitary clothing, they climb over the fences of the premises, enter the stables and film the breaches they actually find there. No people are visible in the footage. With the footage attached, they contact the animal welfare authorities again and file a criminal complaint. During a subsequent official inspection, breaches are confirmed which constitute the criminal offence of animal cruelty (§ 17 of the Animal Protection Act).

*Are A and B punishable under German law?*



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### **§ 32 Criminal Code (Germany)**

- (1) Whoever commits an act in self-defence does not act unlawfully.
- (2) 'Self-defence' means any defensive action which is necessary to avert a present unlawful attack on oneself or another.

# Case 11: Undercover in the stable

(adapted from [OLG Naumburg, 2 Rv 157/17](#))

## Trespass (§ 123 Criminal Code)

### A. Elements of the offence (+)

### B. Justification

#### I. Self-defence (§ 32 Criminal Code)

⇒ Present unlawful attack on oneself or another?

⇒ Animal as "another"? ⇒ disputed (pro: animals' interests protected under § 17 TierSchG)

⇒ Averting a present danger to the animals in the stables (-) ⇒ their treatment not averted

#### II. Necessity (§ 34 Criminal Code)

##### 1. Present danger to a protected interest

⇒ Animal protection as a protected public interest (+)

⇒ Permanent danger with regard to future animals in the stables (+)

##### 2. Act to avert the danger

⇒ Suitability of the act: moved the authorities to take action (+)

⇒ Necessity of the act: Priority of calling the authorities, but here: no reaction (+)

⇒ Balancing of interests: Animal protection > ownership in premises / danger caused by X (+)

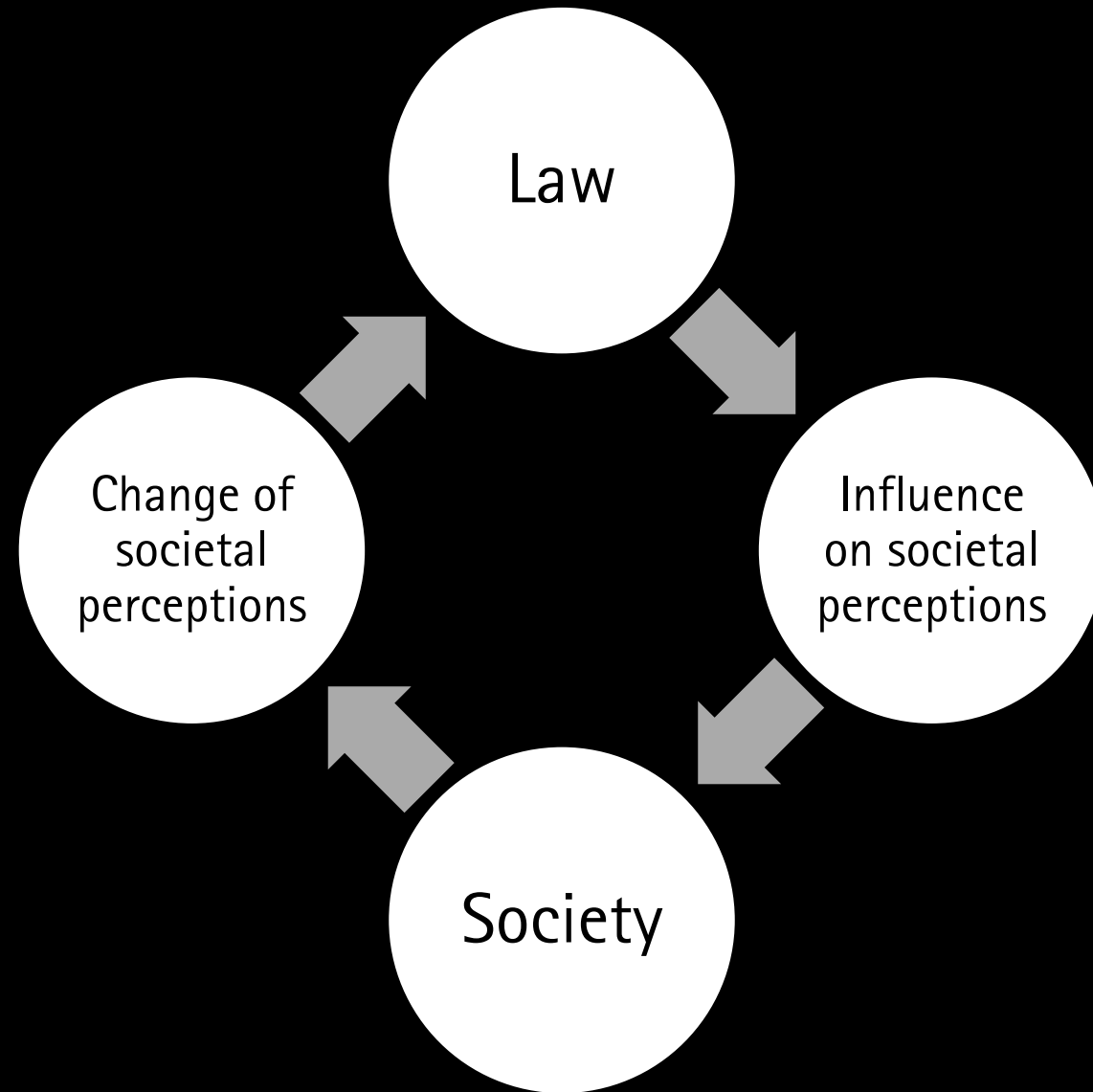
##### 3. Intention to avert the danger (+)

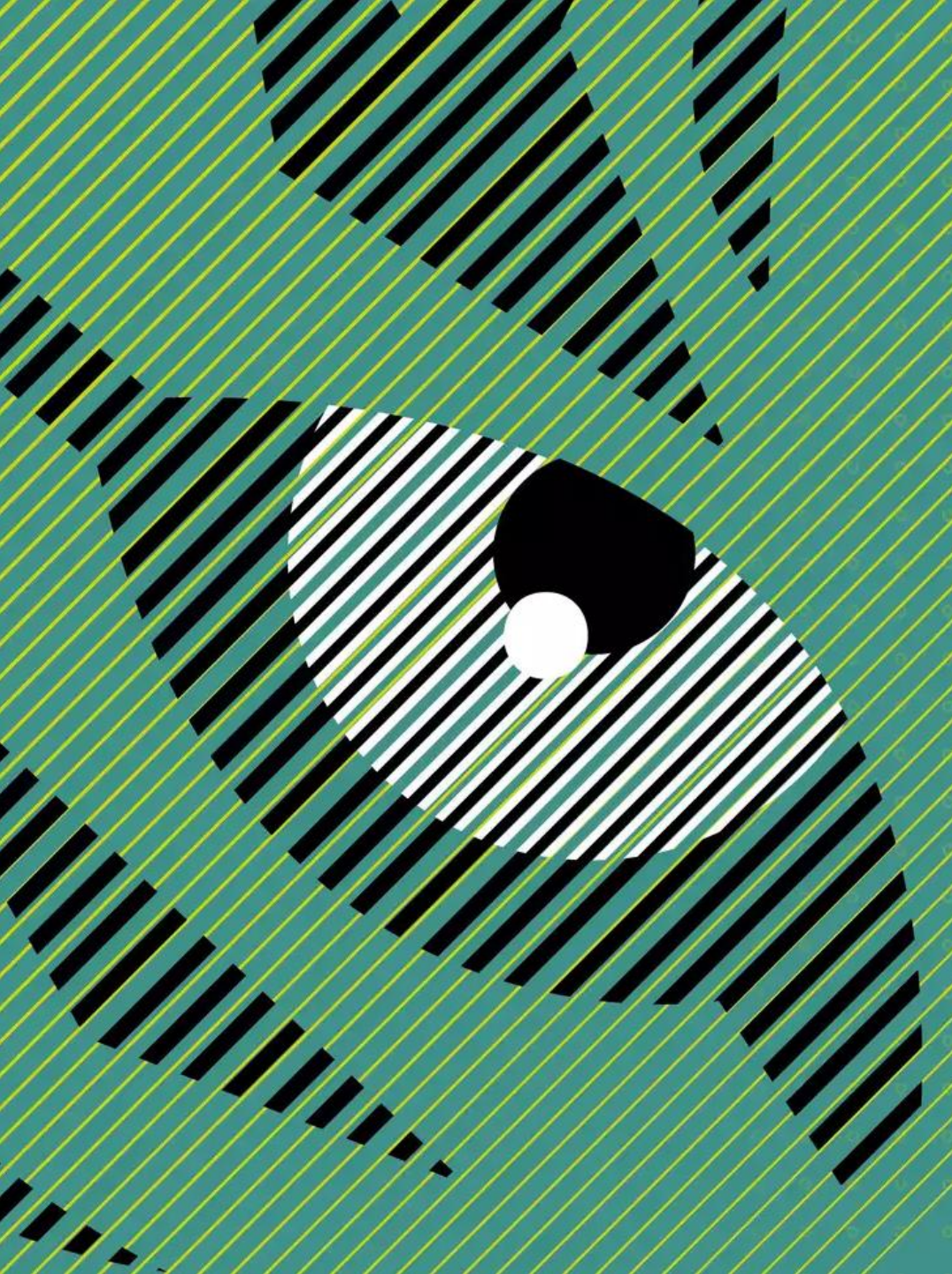
### C. Result: A and B's acts are justified. They are not punishable.

# Ag-gag laws and SLAPPs

- Ag-gag (agricultural gag) laws:
  - Prohibition of **undercover investigations** (eg filming/photography or getting a job at a farm or slaughterhouse under false pretenses) as well as **whistleblowing** by long-time employees
  - Significant criminal **penalties**, classification as **terrorism** (eg US [Animal Enterprise Terrorism Act](#))
  - **Freedom of expression** vs. **reputation of businesses**
  - But also: education of the public; **public interest in information** on animal abuse
  - Private investigations necessary due to **enforcement gap** (→ Case 11)
  - High risks for whistleblowers without photographic evidence
  - **Video surveillance** in animal enterprises? (Current [bill](#) in Germany: for large slaughterhouses)
- SLAPPs (Strategic lawsuits against public participation)
  - = Lawsuits used to intimidate persons (usually journalists) criticising certain practices
    - ⇒ **Burdens of legal proceedings** (time and money, pressure of justification, public accusation)
  - [EU Anti-SLAPP Directive](#) (2024) for transnational constellations
  - Animal industry: Tort claims based on **corporate personality rights / protection of business operations**
    - [BGH, VI ZR 396/16](#): publication of illegally obtained recordings by others is allowed
    - [OLG Oldenburg, 13 U 45/25](#): publication by trespassers themselves is not allowed (appeal pending)
  - ⇒ Court: No SLAPP because no frivolous claim (not evidently without merit)

# Animal law and societal change





## **Unit 10:**

# **Critique of animal rights**

# Overview

- 1) Animal law and critical animal studies (student presentation 15)
- 2) Second wave animal ethics (student presentation 16)
  - Similarity vs. difference as focal point
  - Intersectionality
  - Critique of rights and subjectivity
  - Cultural imperialism
- 3) Final discussion

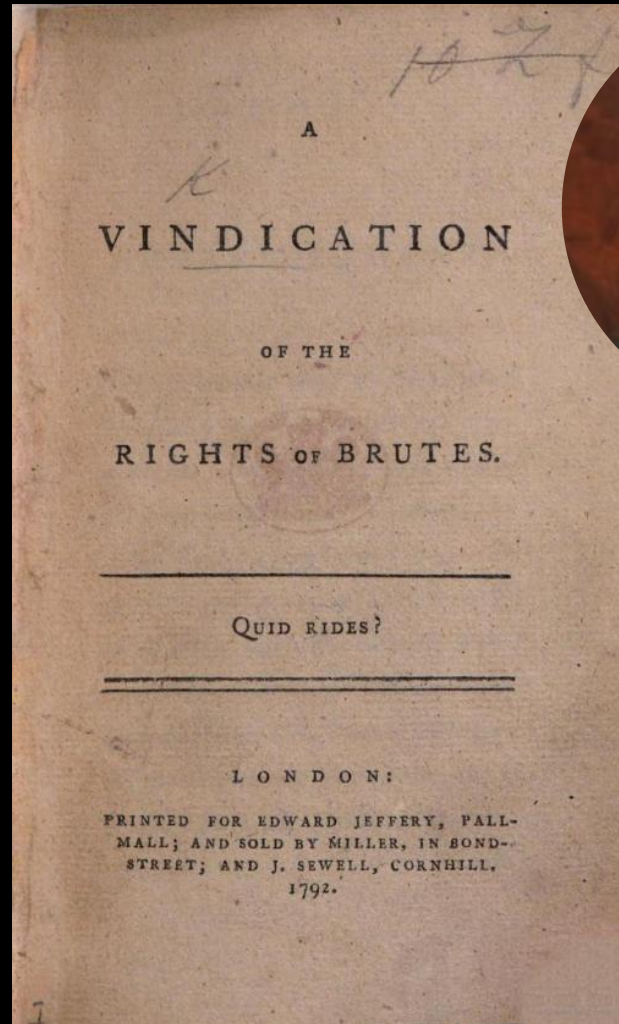
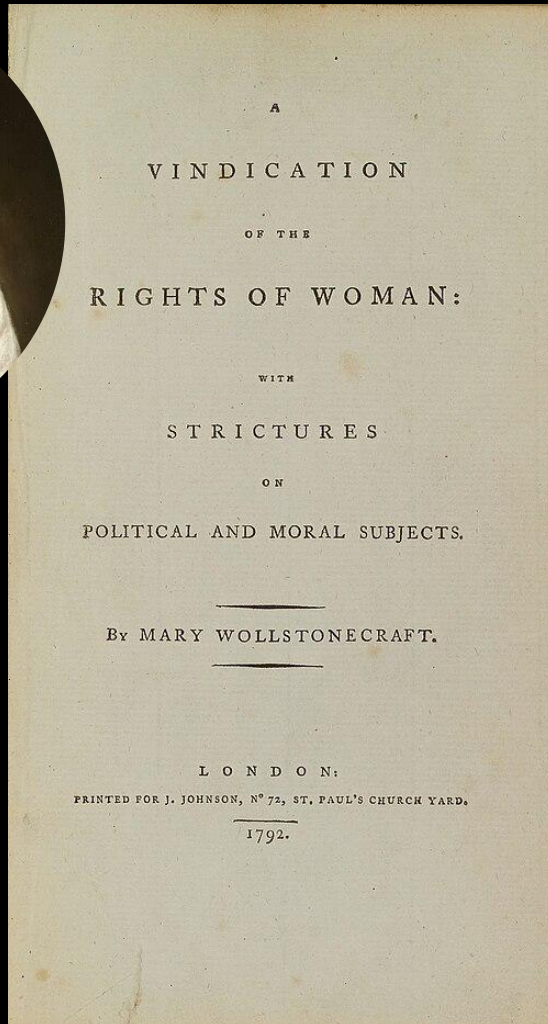
## Points of criticism against animal rights

- Reciprocity between rights and duties?
- Levelling down of human rights?
- Animal welfare instead of animal rights?
- Critique of rights as such (individualistic, disembodied, exclusive)

|                               | Traditional ethics        | Ecofeminist ethics     |
|-------------------------------|---------------------------|------------------------|
| Scope of obligations          | Universal                 | Context-based          |
| View of the Individual        | Atomistic, disembodied    | Dependent, embodied    |
| View of systems of oppression | Separable or negligible   | Key and interconnected |
| What is valued                | Similarity, individualism | Difference, holism     |

# Intersectionality: women's rights

Animal rights satirically used to reduce women's rights to absurdity:



"Indeed, after those wonderful productions of Mr. Paine and Mrs. Woolstoncraft, such a theory as the present, seems to be necessary, in order to give perfection to our researches into the rights of things [...]"

# Intersectionality: animal comparisons

<https://www.youtube.com/watch?v=DcTMV4KHnuo>



*Thanks for  
participating!*



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