



Universität Hamburg

DER FORSCHUNG | DER LEHRE | DER BILDUNG

MAX-PLANCK-INSTITUT
für ausländisches und internationales
PRIVATRECHT HAMBURG



Animal Rights Law

SS 2026

Dr. Felix Aiwanger

www.mpipriv.de/aiwanger

Introductory cases

- Case 1: X beats his dog Y because Y is barking all the time and X had a stressful day.
- Case 2: X kills his dog Y by cutting Y's throat because he likes the taste of Y's meat and wants to eat it.
- Case 2a: X kills his dog Y by cutting Y's throat under complete anaesthesia because he likes the taste of Y's meat and wants to eat it.
- Case 2b: X kills his pig Y by cutting Y's throat under complete anaesthesia because he likes the taste of Y's meat and wants to eat it.
- Case 3: X poisons his dog Y because he wanted to test the side effects of a new medication that was highly promising as a cure for cancer and could have saved millions of people if it had worked.

Why is this course in English?

- Obligatory foreign language course (§ 13 II 1 Nr. 2 HmbJAG)
- Animal Rights Law is a highly international field of law.
- The course is based on experience at the University of Cambridge.

While the entire course is held in English, logistical issues can be discussed in German, but not during the course.

We are not native speakers.
We try our best, but make mistakes.
Please feel free to ask if you don't understand something or
don't know a technical term or how to say something!

Course content and methodological approach

Course objectives:

1. Understand the current legal debate on animal rights
2. Trace animal rights back to fundamental legal conceptions
3. Practice legal skills and knowledge with relevance for the state exam.

- *Course format:* structures, dialogue, recaps, readings
- *Course material:* slides, readings (available at www.mpipriv.de/ar1)

*Please don't hesitate to contact me in case of any questions or concerns.
You can either talk to me after the class or email me at aiwanger@mpipriv.de.*

Course outline

Unit 1:	Empirical, Philosophical, and Historical Foundations <i>with special guest Prof. Shira Shmueli in session 2</i>	Sessions 1–2
Unit 2:	Current Animal Welfare Laws	Sessions 3–4
Unit 3:	Animals as Tradable Products	Session 5
Unit 4:	Theories of Subjective Rights for Animals	Session 6
Unit 5:	Personhood for Animals	Sessions 7–9
Unit 6:	Practical Animal Rights and Rights of Nature	Session 10
Unit 7:	Drafting Animal Rights	Session 11
Unit 8:	Enforcing Animal Rights and Animal Agency	Session 12
Unit 9:	Animal Rights as a Social Justice Movement <i>with special guest(s) from law firm Günther in session 13</i>	Session 13
Unit 10:	Critique of Animal Rights	Session 14

General literature and further resources

- **Books:**

- Raffael N. Fasel/Sean Butler, *Animal Rights Law* (2023)
- Cass Sunstein/Martha Nussbaum, *Animal Rights: Current Debates and New Directions* (2004)

- **Articles:**

- Saskia Stucki/Visa Kurki, *Animal Rights*, in: M. Sellers, S. Kirste (eds.), *Encyclopedia of the Philosophy of Law and Social Philosophy* (2023)
- Felix Aiwanger, *Zwischen Ente und Kaninchen – Reflexionen des Tiers im Recht*, *Rechtswissenschaft* 2025, 100

- **Online Resources:**

- Hamburg Forum on Comparative Animal Law: www.mpipriv.de/comparative-animal-law
- Cambridge Centre for Animal Rights Law: www.animalrightslaw.org
- Global Animal Law GAL Association: www.globalanimallaw.org
- Journal for Animal Law, Ethics and One Health (LEOH): www.leoh.ch
- Brooks Institute for Animal Rights Law & Policy: www.thebrooksstitute.org
- Animal Law Legal & Historical Center: www.animallaw.info
- Global Journal of Animal Law: www.journal.fi/gjal
- Tier im Recht (TIR) Association: www.tierimrecht.org
- Case law database of the State Animal Protection Commissioner of Hesse: www.tierschutz.hessen.de/tierschutz/urteile

Your exam

- You need to take an exam to pass this course.
- The exam will consist in presentations you will give during the course.
- The presentations will start in 2 weeks (15 June).
- We will usually have 2 presentations per session.
- Each presentation should last for about 10–15 minutes and will be followed by a plenary discussion of another $\approx$ 15 minutes.
- You will present on a significant scholarly article or court decision by
 - summarising,
 - contextualising, and
 - critically evaluatingits main thesis, findings and reasons.
- The topics (articles and court decisions) will be assigned... NOW!

Your exam

- Don't worry if you don't understand everything in the text you are assigned.
- Your current level of studies and the individual difficulty of each topic will be taken into account for the grading.
- Some of you will be present earlier and others later. Some of you have a bit more to read and others less. But any case has its pros and cons.
- You can use ppt slides and/or a handout. If you send me the respective files, I can embed your slides in my ppt or print out sufficient copies of your handout.
- You will find all articles and court decisions at www.mpipriv.de/ar1 (password: ***). You are invited (but not expected) to also read the material beyond your own presentation.
- You may switch topics with someone else, but please email me (aiwanger@mpipriv.de) if you do so.

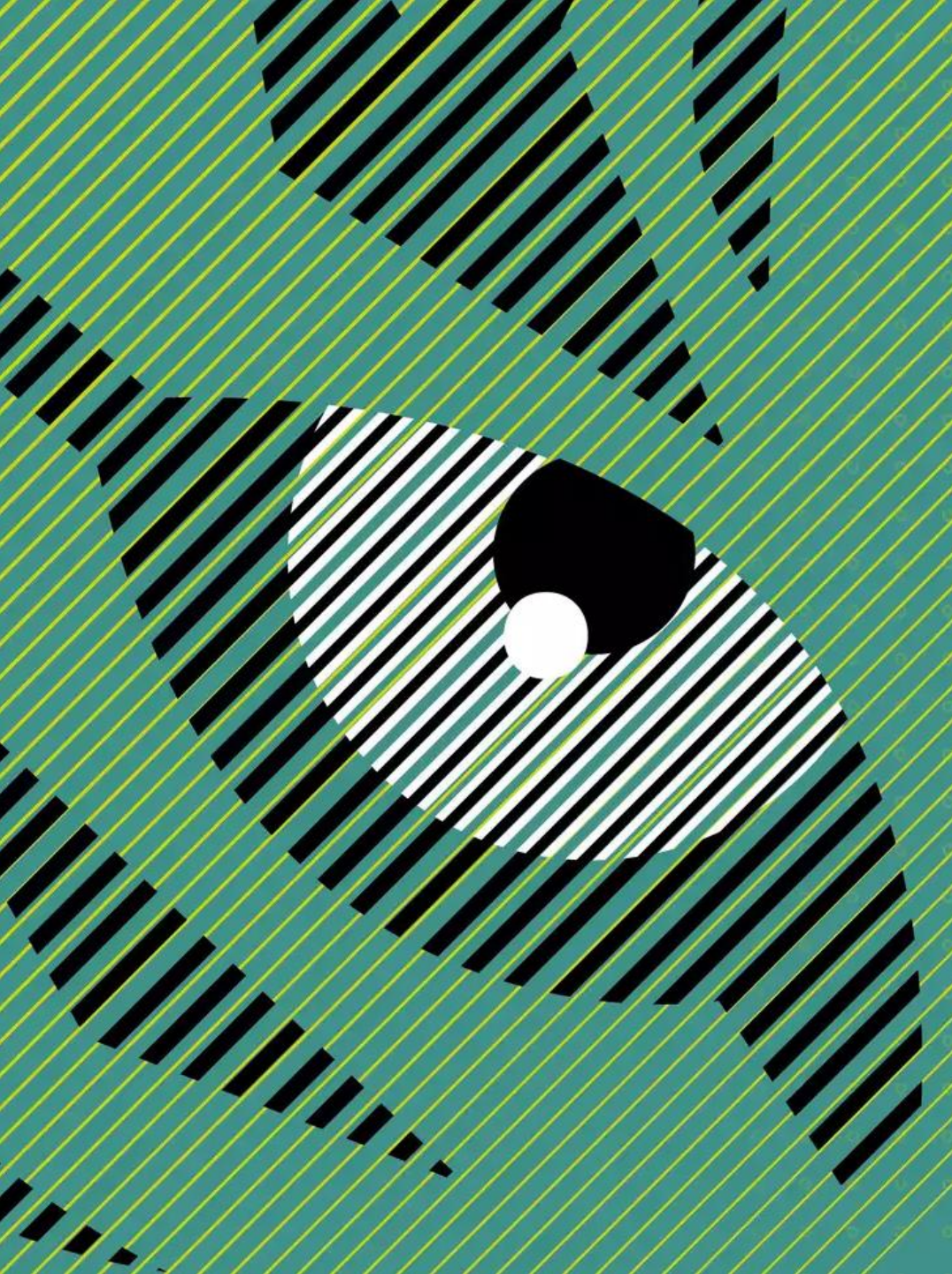
A disclaimer and a warning

Disclaimer:

Animal Rights Law is an evolving, very dynamic field of law.
For many questions, no settled answers can be provided.
Indeed, more questions may be raised than answered.
But this is what makes it appealing and worth of study.

Warning:

Animal Rights Law deals with the – often cruel – treatment of animals and animal suffering.
Devoting oneself to the topic intensely may at times be disturbing and distressing and this varies from person to person.
While pictures are used in a moderate way throughout the course, please feel free to address any discomfort at any time.



Unit 1: Empirical, philosophical, and historical foundations of animal rights

Overview

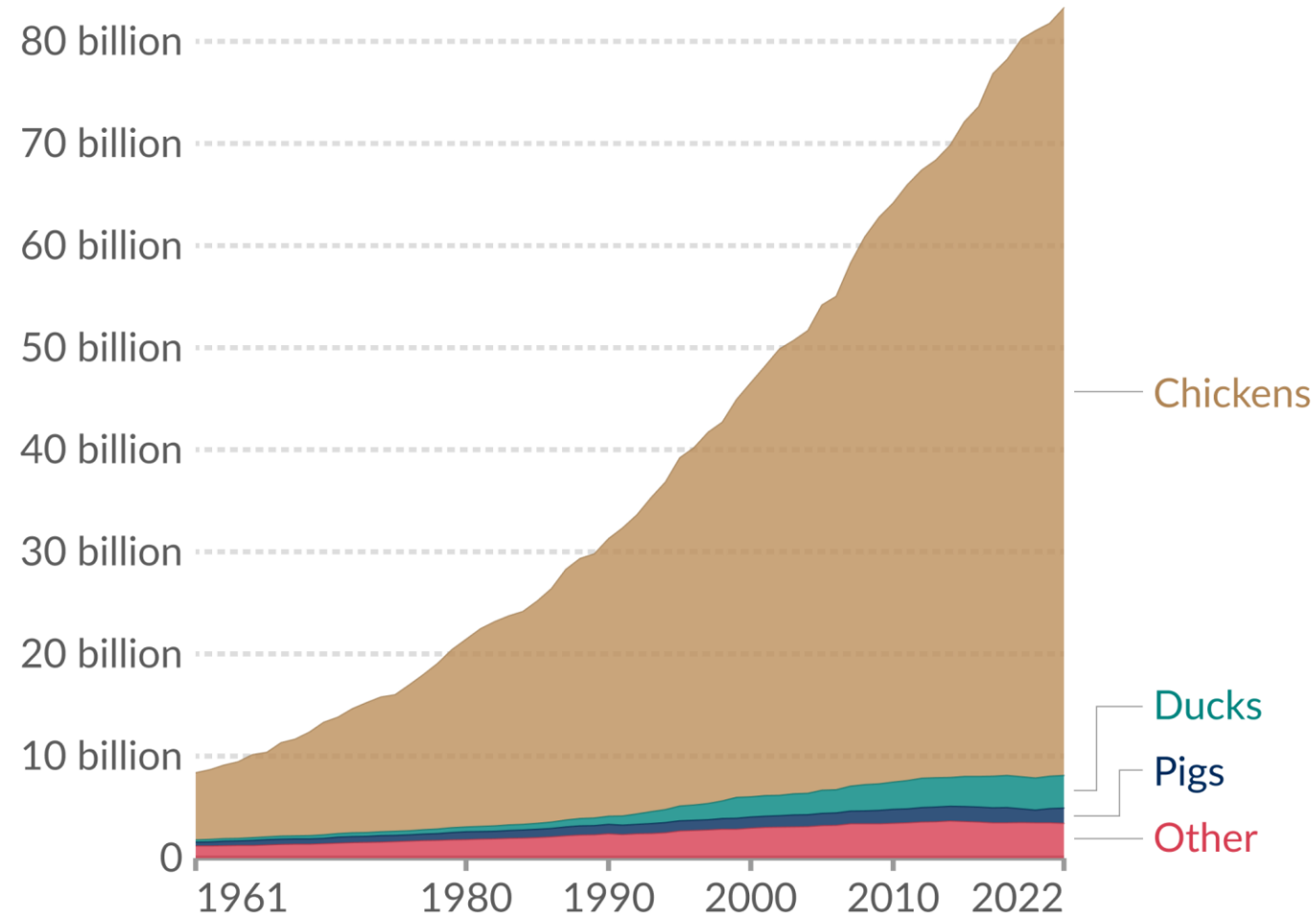
- 1) Some empirical data on animals and animal rights
- 2) Historical milestones in the philosophy of animal rights
 - Before enlightenment (Aristotle, Aquinas, Montaigne, Descartes)
 - Utilitarianism (Bentham, Singer)
 - Deontological theories (Kantianism: Kant, Regan)
 - Contractualism
 - The „Political Turn“

Special guest contribution by Prof. Shira Shmueli: The History of Animal Law in the U.K.

- 3) Fundamental conceptions
 - Speciesism
 - Sentience, pathocentrism
 - Intrinsic value, inherent value, ultimate value
 - Animal welfare

Land animals slaughtered for meat

Our World
in Data



Note: "Other" includes geese, sheep, rabbits, turkeys, goats, cattle, and other animals less frequently slaughtered.

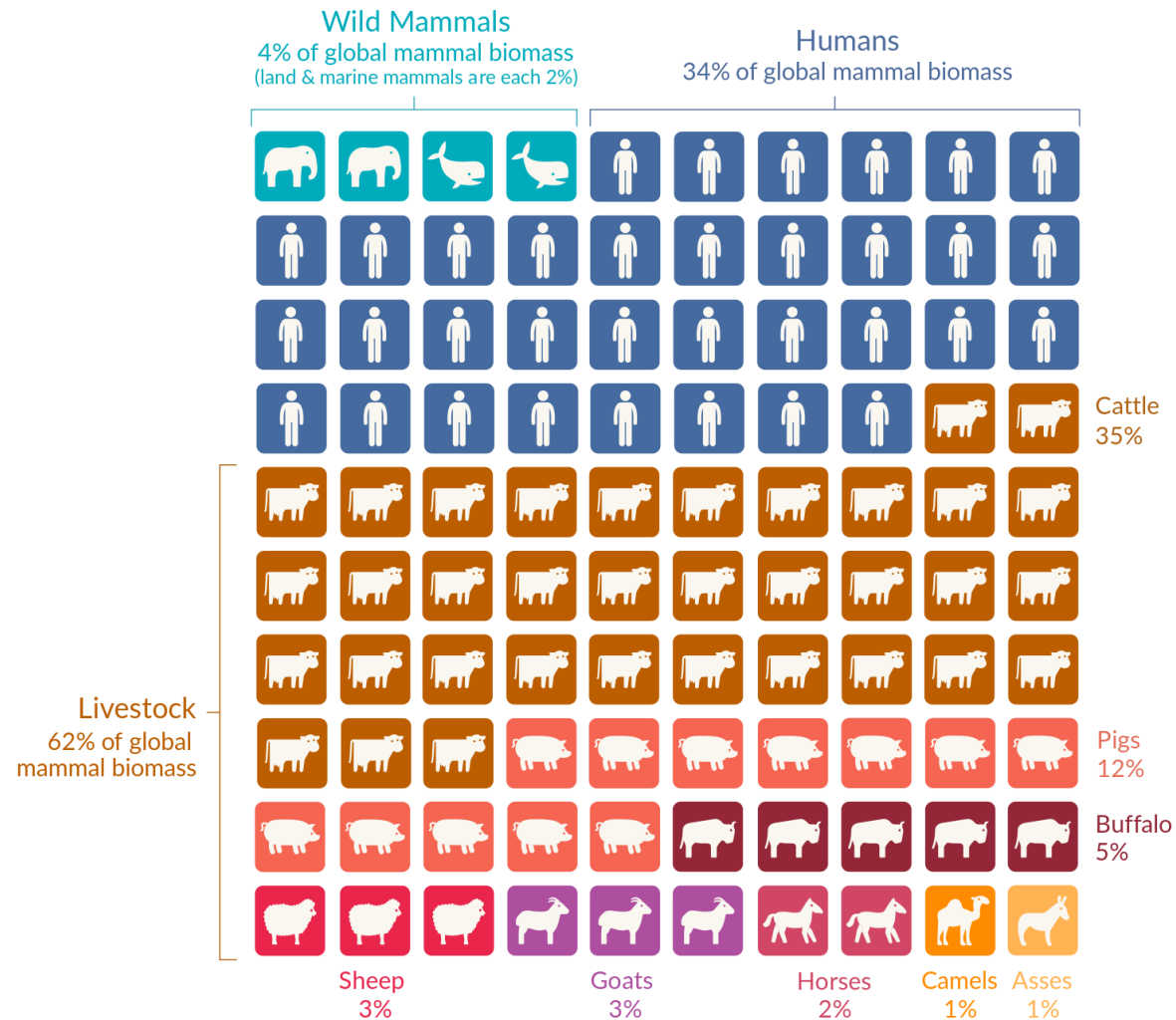
Source: Food and Agriculture Organization of the United Nations (2023)

OurWorldInData.org/animal-welfare | CC BY

Distribution of mammals on Earth

Our World
in Data

Mammal biomass is measured in tonnes of carbon, and is shown for the year 2015. Each square corresponds to 1% of global mammal biomass.



Note: An estimate for pets has been included in the total biomass figures, but is not shown on the visualization because it makes up less than 1% of the total.

Source: Bar-On et al. (2018). The biomass distribution on Earth. Proceedings of the National Academy of Sciences

OurWorldinData.org — Research and data to make progress against the world's largest problems.

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Hannah Ritchie and Klara Auerbach.

Country page

Show all

A

B

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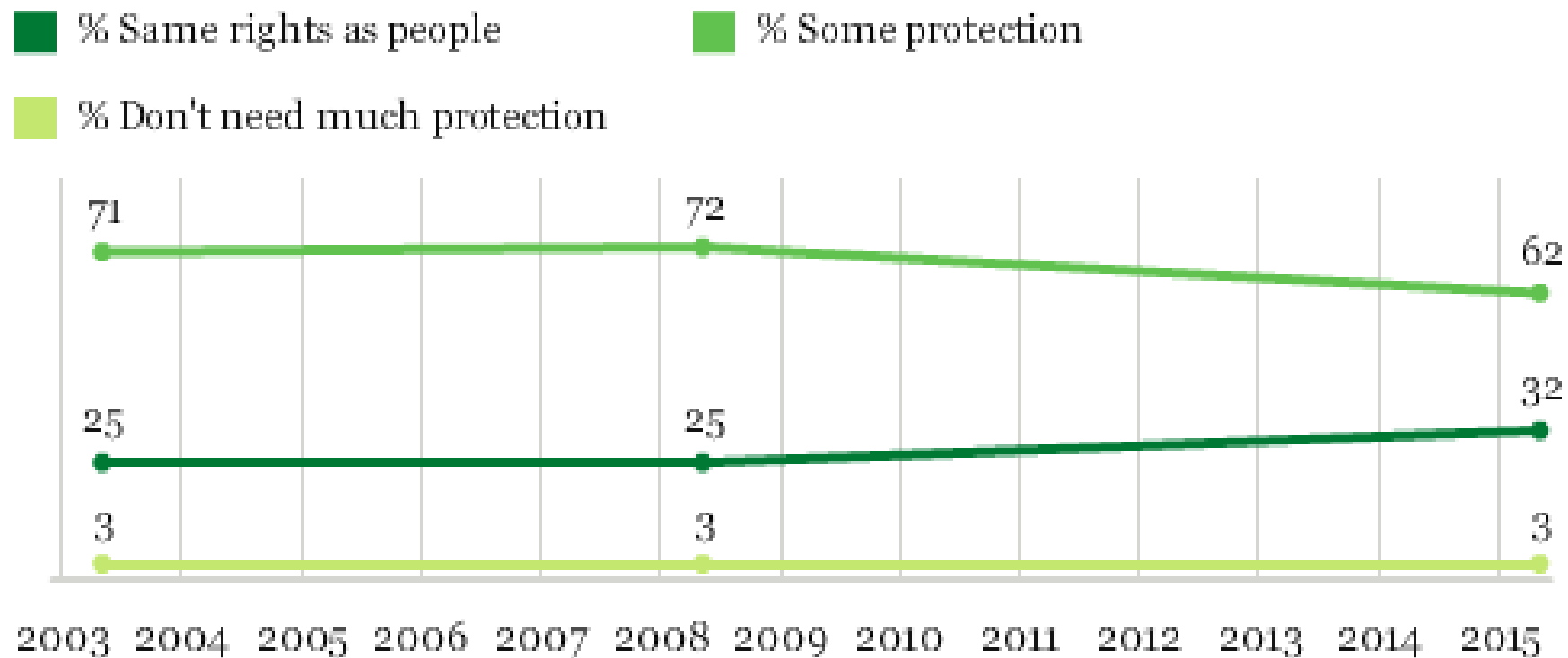
G

Select up to four countries and then select 'Compare' to start contrasting animal welfare standards

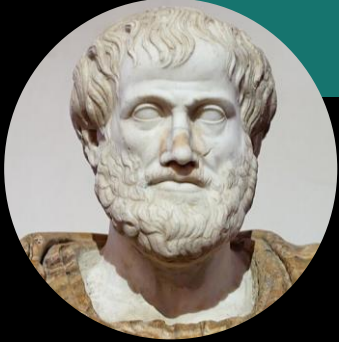
<https://api.worldanimalprotection.org/>

U.S. Support for Animals Having Same Rights as People

Which of these statements comes closest to your view about the treatment of animals:
Animals deserve the exact same rights as people to be free from harm and exploitation;
animals deserve some protection from harm and exploitation, but it is still appropriate to
use them for the benefit of humans; or animals don't need much protection from harm
and exploitation since they are just animals?



Before enlightenment



Aristotle (384–322 b.c.)

soul, mind, rational element > body, passionate element
men > women
masters > slaves
humans > animals (made for the sake of men)



Thomas Aquinas (c. 1225–1274)

"[...] by divine providence they [animals] are intended for man's use in the natural order. Hence it is no wrong for man to make use of them, either by killing or in any other way whatever."
⇒ "dumb animals" are **lacking reason** and thus "naturally enslaved"
⇒ if prohibition of cruelty, then for the sake of human interests

Before enlightenment



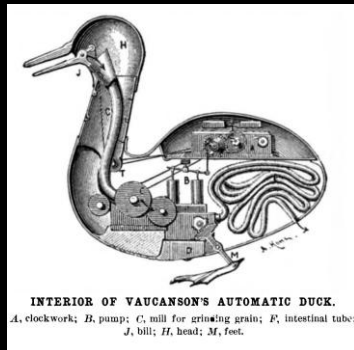
Michel de Montaigne (1533–1592)

- Animals have reason, but it cannot be fully understood by humans
- Animals' suffering is perceptible through empathy
- There are no qualitative, but gradual differences between animals' and humans' reason



René Descartes (1596–1650)

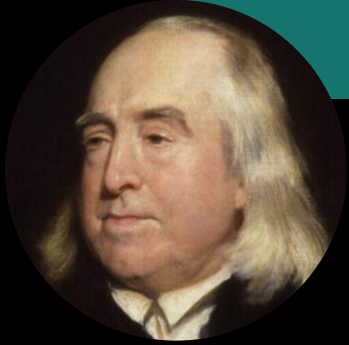
- Animals lack the **ability to speak** $\Rightarrow$ they have **no reason/no thinking soul**
- Animals are comparable to elaborate **machines**:
"[...] it is nature which acts in them according to the disposition of their organs, just as a clock, which is only composed of wheels and weights, is able to tell the hours and measure the time more correctly than we can do with all our wisdom."



$\Leftrightarrow$ **Voltaire**: animals have feelings, memories, ideas

$\Leftrightarrow$ **Rousseau**: due to their sensitivity, animals have "the right not to be uselessly mistreated"

Utilitarianism

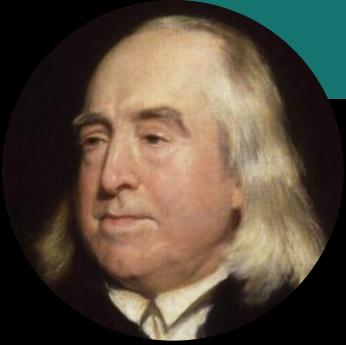


Jeremy Bentham (1748–1832)

„The day has been, I grieve to say in many places it is not yet past, in which the greater part of the species, under the denomination of slaves, have been treated by the law exactly upon the same footing as, in England for example, the inferior races of animals are still. The day may come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? the question is not, Can they reason? nor, Can they talk? but, Can they suffer?“

(An Introduction to the Principles of Morals and Legislation, 1789, S. 308 f.)

Utilitarianism



Jeremy Bentham (1748–1832)

- Hedonistic utilitarianism: **minimise suffering + maximise happiness** in a community ("the greatest pleasure for the greatest number")
 - Relevant criterion: **ability to suffer** (not: ability to reason or to speak)
 - But: killing animals without suffering is morally right (and may even be required) because animals **cannot anticipate the future and human interests prevail**
- ⇒ Foundation of modern animal welfare law (see [Bentham's draft of an anti-cruelty bill](#))



Peter Singer (*1946)

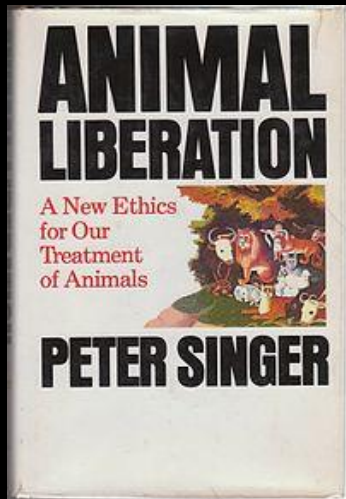
- Differences between groups do not justify treating them unequal (see other liberation movements), but only give rise to different rights ⇒ **Principle of equal consideration of interests**
- ⇒ **sentience** (capacity to suffer or be happy) as prerequisite for having interests
- Preference utilitarianism: positive balance of **all consequences** of an action
 - Different **lives** have **different worth** ⇒ killing animals without suffering is justifiable

Utilitarianism



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Peter Singer (*1946)

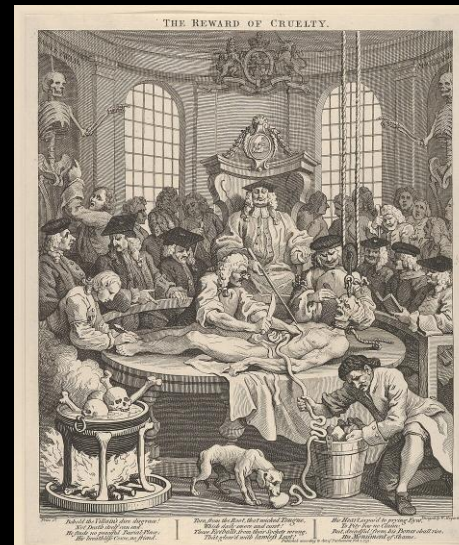
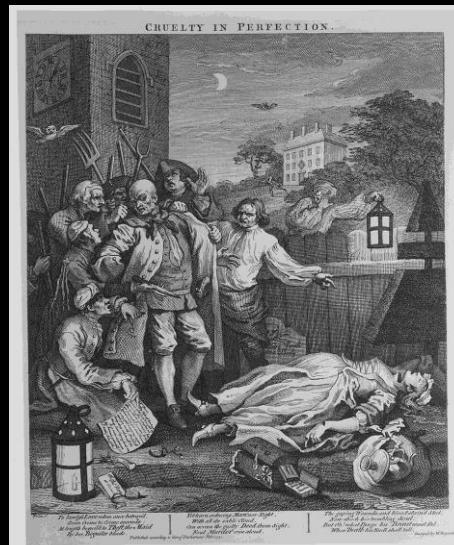
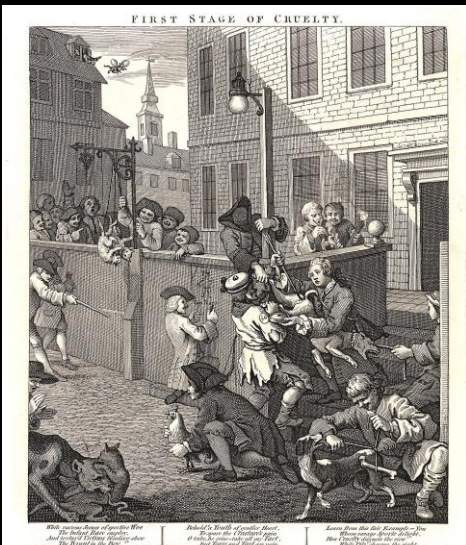


<https://www.youtube.com/watch?v=av22cRQNBiQ>

Deontological theories (Kantianism)

Immanuel Kant (1724–1804)

- Human beings are **ends in themselves** due to their **rationality** ($\Rightarrow$ human dignity)
- Animals are not rational $\Rightarrow$ have **relative value** $\Rightarrow$ can be used as **means to an end** $\Rightarrow$ difference between **persons** (ends in themselves) and **things** (means to an end)
- Humans have **indirect duties** towards animals in order not to stifle their moral feelings towards other humans: *"If a man shoots his dog because the animal is no longer capable of service, he does not fail in his duty to the dog, for the dog cannot judge, but his act is inhuman and damages in himself that humanity which it is his duty to show towards mankind."*



William Hogarth,
The Four Stages of
Cruelty (1751)

Deontological theories (Kantianism)



Tom Regan (1938–2017)

"My Aunt Bea is old, inactive, a cranky, sour person, though not physically ill. She prefers to go on living. She is also rather rich. I could make a fortune if I could get my hands on her money, money she intends to give me in any event, after she dies, but which she refuses to give me now. In order to avoid a huge tax bite, I plan to donate a handsome sum of my profits to a local children ' s hospital. Many, many children will benefit from my generosity, and much joy will be brought to their parents, relatives, and friends. If I don ' t get the money rather soon, all these ambitions will come to naught. The once-in-a-lifetime opportunity to make a real killing will be gone. Why, then, not kill my Aunt Bea ? [...] There is very little chance of getting caught. And as for my conscience being guilt ridden, I am a resourceful sort of fellow and will take more than sufficient comfort – as I lie on the beach at Acapulco – in contemplating the joy and health I have brought to so many others."

from: [The Case for Animal Rights](#), in: Peter Singer (ed.), [In Defense of Animals](#) (1986), p. 185

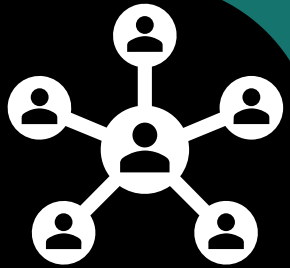
- Individuals have an **inherent, incommensurable value** $\Rightarrow$ respect
 - *Criterion*: being the **"subject of a life"** = subjective experience and goals
 - **Individual moral rights** instead of supraindividual balancing/account
- $\Rightarrow$ **Protection of life** for (some) animals, prohibition of instrumentalisation

Contractualism and the "Political Turn"



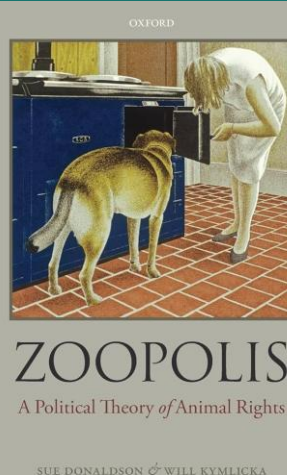
Contractualism (esp. Peter Carruthers, *1952)

- **Hypothetical moral/social contract:** What rules and principles would contractors rationally agree to?
 - Condition 1: contractors as **rational agents** (able to reflect their needs and desires)
 - Condition 2: contractors can have rights and duties (**reciprocity/symmetry thesis**)
- ⇒ Only **indirect duties** to animals possible (side effect of direct duties to humans)
- ⇒ *"those who are committed to any aspect of the animal rights movement are thoroughly misguided"*



The "Political Turn"

- Shift from individual moral duties to duties of society/institutions
 - **Donaldson/Kymlicka:** Animals as members of political communities:
 - Wild animals = sovereign communities (separate/independent)
 - Liminal animals = denizens (right to residency, coexistence)
 - Domesticated animals = co-citizens (participation, cooperation)
- ⇒ Positive and relational duties towards, but also *of* animals



Speciecism

= prejudicial attitudes and views against animals based on their species

- Coined by psychologist and activist Richard Ryder (*1940) and popularised by Peter Singer
- Analogy to other prejudicial attitudes such as sexism and racism: **dominant groups have power over others** (structural similarity)
- Unique features of (some) humans as justification for different treatment
- Deeply rooted in Western thought (→ Aristotle, Christian theology, Kant)
- 2 types of speciesism:
 - Anthropocentric speciecism: Human interests > similar interests of any non-human animal
 - Species bias: Interests of some animals > interests of other animals (e.g. depending on their use or tradition)
- Humans are animals as well ⇒ **"nonhuman animals"**

Sentience

= capacity to have feelings; sometimes as synonym for consciousness

- Basis for many animal welfare laws and animal rights laws
- **Pathocentrism** = **sentientism** = **sentiocentrism**: sentience is the decisive criterion for moral/legal consideration
 - ⇔ **Anthropocentrism** (being human as decisive criterion)
 - ⇔ **Biocentrism** (being alive as decisive criterion)
 - ⇔ **Holism** (being as decisive criterion)
- Scientific evidence for sentience:
 - Behavioural parallels (reactions) upon stimuli of feelings
 - Anatomical/physiological similarities with sentient creatures:
 - **Nociception**: sensory detection of aversive stimuli ⇒ signal through the nervous system to different brain areas ⇒ escape reaction (found in vertebrate and invertebrate animals)
 - **Psychological processing of stimuli**: Conscious affective state ⇒ long-term learning effect (found in vertebrates and octopuses)
 - Shared evolutionary background: Evolutionary functions of feelings (e.g. pain) for **self-preservation** (e.g. recognising and avoiding detrimental situations)

Ecocentrism/physiocentrism

= umbrella term for pathocentrism, biocentrism, holism

Intrinsic value

= value that its holders have in and of themselves, regardless of whether they are useful or valued by someone else or for some other value

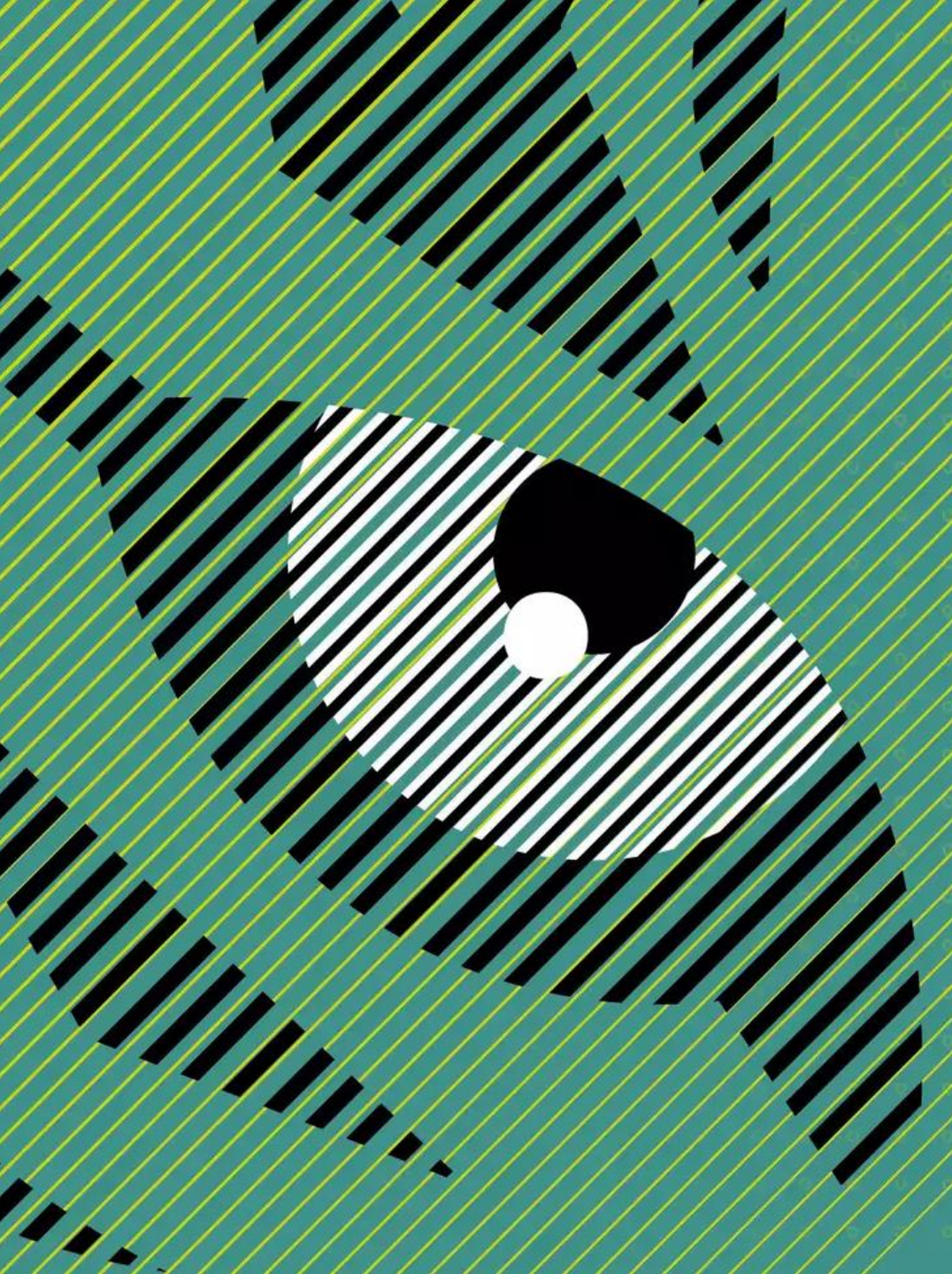
- **Ultimate value** = value that does not derive from the use as means to anything else
⇔ **instrumental value**
- **Intrinsic value** (in the narrower sense) = value that is of primary moral concern (e.g. sentience)
- **Inherent value** = value that depends solely on the nature of the thing in question (or value that is even independent of valuers)
- Terms often used synonymously

Animal welfare

= protections of animals' wellbeing

- Animal welfare laws: seek to promote animals' wellbeing in **positive** ways
- Anti-cruelty laws: limited to **negatively** prohibiting certain cruel treatments against animals (primarily enforced through criminal law)
- Welfarism and animal rights:

Classic Welfarism	(Abolitionist) Animal Rights	New Welfarism
"bigger cages"	"no cages"	"first bigger, then no cages"
utilitarian	deontological	deontological
Precedence of human interests	Equal status with human interests	Principally equal status
No right to life	Absolute right to life	Relative right to life
Admissible purposes, prohibited means	Prohibited purposes	Certain prohibited purposes
Animals as things	Animals as persons	Animals as things



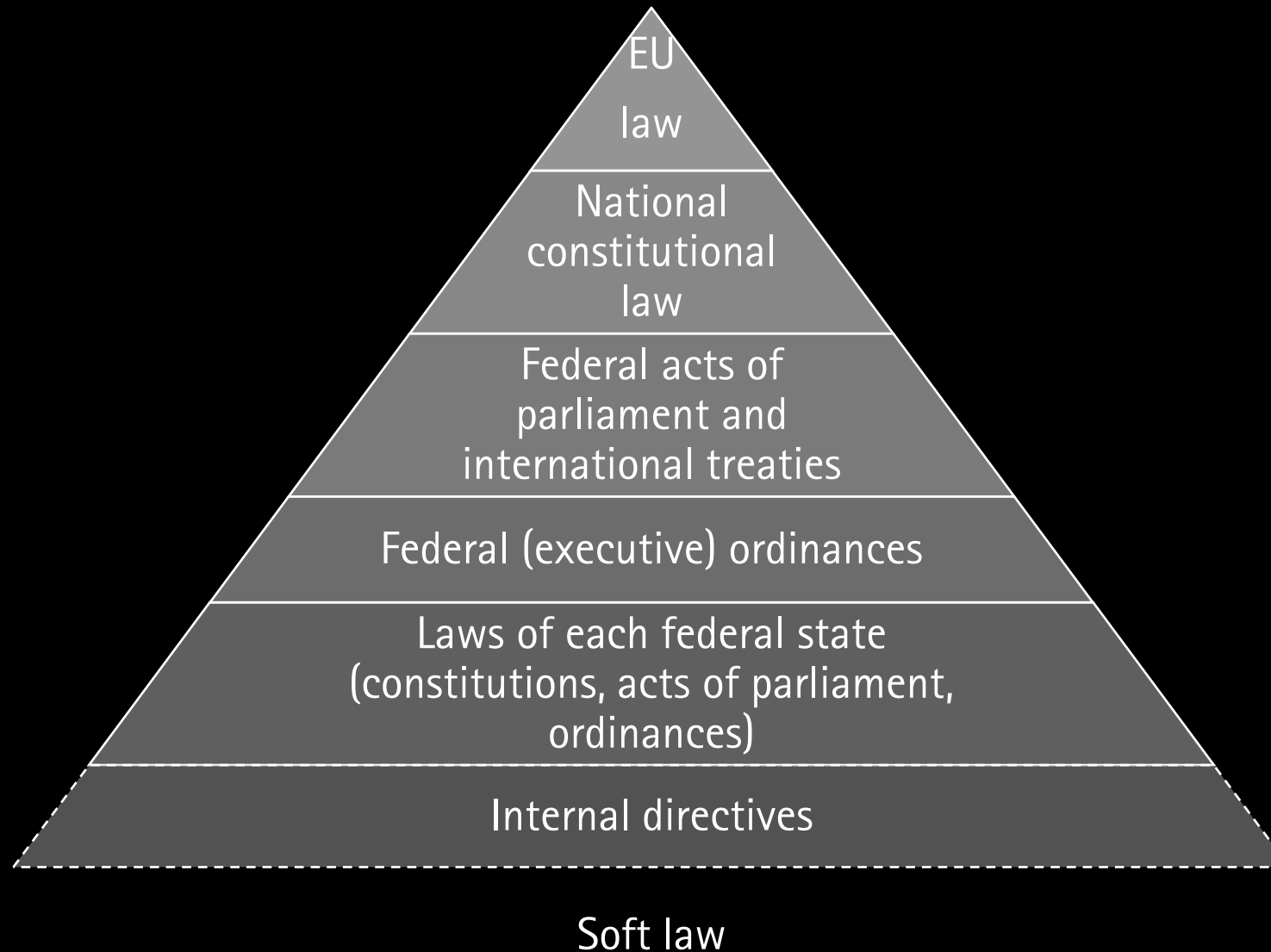
Unit 2:

Current animal welfare laws

Overview

- 1) National and international sources of animal welfare norms
- 2) Regulatory elements of animal welfare law
 - Scope and definitions
 - Types of obligations
 - Administrative enforcement
 - Criminal enforcement
- 3) Intersections with other fields of law
 - Environmental law and hunting law
 - Product safety law
 - Criminal law
 - Private law

Sources of animal welfare norms



European animal welfare law

- Primary European law:

Art. 13 Treaty on the Functioning of the European Union (TFEU), since 2008

In formulating and implementing the Union's [...] policies, the Union and the Member States shall, **since animals are sentient beings**, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to **religious rites, cultural traditions and regional heritage**."

= "**cross-sectional clause**"

- Art. 36 TFEU: protection of health and life of animals as **justification for prohibitions or restrictions** on imports, exports or goods in transit
- Art. 191 (2) TFEU: **precautionary principle** → protection in case of doubts

- Secondary European law

- Regulations, e.g.:
 - Council Regulation (EC) No 1099/2009 of 24 September 2009 on the **protection of animals at the time of killing**
 - Council Regulation (EC) No 1/2005 of 22 December 2004 on the **protection of animals during transport and related operations**
- Directives, e.g.:
 - Council Directive 98/58/EC of 20 July 1998 concerning the **protection of animals kept for farming purposes**
 - Council Directive 2008/120/EC of 18 December 2008 laying down **minimum standards for the protection of pigs**
 - Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the **protection of animals used for scientific purposes**
 - Council Directive 1999/22/EC of 29 March 1999 relating to the **keeping of wild animals in zoos**

Animal protection in national constitutions

- Competence norms, e.g. Art. 74 (1) No. 20 Basic Law (Germany)
- State objectives
 - Constitutions of Austria, Belgium, Egypt, Germany, India, Italy, Luxemburg, Mexico, Russia, Slovenia

Art. 20a Basic Law (Germany), since 2002

Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life **and animals** by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.

- similar provision in constitutions of most sub-states of Germany
 - ⇒ Justification for **limiting human (basic) rights**
 - ⇒ Guideline for **interpretation** of statutory law
 - ⇒ Duty of legislator to **promote** animal welfare, but not justiciable
- Direct legal protections
 - Art. 225 Constitution of Brazil: "right to an **ecologically balanced environment**"
 - ⇒ Can be invoked by animal protection organisations to challenge constitutionality of statutory law

Art. 120 Federal Constitution (Switzerland), since 2000

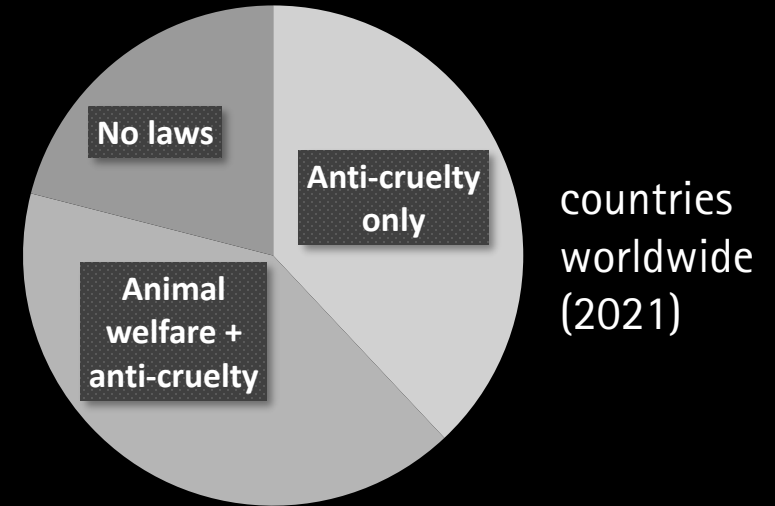
The Confederation shall legislate on the use of reproductive and genetic material from animals, plants and other organisms. In doing so, it shall take account of the **dignity of living beings** as well as the safety of human beings, animals and the environment, and shall protect the genetic diversity of animal and plant species.

International treaties on animal welfare

- No global treaty protecting animals
- Protection of biodiversity (species):
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973) – "CITES"/"Washington Convention"
 - Convention on the Conservation of Migratory Species of Wild Animals (1979) – "Bonn Convention"
 - Bern Convention on the Conservation of European Wildlife and Natural Habitats (1979) – "Bern Convention"
- Treaties of the Council of Europe:
 - European Convention for the Protection of Animals kept for Farming Purposes (1976)
 - European Convention for the Protection of Animals for Slaughter (1979)
 - European Convention for the Protection of Animals during International Transport (1968)
 - European Convention for the Protection of Pet Animals (1987)
 - European Convention for the Protection of Vertebrate Animals used for Experimental and Other Scientific Purposes (1986)

National statutory animal welfare law

- Development of animal protection legislation during the 19th century (firstly UK Martin's Act of 1822)
- **Anti-cruelty** laws and **animal welfare** laws
- Germany:
 - Federal acts of parliament
 - **Animal Protection Act** ("Tierschutzgesetz"/TierSchG)
 - Related Acts (Animal Health Act, Animal Breeding Act, Federal Nature Protection Act, Federal Hunting Act)
 - Federal executive ordinances, e.g.:
 - Ordinance on the Protection of Farmed Animals ("Tierschutz-Nutztierhaltung-Verordnung")
 - Ordinance on the Protection of Animals used for Scientific Purposes ("Tierschutz-Versuchstier-Verordnung")
 - Ordinance on the Protection of Dogs ("Tierschutz-Hunde-Verordnung")
 - Ordinance on the Protection of Animals during Transport ("Tierschutz-Transport-Verordnung")
 - Ordinance on the Protection of Animals during Slaughter ("Tierschutz-Schlacht-Verordnung")
 - State acts of parliament
 - regarding competent authorities
 - State nature protection acts and state hunting acts



Internal directives and soft law on animal welfare

- Administrative directives
 - Issued by government (ministries)
 - Addressed to administrative agencies and their staff
 - Germany: General administrative directive for the implementation of the animal welfare act ("AVV TierSchG")
 - Can have binding effect toward external parties (citizens) due to the principle of equal treatment (Art. 3 German Basic Law)
- Guidelines, expert reports etc.
 - Issued by expert committees (private or public)
 - Used to interpret vague legal terms
 - Can have some relevance in legal proceedings as anticipatory expert opinion to prove facts of a case
- Industry standards, codes of conduct
 - Voluntary self-commitment by companies
 - Can become part of contracts

Case 1: Laying hens

The government of North Rhine-Westphalia considers the Ordinance on the Protection of Laying Hens in Caged Systems ("Laying Hens Ordinance"), issued by the Federal Minister for Food, Agriculture and Forestry, to be unconstitutional. The ordinance permits the rearing of laying hens in battery cages subject to certain minimum requirements, in particular regarding the size of the cage areas and the length of the feed troughs. North Rhine-Westphalia takes the view that the permitted rearing conditions prevent the animals from engaging in essential species-specific behaviours and therefore violate the Animal Protection Act. Furthermore, it is submitted that the ordinance is not covered by the statutory basis § 2a of the Animal Protection Act. The government of North Rhine-Westphalia is therefore seeking before the Federal Constitutional Court a declaration that the ordinance is incompatible with the Basic Law and void.



Matias Vassor / Open Wing Alliance / We Animals

Will the motion of the government of North Rhine-Westphalia be successful?

Case 1: Laying hens

(adapted from [BVerfGE 101, 1](#), see also currently pending [2 BvF 1/19](#))

A. Admissibility

- **Abstract judicial review**: Compatibility of any statute (including ordinances) with the Basic Law
- Compatibility with higher-ranking statutory law as incidental question

B. Merits

I. Legal basis authorising the issuance of the ordinance

1. Compatibility of the legal basis with formal requirements
 - **Competence** of federal legislator (+)
2. Compatibility of the legal basis with substantive requirements
 - Specification of **content, purpose and scope** of authorisation (+)
 - Requirement that **essential decisions** be regulated through act of parliament (+)

II. Compatibility of the ordinance with formal requirements (+)

III. Compatibility of the ordinance with substantive requirements

1. Compatibility with the legal basis
 - Compatibility with **§ 2 TierSchG**
⇒ Balancing of interests (**Art. 20a Basic Law vs. Art. 12 (1) Basic Law**)
2. Compatibility with other constitutional provisions
 - Art. 20a Basic Law ⇒ balancing of interests

C. Result: The ordinance is unconstitutional, amendment of legislator required

Regulatory elements of animal welfare law: Scope and definitions

- Definition of animals

§ 2132 US Animal Welfare Act (1966)

The term "animal" means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term **excludes** (1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research, (2) horses not used for research purposes, and (3) **other farm animals**, such as, but not limited to livestock or poultry [...]

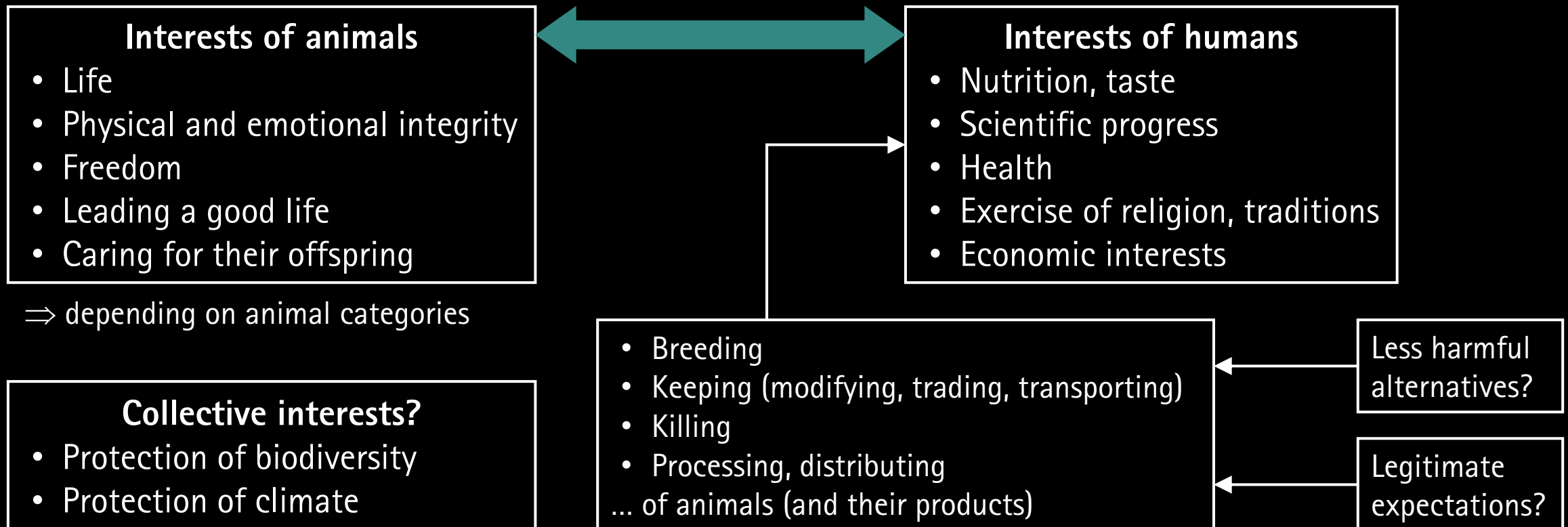
⇒ Limitation of the scope of application

- Categorisations of animals:

- According to **purpose/use** (e.g. agriculture, experimentation, entertainment)
- According to **biological classifications** as indicators for sentience (e.g. vertebrates, invertebrates, mammals, cephalopods)
- According to **species** and their specific needs (e.g. dogs, cats, horses)
- According to **societal views** (e.g. primates, companion animals)

Regulatory elements of animal welfare law: Types of obligations

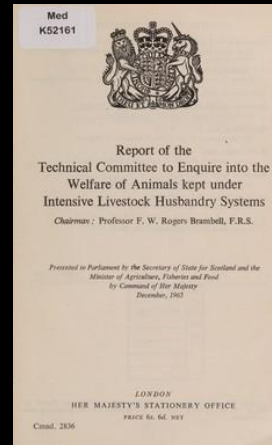
- Anti-cruelty laws
 - Prohibition of different forms of cruelty toward animals in general or towards specific animals
 - ⇒ Germany: § 3 TierSchG
 - Prohibition of "unnecessary"/"unreasonable"/"unjustifiable" pain / "without good reasons"
 - ⇒ Requirement of justification ⇒ **balancing of interests**
 - ⇒ Germany: § 1 TierSchG; see also **3Rs in animal experimentation: Replacement/Reduction/Refinement**



Regulatory elements of animal welfare law: Types of obligations

- Animal welfare laws:
 - More wide-ranging, driven by scientific insights about behaviour and need of animals
 - Positive requirements to promote animals' wellbeing
 - Drawing on **5 Freedoms** (UK Farm Animal Welfare Council 1979, based on report of the Brambell Committee 1965):
 - (1) Freedom from hunger and thirst
 - (2) Freedom from discomfort
 - (3) Freedom from pain, injury or disease
 - (4) Freedom to express normal behaviour
 - (5) Freedom from fear and distress

⇒ Germany: § 2 TierSchG
- Exceptions
 - Due to conflicting **social rules** (e.g. religious rules on slaughter without stunning, e.g. § 4a TierSchG)
 - Due to conflicting **economic reasons** (e.g. reference to industry standards: "generally accepted farming practices" in Canadian animal welfare law)



Regulatory elements of animal welfare law: Administrative enforcement

- Competent authorities: **State animal welfare agencies** (Germany: § 15 TierSchG)
- **Inspections or checks** (announced or unannounced) (Germany: § 16 TierSchG)
- **Preventive Measures** (Germany: § 16a TierSchG as legal basis for **administrative acts**)
 - Order to take measures for compliance with animal welfare law
 - Confiscation of animals
 - Temporary or permanent prohibition on keeping animals
 - Temporary or permanent closure of establishments
 - Temporary or permanent prohibition of trade in animals
 - Temporary or permanent prohibition of possessing animals
- **Licensing** for activities/premises/people
 - ⇒ preventive prohibition subject to permission (Germany: e.g. §§ 7a, 8, § 11 TierSchG)
 - ⇒ repressive prohibition subject to exemption (Germany: e.g. § 4a (2) No. 2 TierSchG)
- **Reporting/documentary/organisational** duties
- **Certification/labelling** requirements
- Representative actions by NGOs ("Verbandsklage") → Unit 8

Case 2: Tethering of cattle

During an unannounced official inspection of farmer L's cattle, the competent veterinary authority finds that L's 24 cows are kept in tethered systems without daily access to a pasture, a yard or similar. Under the tethered system practised by L, almost all the basic needs of the cattle are severely restricted. The lack of exercise could also lead to frequent illness and cause pain. According to Lower Saxony's "animal welfare guidelines for dairy cow husbandry and for beef cattle rearing", existing tethered systems should, where possible, be converted to loose housing systems.

The Veterinary Agency therefore issues a notice ordering L to provide his cattle with free access to a pasture, paddock, exercise yard or similar area for at least two hours daily and at least during the period from 1 June to 30 September of each year. The order is declared immediately enforceable. L wishes to take legal action against this as soon as possible.

Will L's legal action succeed?



Case 2: Tethering of cattle

(adapted from [VG Münster, 11 L 843/19](#), see also failed [reform bill 2024](#))

A. Admissibility

- § 80 Code of Administrative Court Procedure

B. Merits

I. Formal requirements of order of immediate enforceability (+)

II. Substantive requirements of order of immediate enforceability

⇒ Legality of the administrative act

1. Legality of the administrative act

a. Legal basis: § 16a (1) TierSchG

b. Formal requirements (+)

c. Substantive requirements

- Violation of § 2 TierSchG (+)

- Lower Saxony's animal welfare guidelines as anticipatory expert opinion (+)

2. Special public interest in immediate enforceability (+)

C. Result: As the agency's order was legal, L will not be successful.

Case 3: Animal experimentation for basic research

Prof. K heads a department at the University of Bremen and conducts research into the neural mechanisms underlying complex brain functions. This involves animal experiments using macaques (rhesus monkeys), for which Prof. K was first granted a temporary licence in 1998. During the experiments, the animals' brain activity is measured using electrodes implanted in the brain. The animals are secured in a so-called primate chair and are required to respond to specific signals, for which they are rewarded with water. For one week, they therefore receive water solely as a result of their participation in the experiment. K's research project is evaluated by a commission of experts in June 2024, which concludes that the research approach was of international standing and provided fundamental insights into cognitive functions such as perception, attention and memory.

In a decision dated 15 October 2025, the competent authority of the State of Bremen refuses to grant further authorisation for the research project for the experimental period from 1 December 2025 to 30 November 2028. The experiments are deemed ethically unjustifiable due to the stress they cause the animals in relation to the intended scientific benefits. Following an unsuccessful appeal, K brings an action before the Administrative Court of Bremen seeking the grant of a licence.

Will K's action succeed?



Case 3: Animal experimentation for basic research

(adapted from BVerwG, 3 B 29/13)

A. Admissibility

- "Enforcement action" against rejection of administrative act (§ 42 (1) Code of Administrative Court Procedure)

B. Merits

⇒ Entitlement of K to be granted the licence?

- Mandatory issuance of licence according to § 8 (1) TierSchG (no discretion of authorities)

§ 7a (2) No. 3 Animal Protection Act (Germany)

Experiments may be carried out on vertebrates only if the pain, suffering or harm they can be expected to inflict on the laboratory animals is **ethically justifiable** in view of the purpose of the experiment.

- Assessment of "ethical justification" **not subject to judicial review?**
 - ⇒ *Federal Administrative Court*: judicial review can only be restricted in exceptional circumstances, here (-)
- **Animal protection** (Art. 20a Basic Law) vs. **academic freedom** (Art. 5 (3) Basic Law)
 - ⇒ *Federal Administrative Court*: Science does not have to be oriented toward utility or practical application, but its **self-regulation** and the value of **basic research** should be respected
 - ⇒ **Scientific significance** to be balanced against **severity of animal suffering**

C. Result (*Federal Administrative Court*): Scientific significance prevails. K is entitled to be granted the licence and will be successful.

Regulatory elements of animal welfare law: Criminal enforcement

- Prosecution by **police, public prosecutors, courts**
- Criminal convictions: **fine or imprisonment**
- Germany: § 17 Animal Protection Act
 - Protected interest: **welfare of animals** (not: property interests of owner!)
 - Sufficiently **specific** (Art. 103 (2) Basic Law) in spite of vague terms
 - Applicable to **intensive farming practices** ([BGH, 2 StR 159/86](#))
- Application of general criminal law:
 - Commission by **act or omission** (eg veterinarians, state officials with duties to act)
 - **Subjective** requirements (intent, cruelty in § 17 No. 2 a) TierSchG)
 - **Justification** of criminal acts (esp. "good reason" for killing, licence by authorities)
 - **Complicity, aiding and abetting** (esp. in commercial operations)
- Criminal procedure:
 - Proof of suffering: high relevance of **expert evidence** (veterinarians)
 - Animals rarely represented as **victims** in proceedings; no victim status in Germany
- Administrative fines ("Bußgeld")
Germany: § 18 Animal Protection Act

Case 4: Animal hoarding

O keeps 46 dogs in his house. As he is unable to cope with their care, he moves into a flat at the end of 2025 and leaves the dogs to their fate. Following a tip-off from a neighbour, the completely neglected and filthy animals are discovered in February 2026 and rescued from the empty house by the veterinary authorities. The animals had too little to eat and drink and had, in some cases, been feeding on wallpaper, furniture and the faeces of the other animals. Some dogs can no longer walk properly. Furthermore, the animals' fur is, in some cases, completely matted with faeces and urine, and many dogs have infections in their eyes and teeth.

How is O's behaviour punishable under German law?



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Case 4: Animal hoarding

- A. Killing of a vertebrate without good reason – § 17 No. 1 TierSchG
- Attempted killing not punishable
- B. Causing a vertebrate considerable pain or suffering out of cruelty – § 17 No. 2 a) TierSchG
- Commission by omission, § 13 Criminal Code
 - Pain: physical harm (+)
 - Suffering: mental harm (+)
 - Considerable pain or suffering (+)
 - Subjective element: Out of cruelty (-)
- C. Causing a vertebrate persistent or repeated severe pain or suffering – § 17 No. 2 b) TierSchG
- Commission by omission, § 13 Criminal Code
 - Persistent pain or suffering (+)
 - Severe pain or suffering (+), independent of persistence
 - Guarantor duty to act ⇒ § 2 TierSchG
 - Intent of O (+)
 - Defense: O's consent as owner?
⇒ O is not the holder of the protected interest (-)
 - Lack of criminal responsibility due to mental disorder?
⇒ Evidence inconclusive (-)
 - Result: O is punishable pursuant to § 17 No. 2 b) TierSchG

Enforcement gap

- Current animal protection law is often not properly enforced:
 - Low rate of **inspections** and criminal **prosecutions**
 - Inspections usually **announced** in advance
 - Industry-friendly interpretation of **vague legal terms**
 - **Low penalties** compared to possible range
 - High number of **unreported violations**
 - **Differences** between enforcement in different regions and for different categories of animals
- This enforcement gap is due to certain structural deficits:
 - Lack of **resources** in state agencies (personal, financial or other)
 - Lack of **training** and **specialisation** ⇒ lack of veterinary and legal expertise
 - **Communication barriers** between different disciplines
 - Concentration of **power** and **resources** in animal-using industries
 - Bias due to long-standing relationships, **status quo bias**
 - **Political influence** on proceedings
 - Structural imbalance: Only one side of the conflict represented in proceedings; interests of animals mostly **not represented** (→ Unit 8)

Intersections: Criminal law and private law

- Criminal law
 - Criminal liability for damage to animals as **property damage** if animal is owned $\Rightarrow$ protection of owner's interests (*GER*: § 303 Criminal Code)
 - Controversy: Criminal liability for failure to **render assistance to animals** in the case of an accident or a common danger or emergency (*GER*: § 323c Criminal Code)
 - Justification of **criminal acts for the benefit of animals**? $\rightarrow$ Unit 9
- Private law
 - Animals as **things**, but certain modifications $\rightarrow$ Unit 5
 - Contract law: sale of animals or other **contracts concerning animals** (*GER*: eg § 477 (1) Civil Code)
 - Property law, eg **lost and found animals**
 - Renunciation of ownership of animals prohibited (*GER*: § 3 sentence 1 No. 3 TierSchG)
 $\Rightarrow$ but: wild animals ownerless (*GER*: § 960 Civil Code)
 - Finder is entitled to deliver the animal to the competent authority (*GER*: § 967 Civil Code)
 - Finder is entitled to reimbursement of expenses from owner (*GER*: § 970 Civil Code)
 - Acquisition of ownership by finder/municipality after 6 months (*GER*: §§ 973, 976 Civil Code)
 - Tort law, eg liability for **damage caused by animal behaviour** (*GER*: §§ 833, 834 Civil Code)

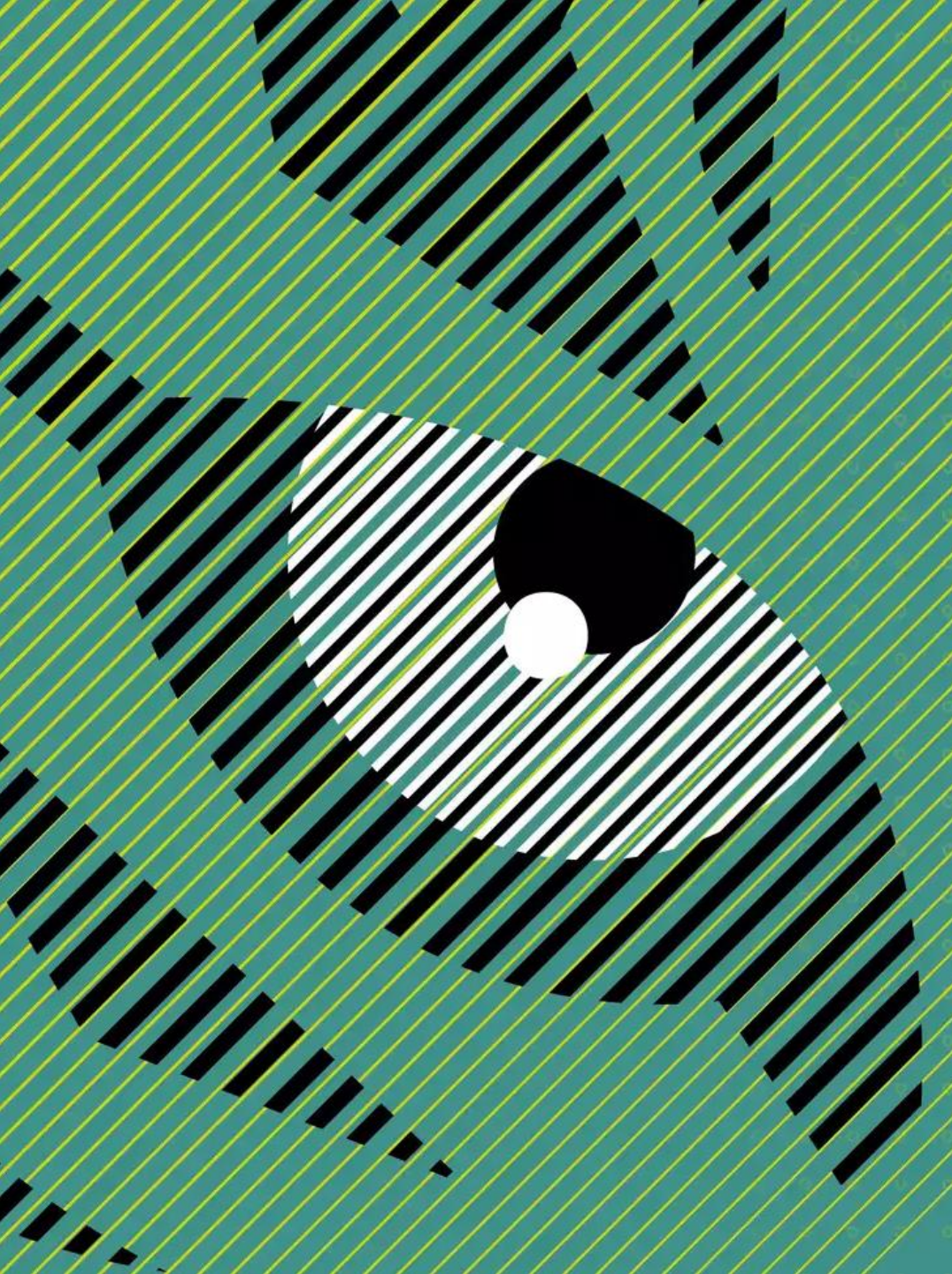
Intersections: Environmental law

- Protection of endangered species
 - Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ("**Habitats Directive**")
 - Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ("**Birds Directive**")
 - Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by **regulating trade** therein
 - Different levels of Protection:
 - **Generally** protected species (no harm without good reason)
 - **Specially** protected species (prohibition of harm, exceptional permission possible)
 - **Strictly** protected species (more comprehensive prohibitions, exceptional permission possible)
 - ⇒ Protection of species, **not individual animals**
 - ⇒ Controversial example: downgrading of protection status of wolves
- Management of invasive species
 - Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species
 - Conflicts between species (eg racoons, nutrias)
 - **Management measures** (eg birth control) → ultima ratio: killing

Intersections: Hunting law and product safety law

- Hunting Law
 - Hunting as "good reason" under § 1 TierSchG?
⇒ Purpose of (private) hunting? (Hobby? Sports? Food supply? Nature protection?)
 - Prohibition of cruel hunting methods (eg certain types of traps)
 - Landowners not obliged to tolerate hunting on their premises if contrary to their ethical values
(ECtHR, *Herrmann v. Germany*, Judgement of 26 June 2012: violation of the right to property)
- Product safety law
 - Animals as food: use of medications, sanitary conditions ⇒ protection of human health
 - Animal disease culling to prevent spread of pathogens (eg culling of 17 million minks raised in Denmark for fur during Covid)
 - Risks of substances for humans ⇒ obligatory animal testing for vaccines, medicines, chemicals
⇒ Licencing of activities and persons

"Animal law" in a broad sense encompasses
rules applicable to animals in each area of law



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

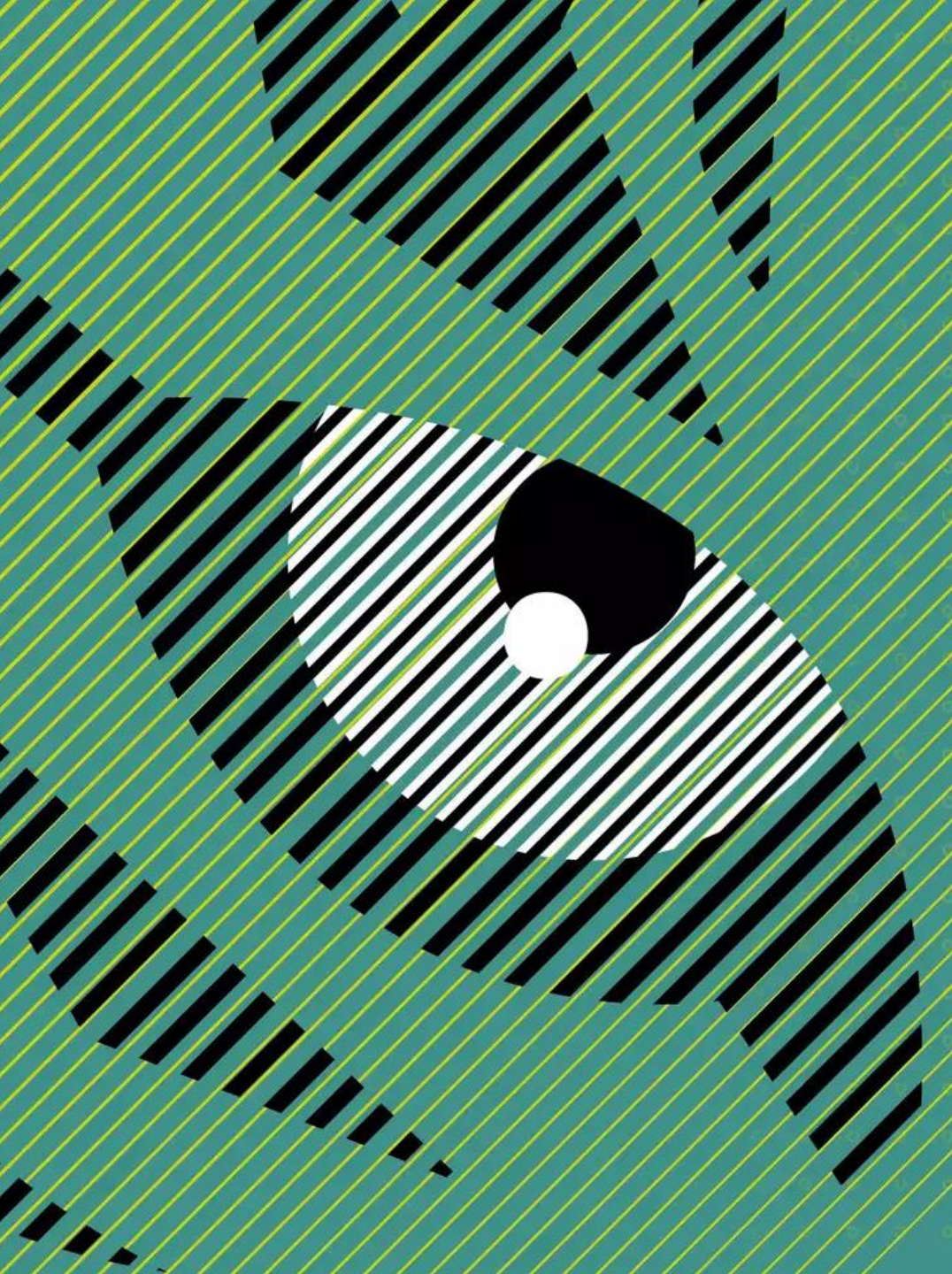
Animals in the production process

- 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 (see 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



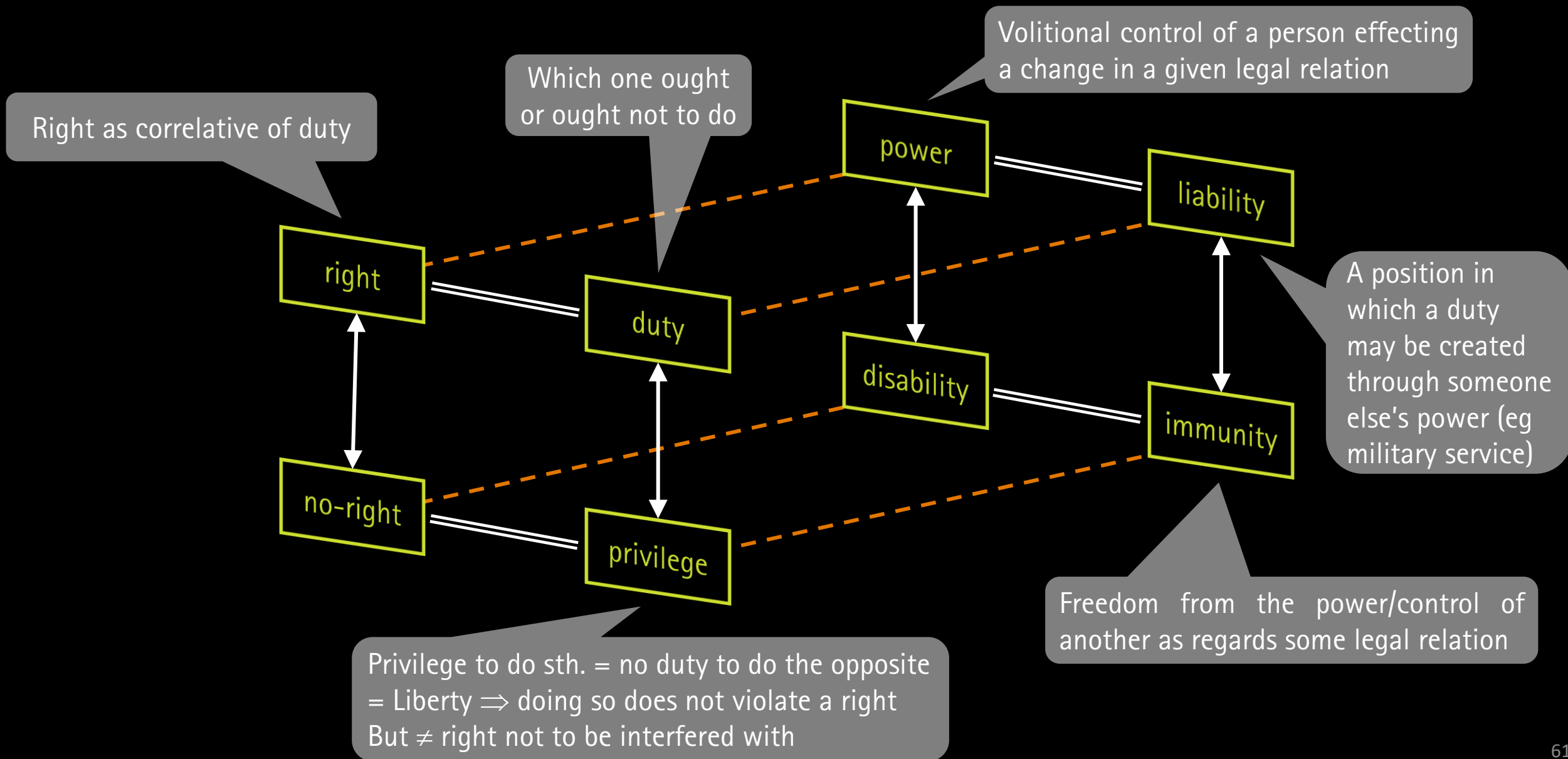
Unit 4:

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)

Hohfeldian analysis of rights → [Wesley N. Hohfeld \(1913\)](#)



Constructivist views

- Rights as **artificial/fictional constructs** of the law that can be shaped according to societal needs or the requirements of legal reasoning
- Approach of positive law / **legal positivism**
- No metaphysical/philosophical explanation needed
- *Hans Kelsen, Pure Theory of Law* (1934/1960):
 - Primarily, rights are merely the **logical reflex of obligations**.
 - "The concept of a legal obligation refers exclusively to a positive legal order and has **no moral implication whatever**."
 - "[T]he essence of the right that it is more than a mere reflex of a legal obligation consists in the fact that a legal norm confers upon an individual the **legal power** to bring about by a law suit the **execution of a sanction** as a reaction against the nonfulfillment of the obligation" = "*right in the technical sense*"

⇒ Anything goes?

Will theory / choice theory of rights

= Someone is a rights-holder if she can determine **by her own will/choice** whether someone else should act in a certain way, and thereby restrict his freedom.

- Main proponents: *John Austin, Friedrich Carl von Savigny, Bernhard Windscheid, H.L.A. Hart, Ronald Dworkin*
- Rights = spheres of **autonomy** $\Rightarrow$ rights-holder as "**small-scale sovereign**" (H.L.A. Hart)
- Function of rights: expressing and protecting choices made by **autonomous individuals**
- Precondition: Ability to choose how to exercise one's rights $\Rightarrow$ **free will, autonomy**

$\Rightarrow$ Applications to animals?

- Can make decisions for themselves
- Can show legally relevant behaviour ("**agency**")
- But no will with regard to the **legal relevance** of their acts

$\Leftrightarrow$ Arguments against the will theory:

- Cannot explain inalienable rights
- Leads to the conclusion that **infants, humans in a coma or with severe cognitive impairments** cannot have rights

Interest theory / benefit theory of rights

= Someone has a right if her **interests or well-being** is a sufficient reason to hold others under a corresponding duty.

- Main proponents: *Jeremy Bentham, Rudolf von Jhering, Joseph Raz, Matthew Kramer, Neil MacCormick*
 - Function of rights: protecting the interests/the wellbeing of rights-holders
 - Precondition: **Ability to have interests**
 - Broad and narrow definitions of interests
 - Broad definition of interests: **Sentience** as sufficient condition for interests
 - Additional condition: **intrinsic value?**
- ⇒ Applications to animals?
- Animals that are sentient (+ have intrinsic value) **can have interests** serving as grounds for their rights
- ⇔ Arguments against the interest theory:
- Can lead to an **"inflation" of rights** (content of rights + holders of rights)

Symmetry/reciprocity of rights and obligations

The relationship between rights and obligations is subject to different theories not to be confounded: (1) symmetry/reciprocity; (2) correlativity

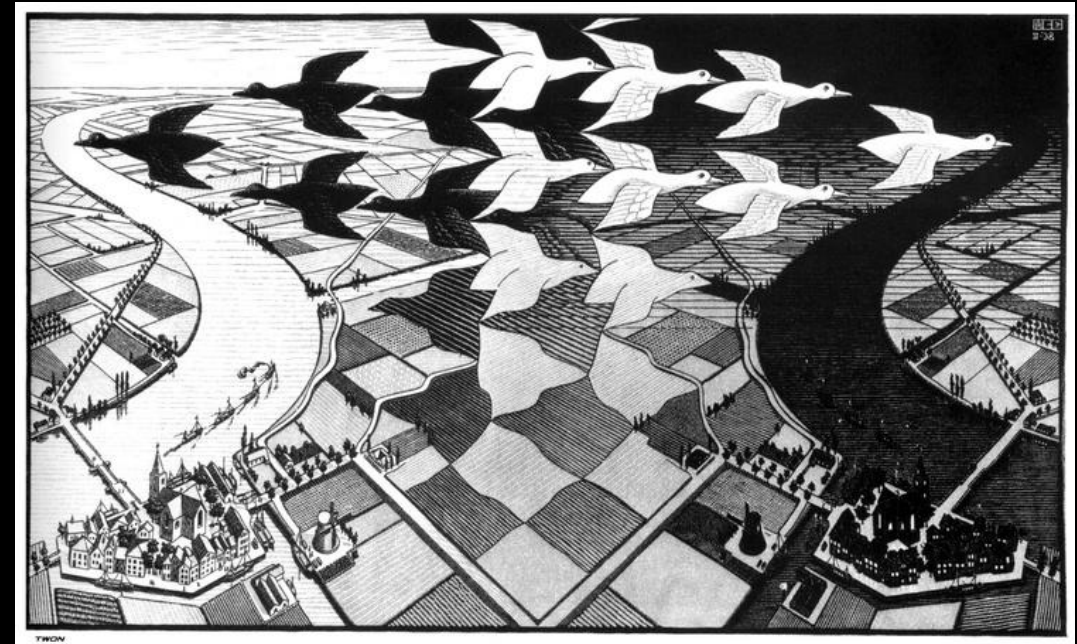
(1) Symmetry/reciprocity of rights and obligations:

Rights and obligations always come together
in the same person

⇒ One can only have rights if one can have obligations

⇒ Background in contractualist theories
(→ Unit 1)

⇔ **Current legal reality:** legally incapacitated humans as rights-holders



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Correlativity of rights and obligations

The relationship between rights and obligations is subject to different theories not to be confounded: (1) symmetry/reciprocity; (2) correlativity

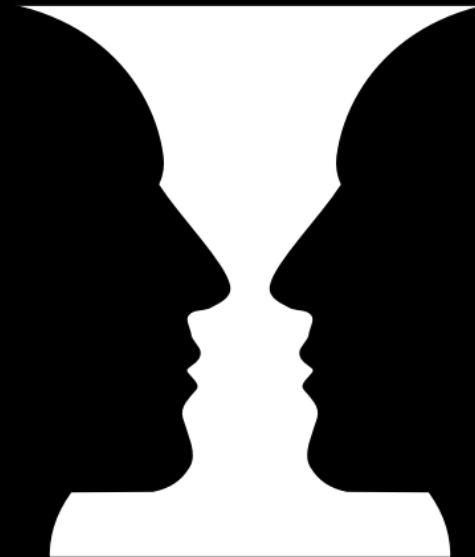
(2) Correlativity of rights and obligations:

Rights and obligations always come together
in the different persons

⇒ One can only have a right if someone else
has an obligation to comply with the right

⇒ Legal relation between rights-holder and
duty-bearer

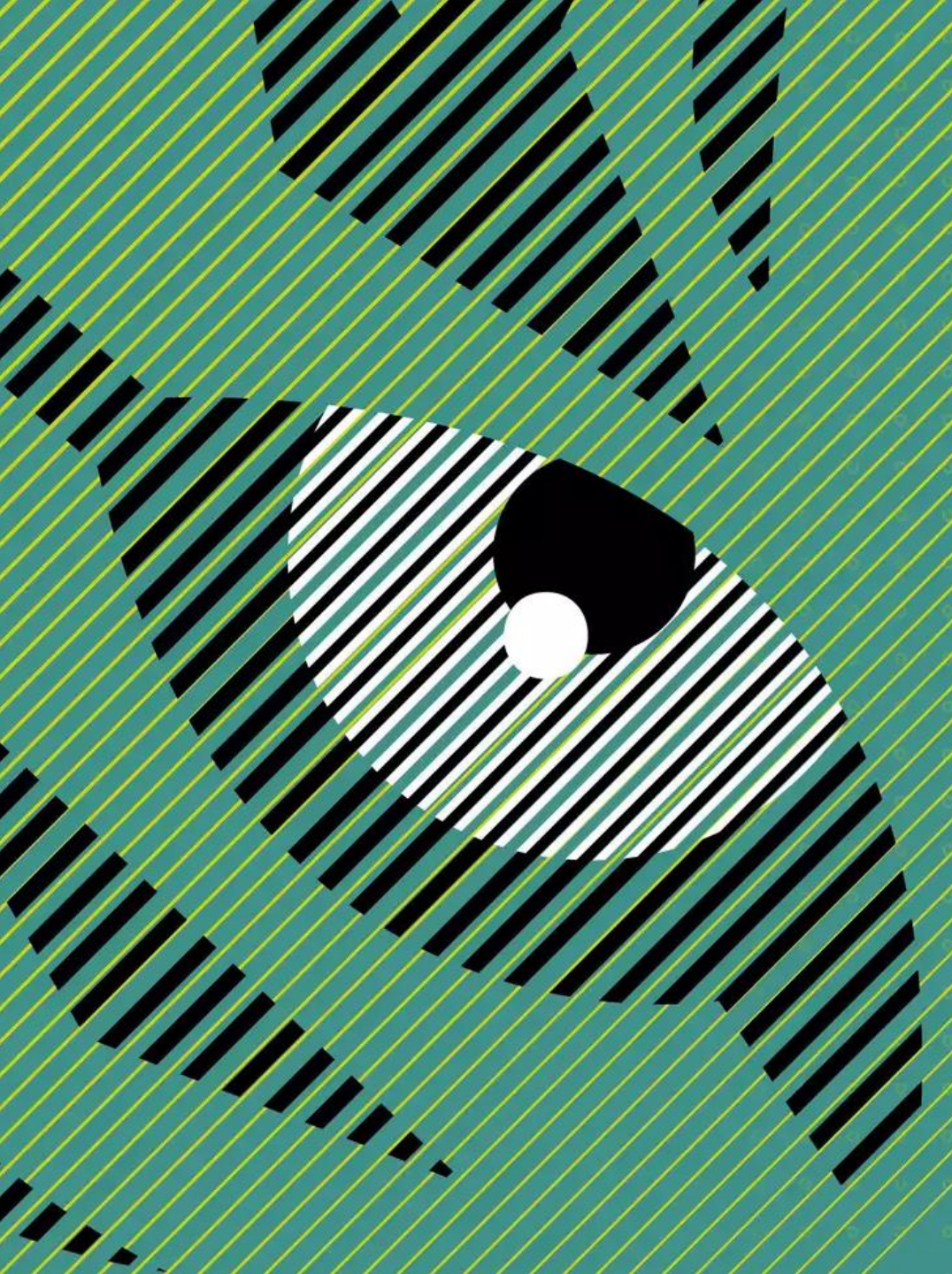
⇒ Difference between subject of rights and
subject of duties (Leonard Nelson)



Obligations of animals?



- Obligation = prescription of a certain behaviour
⇒ Steering of behaviour by
 - communicating the obligation
 - threatening detriments in case of non-compliance or
 - promising benefits in case of compliance
 - Problems:
 - Animals cannot comprehend textual forms of communication used in law
 - Animals cannot judge and accept the underlying reasons for an obligation imposed by human laws
 - But:
 - Other ways of communicating obligations (eg fences) and incentives (eg rewards)
 - Does the law require behaviour out of duty beyond mere conditioning effects?
 - Historical example: Animal trials (9th to 20th century) → student presentation 3
 - Individual animals or groups of animals as defendants in criminal proceedings before ecclesiastical and secular courts (esp. France, Germany); charges: injuring/killing someone / destroying crops
 - Convictions (esp. death penalty), but also acquittals and settlement contracts with animals
 - Explanation: Restoring the divine order, creating narratives to cope with crisis events
- ⇒ *Animal obligations are conceivable at least as legal fiction with instrumental purpose*



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)

The dereification of animals



Quebec



„not things“



*„not things“
+ „sentient being“*



Colombia

The dereification of animals

- 18 states (mostly in Europe) have included a provision in their Civil Codes stating that animals are **not things** (first Austria in 1988, Germany in 1990)

§ 90a Civil Code (Germany), since 1990

Animals are **not things**. They are protected by special statutes. The provisions that apply to things are to be **applied accordingly** to animals, unless otherwise provided.

- 8 of these states add a **positive definition** of animals as sentient beings or similar (Belgium, Colombia, Czech Republic, France, Portugal, Quebec, Slovenia, Spain)
- The other 10 states merely provide for a **negative definition** (Azerbaijan, Austria, Germany, Hungary, Kazakhstan, Liechtenstein, Moldavia, Netherlands, Poland, Switzerland)
- Typically, these changes have been accompanied by ancillary private law adjustments:
 - The **compensation for damage** inflicted on an animal may exceed its market price (*GER*: § 251 (2) Civil Code) and may include damages for **emotional distress** (France, Italy, Portugal, Spain, USA)
 - Reference to **animal protection law** (*GER*: § 903 Civil Code, § 765a (1) Code of Civil Procedure)
 - Exemption from **attachment by creditors** (*GER*: § 811 (1) No. 8 Code of Civil Procedure)
- In some states, courts have relied on the "non-thinghood" of animals to take into account or strengthen animal interests in the interpretation of other provisions.
⇔ ECJ, Felicísima v Iberia (2025): **animal = luggage** (limited liability for loss under Montreal Convention)

Case 6: Emotional distress from the killing of an animal

Seven years ago, A and B adopted the dog D from an animal shelter and have been living with him ever since as if he were a member of the family: D plays with A and B's child C, goes on holiday with them and often sleeps in A and B's bed.

One day, A is walking with D along a field path. Suddenly, farmer X turns his tractor from the adjacent road onto the path. In the blink of an eye, D is run over by B's tractor. The seriously injured dog has to be put down by a vet. As a result of her shock, A suffers from a severe adjustment disorder and a severe depressive episode, leading to long-term medication.



AI generated image

Is A entitled to compensation for her emotional distress under German law?

Case 6: Emotional distress from the killing of an animal

(adapted from BGHZ 193, 34)

Legal bases of claim: § 823 (1) Civil Code / § 7 (1) Road Traffic Act

A. Injury to A's health?

⇒ Restrictive conditions in case of shock:

- **Severity** of the shock (pathological level) (+)
- Primary injury to **close relatives**
⇒ animals as family members? ≈ here (+)
- **Reasonable** reaction (severity of the primary injury) (+)

But: legislator **explicitly excluded** compensation for injury of killing of animals in 1990 reform

Today: **Art. 20a Basic Law** requires different interpretation

B. Result (*Federal Court of Justice*): no compensation for A

Convincing alternative view in scholarly literature: compensation (+)

§ 333 bis Civil Code (Spain), since 2021

In the event that the **injury to a companion animal** has caused its death or a serious impairment of his physical or mental health, both his owner and those who live with the animal have the right to compensation **including reparation for the moral damage caused**.

Case 7: Who gets the dog?

X and Y are married. During their marriage, they decide to 'adopt' the dog D from the animal shelter. In the period that follows, it is mostly X who looks after the dog, takes him for walks or to the vet. After the marriage breaks down, they initially separate and are eventually granted a final divorce. In the meantime, D had remained with X. Y is now demanding that D be handed over to him, arguing that the running costs for D were paid by him, which is true.

Will Y be successful if German law is applicable?



§ 1568b Civil Code (Germany)

(1) Each spouse may demand that, on the occasion of the divorce, the other spouse make available to them the jointly-owned household objects and make them the owner if they depend to a greater degree than the other spouse on using them, taking into consideration the best interests of the children living in the household and of the circumstances of the spouses, or if this is equitable for other reasons.

(2) Household objects which were acquired during the marriage for the joint household for purposes of distribution are deemed joint assets of the spouses unless the sole ownership of the spouse is established.

Case 7: Who gets the dog?

(see, eg, [*OLG Nuremberg*](#), 10 UF 1249/16)

Legal basis of claim: § 1568b (1) Civil Code

A. Requirements of § 1568b (1) Civil Code

I. Household object

§ 90a Civil Code: not things, but provisions on things to be applied accordingly

II. Joint ownership

§ 1568b (2) Civil Code: presumption of joint ownership

- "adoption" = acquisition
- During marriage for joint household (+)

III. Greater dependence on using D (-)

IV. Considerations of equity

- § 90a Civil Code requires the **animal's own interest** to be taken into account
- Criteria comparable to interests of children (**home environment, quality of care, stability**)
- Ascertainable through **expert evidence** or **behaviour in the courtroom**
- Here: D is accustomed to X as caregiver, change would negatively affect him

B. Result: D's interests require that he stays with X. Y will not be successful.

Case 8: Inheritance for a cat

In his formally valid will, fashion designer L bequeaths a house and a bank account to his cat C. Following his death, L's descendants view themselves as his heirs and demand that the house and the bank account be included in the estate.

What is C's legal status if German law is applicable?

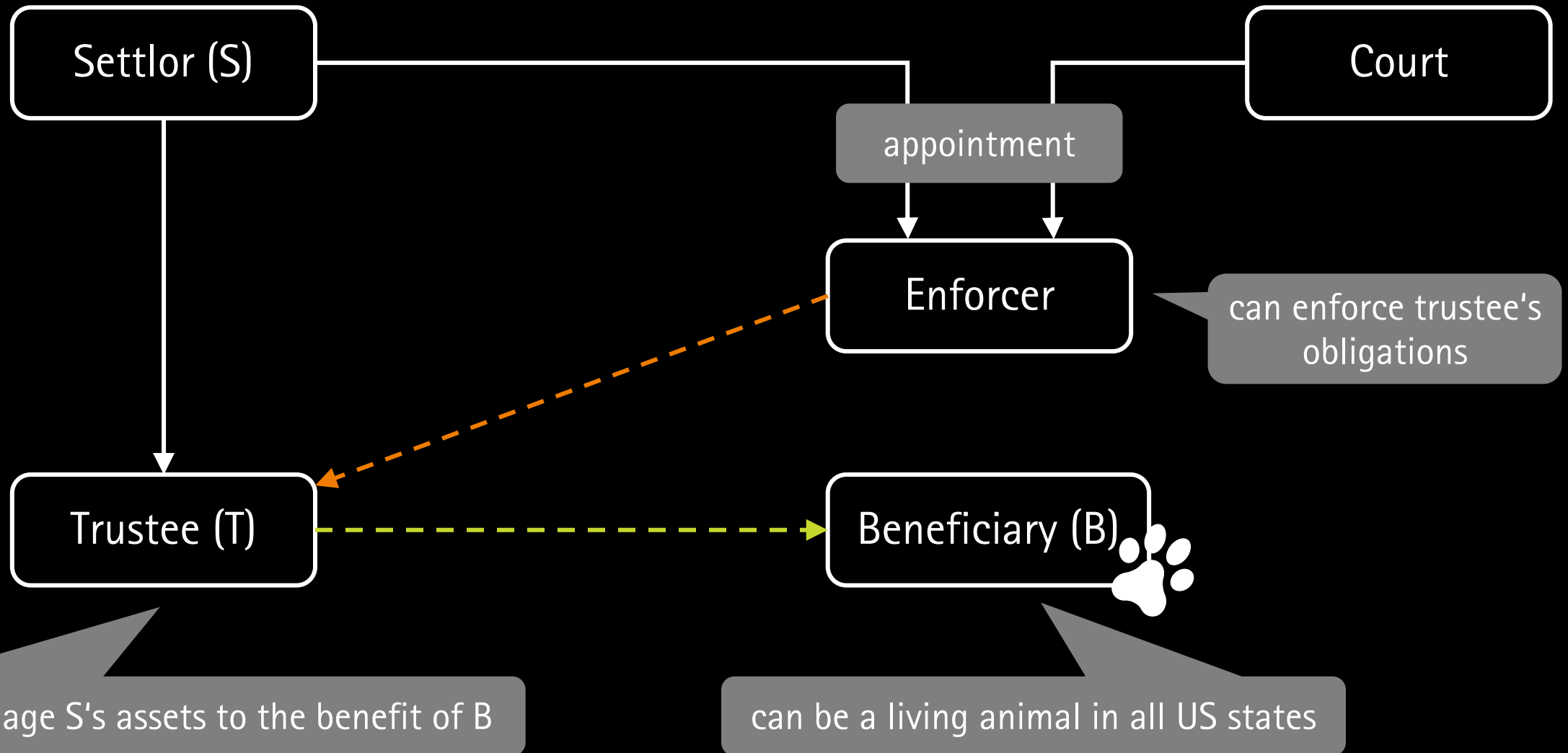


© Claudiabirmani, [CC BY-SA 2.5](#)

§ 1940 Civil Code (Germany)

The deceased may by will oblige their heir or a legatee to perform an act without giving another person a right to the performance (testamentary burden).

„Pet trusts“ in the US



The dereification of animals

- The distinction between **persons and things** as principle categories of law is rooted in classical **Roman law** (lat. *persona/res*), albeit with slightly different meaning
 - **Slaves** had a hybrid status as persons (due their human nature) and things (being owned, subject to the absolute power of their master)
 - Animals as (moveable) things; some animals belonging to a **special category of things (*res Mancipi*)** requiring special rituals for transfer of ownership also used for adoption and emancipating children
- In line with the modern dereification of animals, alternative positive classifications have been proposed for the legal status of animals:
- Living Property (*David Favre*):
 - Inclusion of **non-economic values** limiting ownership
 - Parallels to **parent-child-relationship** ⇒ animal **adoption** instead of sale; **guardianship** for animals
 - Funds held on **trust** for animals; animals as **beneficiaries** of contracts; "**equitable self-ownership**"
- Quasi-personhood/quasi-property (*Angela Fernandez*):
 - Personhood heavily linked to human beings
 - Quasi-property: animals can be owned, but with **specific protections**
 - Quasi-personhood: animals have rights like persons, but limited to **specific types of rights**⇒ **Continuum** between persons and things instead of rigid dichotomy

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."

Animals as family members

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 - 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
 - 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)

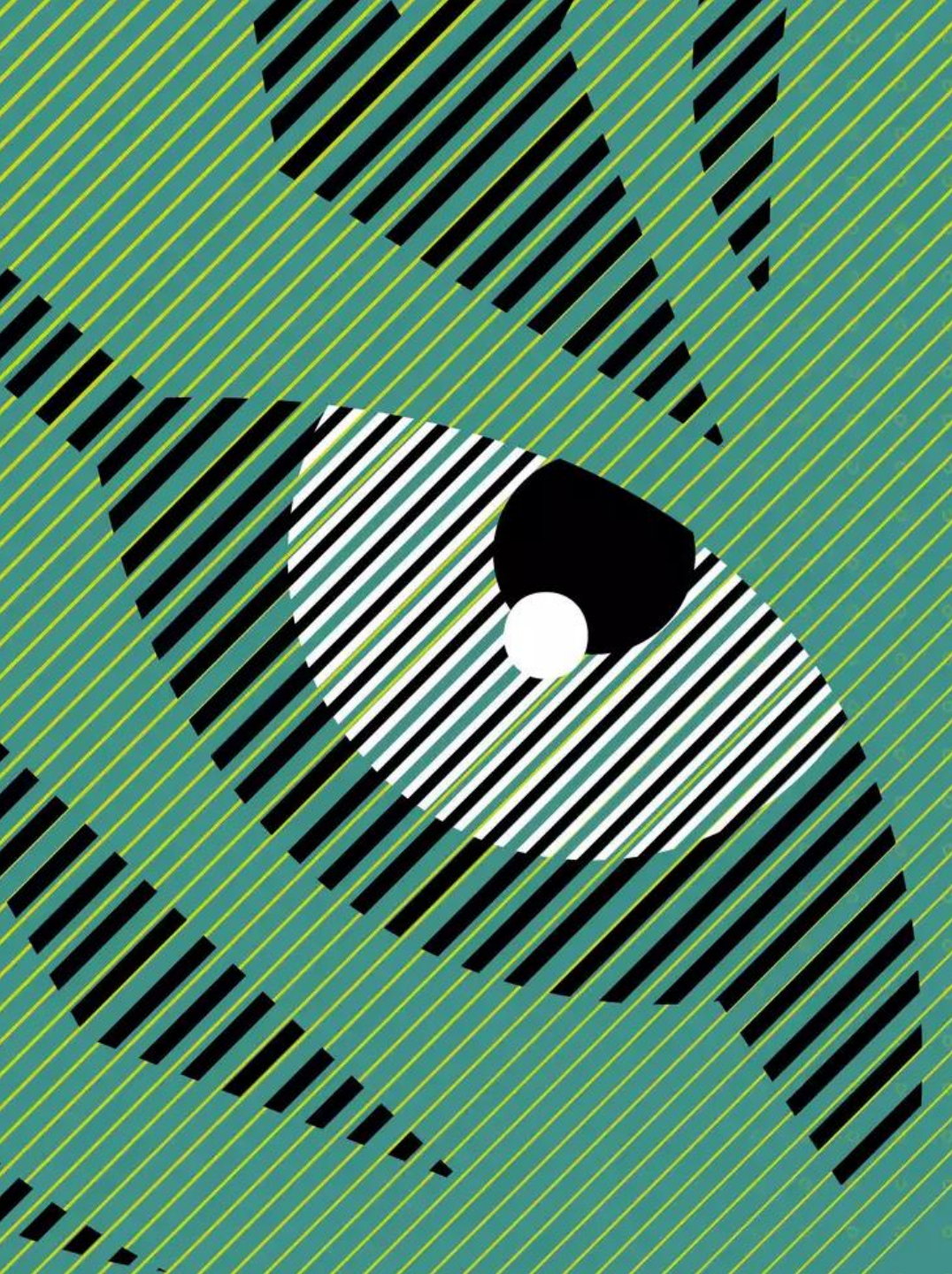
- Elephants born in the wild, but kept in zoo in Connecticut
- Dismissal in first instance due to lack of relationship between NGO and elephants
- [Appellate Court](#) (2019): elephants as property rather than legal persons + inability to bear duties
- Further proceedings before the Appellate Court and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



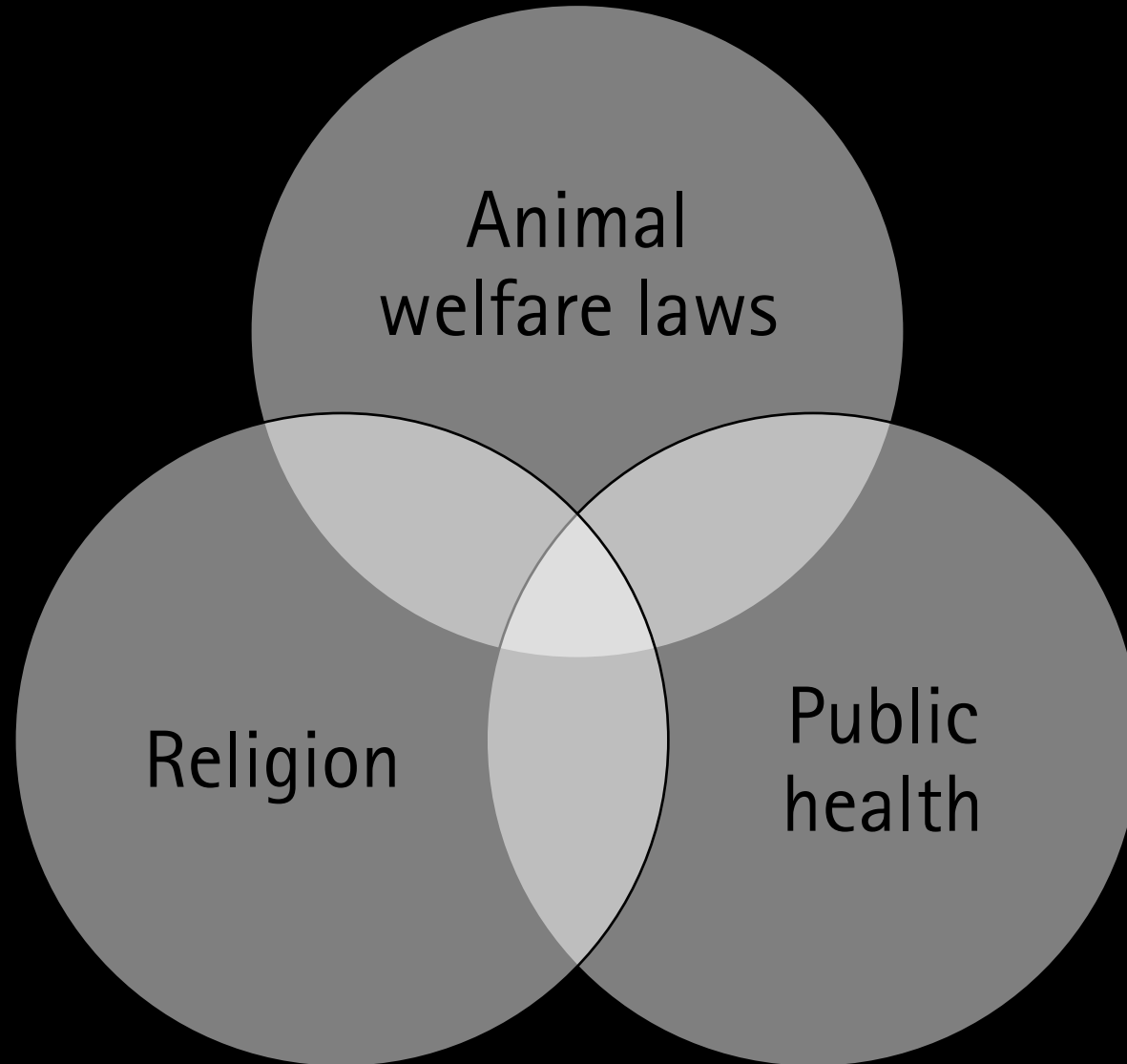
Unit 6:

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) / **statutory** level / **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 competent 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

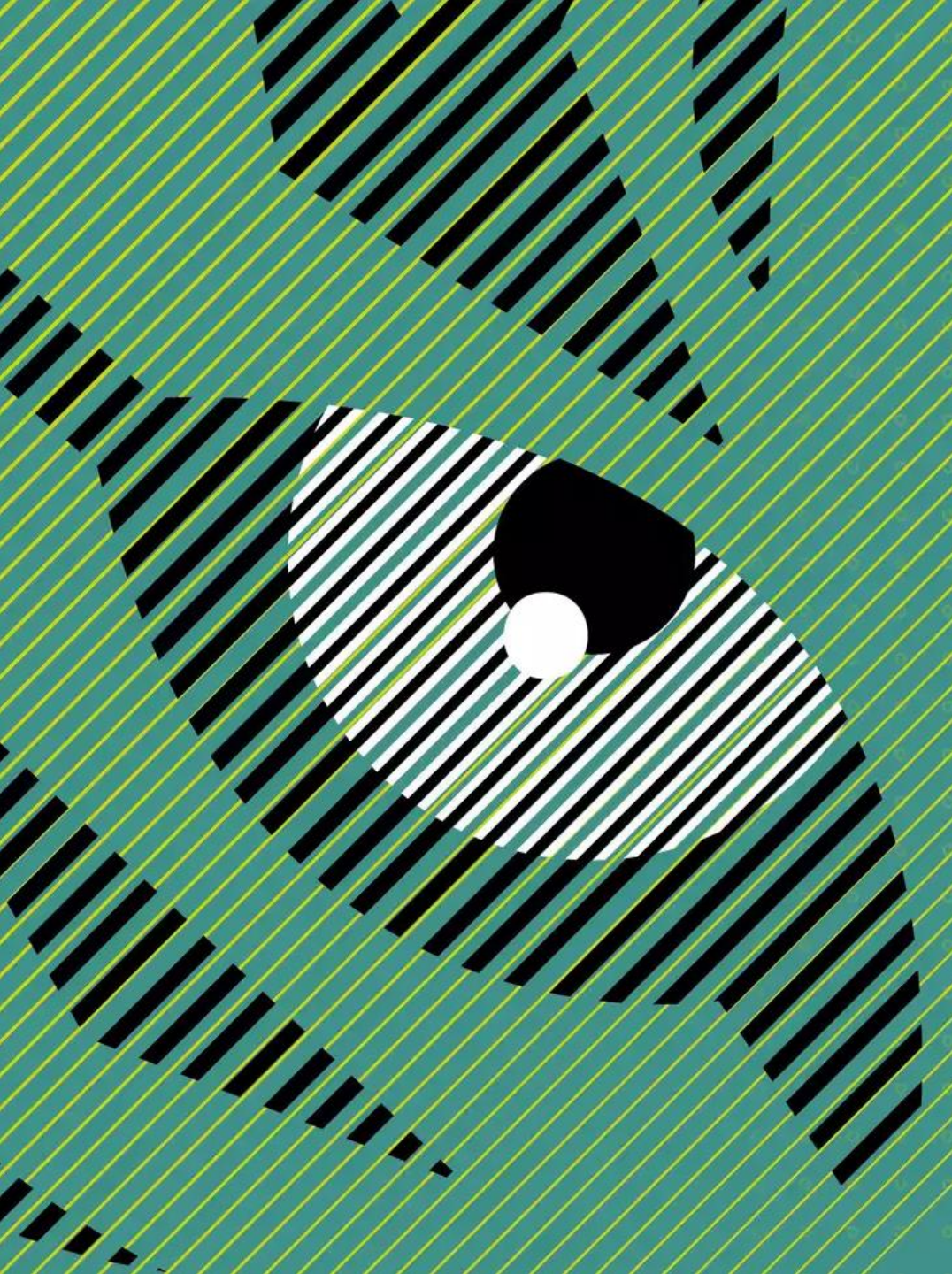
To promote and formally recognise Amazonian stingless bees and their habitat as rights-holders, acknowledging their intrinsic rights – such as the right to exist, to maintain healthy populations, to live in a healthy environment, and to conserve and regenerate their habitat – and linking their protection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



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 of animal rights
- 3) Solving conflicts between rights
- 4) Types 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

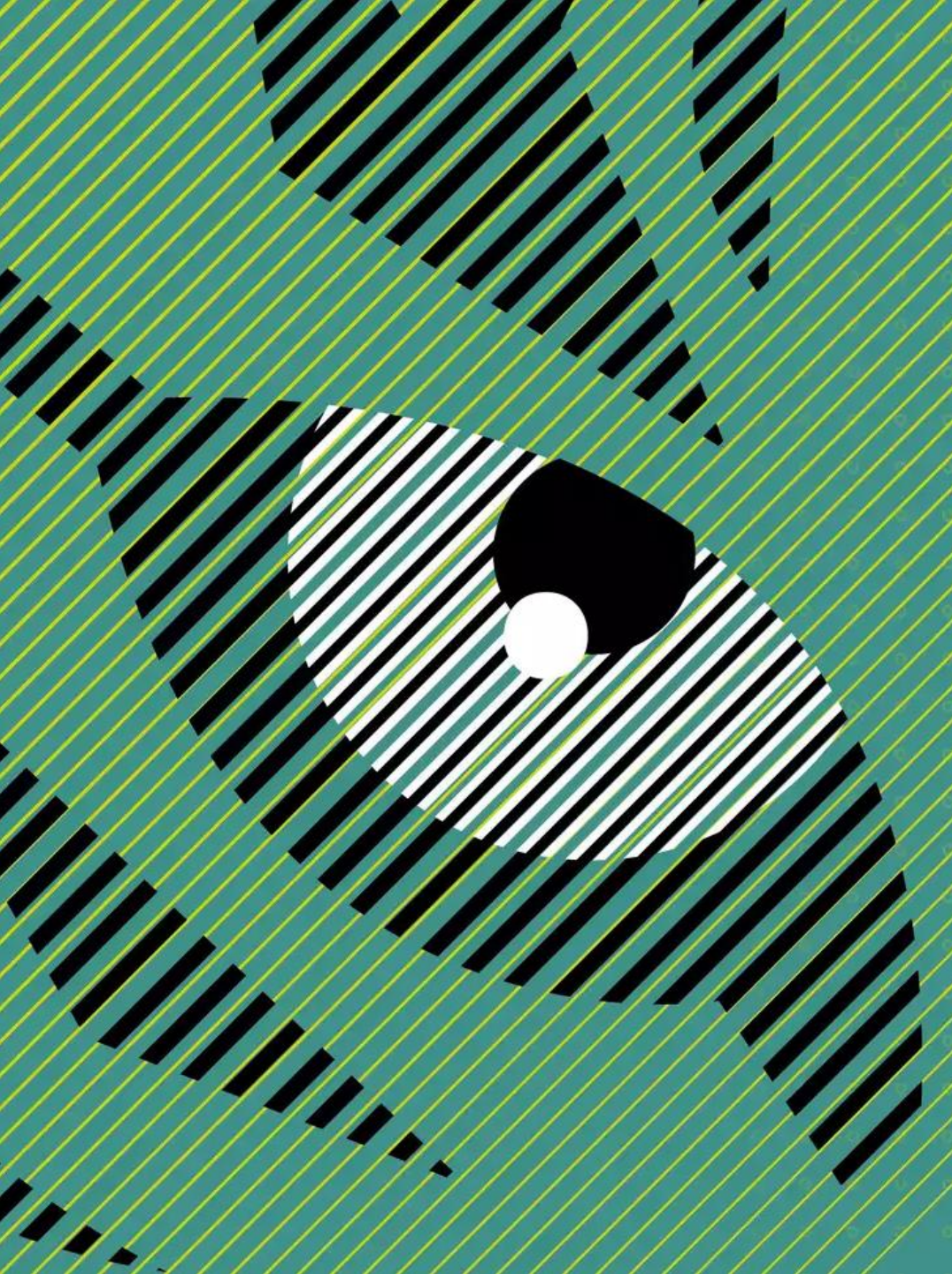
- Labour rights
 - Ban of highly problematic practices
 - Labour rights protections (workplace safety, rest and leisure time, workplace participation, representation by a labour union, retirement; financially: fair wages, retirement pensions ⇒ funds of animals managed by trustee)
 - Potential to promote 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>



Unit 8:

Enforcing animal rights and animal agency

Overview

1) Problems of representing animals

- The principal–agent problem applied to animal representation

*Special guest contribution by RAIN Anja Popp (law firm Günther):
From the work of an animal law attorney*

- Epistemological, ethical, and political considerations (**student presentation 13**)

2) Mechanisms for representing animals

- Existing models of indirect animal representation
- Direct representation: animal guardianship
- Criteria for the selection of a representative

3) Animal agency

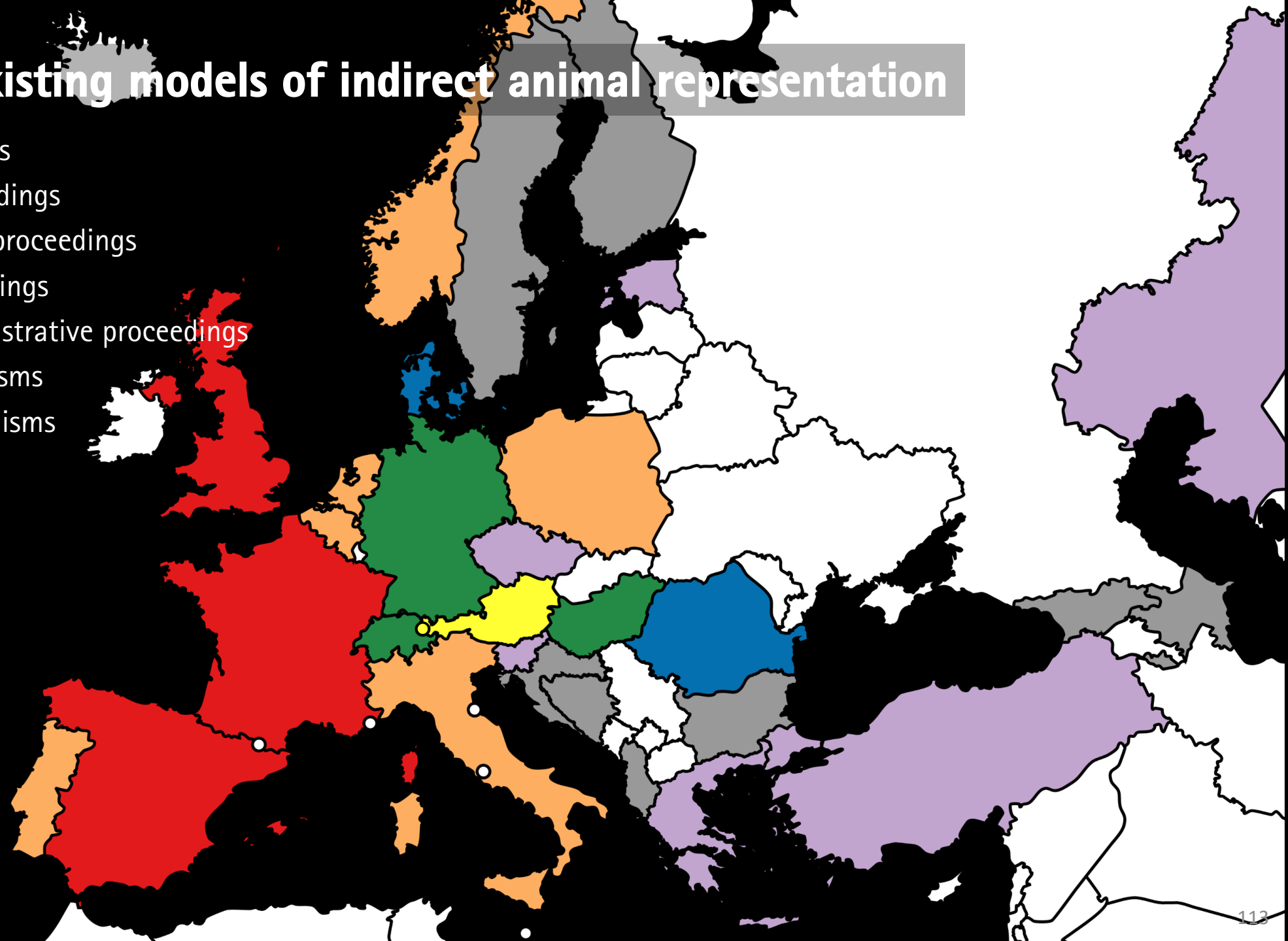
The principal-agent problem applied to animal representation



- Principal-agent problem: **conflicts of interests** between represented principal and representing agent (eg managers of firms, employees, attorneys, politicians)
 - ⇒ Human representatives of animals may be guided by other interests than the interests of the represented animals (eg strategic interests, financial interests)
- **Information asymmetry**: Principal lacks information on the agent's performance
 - ⇒ Animals lack any capacities to monitor and influence representatives
- **Agency costs**: Losses as result of diverging interests/misaligned decisions of agents
 - ⇒ Suffering of animals or misallocation of resources designated for animals
- Solutions: Minimising agency costs by
 - **aligning the interests** of principal and agent
 - **supervisory and monitoring** mechanisms, checks and balances
 - **financial incentives** for agents correlative to their compliance with the principal's interests
 - ⇒ Guidelines for design of animal representation

Existing models of indirect animal representation

- NGOs in civil proceedings
- NGOs in criminal proceedings
- NGOs in administrative proceedings
- NGOs in various proceedings
- Ombudsperson in administrative proceedings
- Various weaker mechanisms
- No indication of mechanisms
- No data



Existing models of indirect animal representation

- Representative actions by NGOs in *administrative* proceedings (eg Germany: Baden-Württemberg, Berlin, Bremen, Hamburg, Lower Saxony, Rhineland-Palatinate, Saarland, Schleswig-Holstein):
 - **Associations/foundations** committed to animal protection: **accreditation** by state governments
 - Access to **information** and **participation** in administrative proceedings
 - **Right to appeal** administrative decisions before administrative courts
 - Limited to certain types of proceedings, short preclusion periods, difficulties to obtain information
- Victim representation by NGOs in *criminal* proceedings (eg France):
 - **Associations/foundations** with animal protection as statutory purpose
 - Status of representative of victim: entitlement to **monetary compensation** for suffering
- Civil litigation by NGOs **against private parties** (eg Netherlands)
- Animal Ombudspersons (eg Austria: all substates):
 - Public officer **appointed by state governments**
 - **Party status** in administrative proceedings and **right to appeal** administrative decisions
 - Access to **information** in criminal proceedings

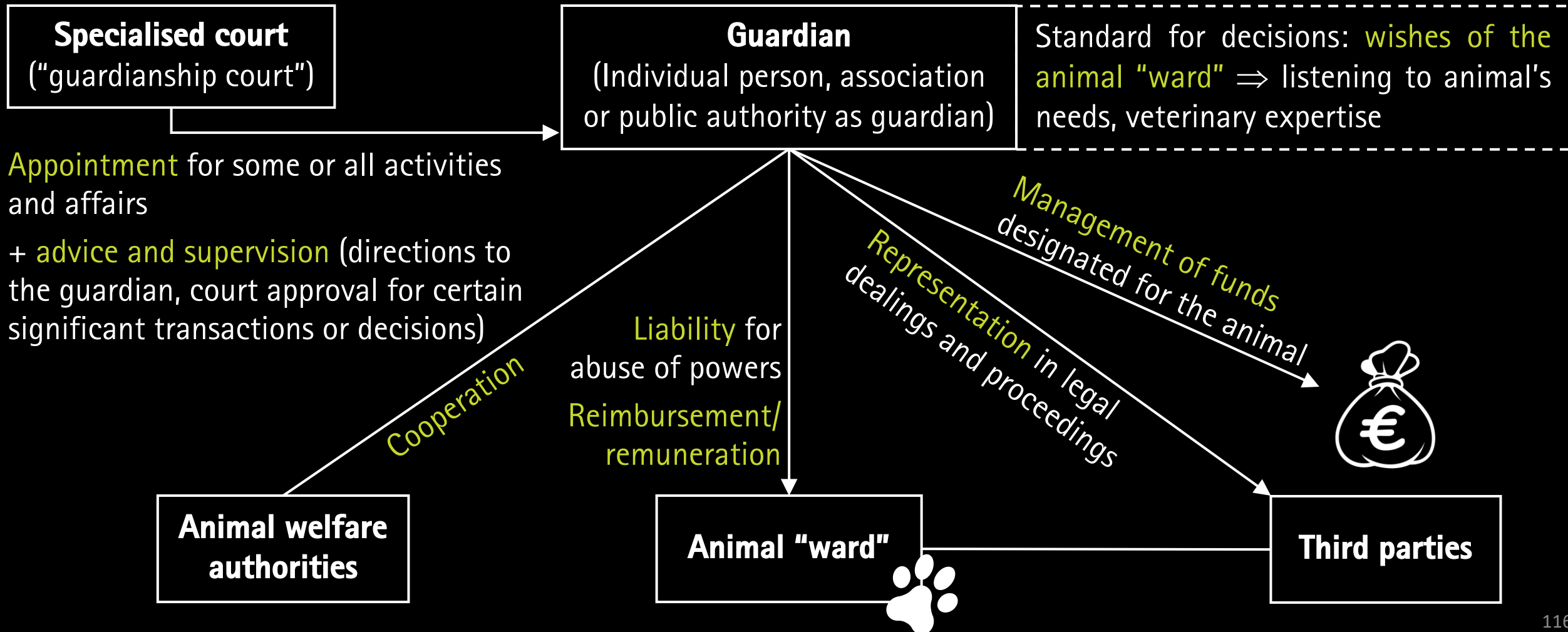
Existing models of indirect animal representation

- Animal prosecutor in *criminal* proceedings (1992–2010 in Zurich, Switzerland):
 - **Attorney** appointed by cantonal government at the suggestion of NGOs
 - **Automatic information** about criminal investigations
 - **Victim rights** in criminal proceedings and **right to appeal** penal judgments
- Animal advocate in *criminal* proceedings (Connecticut, USA):
 - Separate advocate **appointed by court** in a proceeding regarding the welfare or custody of a **cat or dog** to represent the "**interests of justice**"
 - Selection of advocate from a **list of attorneys** with knowledge of animal issues and the legal system and a **list of law schools** that have students with an interest in animal issues and the legal system
 - Monitoring, consultation, access to information, attendance of hearings, recommendations to the court
- Civil remedy for the protection of animals (North Carolina, USA):
 - Civil legal action by **any citizen** against owner/possessor of animal to protect and ensure the humane treatment of animals, independently of any criminal charges

⇒ *Indirect models*: representatives act in their own right, not in the name of animals

Direct representation: animal guardianship

⇒ Parallel to guardianship of humans **unable to represent themselves in legal dealings**



Case 10: A guardian for Hiasl?

In 1982, poachers acting on behalf of the company Immuno shot the mothers of the young chimpanzees Hiasl and Rosi in Sierra Leone; the chimpanzees were then transported to Europe to be used in a research laboratory and to help establish a primate centre. However, at the airport Hiasl and Rosi were seized for breach of the Convention on International Trade in Endangered Species (CITES). After being reared by a private family, the two found refuge in an animal. However, in 2006, the shelter ran into financial difficulties; there was a threat that the two chimpanzees would be sold abroad.

Animal rights organisation V seeks a court ruling that the chimpanzee Hiasl (H) must be granted fundamental rights on the basis of his intellectual abilities and close kinship to *Homo sapiens*, and that he must therefore not simply be sold abroad. To ensure these rights are upheld, V is applying to the competent court to appoint a guardian for Hiasl, who could collect and manage donations for H's upkeep.

Will V's application be successful if German law is applicable?



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§ 1814 Civil Code (Germany)

(1) If a person of full age is legally unable to take care of their affairs, either in whole or in part, and this is due to an illness or disability, the guardianship court shall appoint a legal guardian (guardian) for them.

Case 10: A guardian for Hiasl?

(adapted from [District Court Mödling \[Austria\], 18 April 2007](#))

A. Admissibility

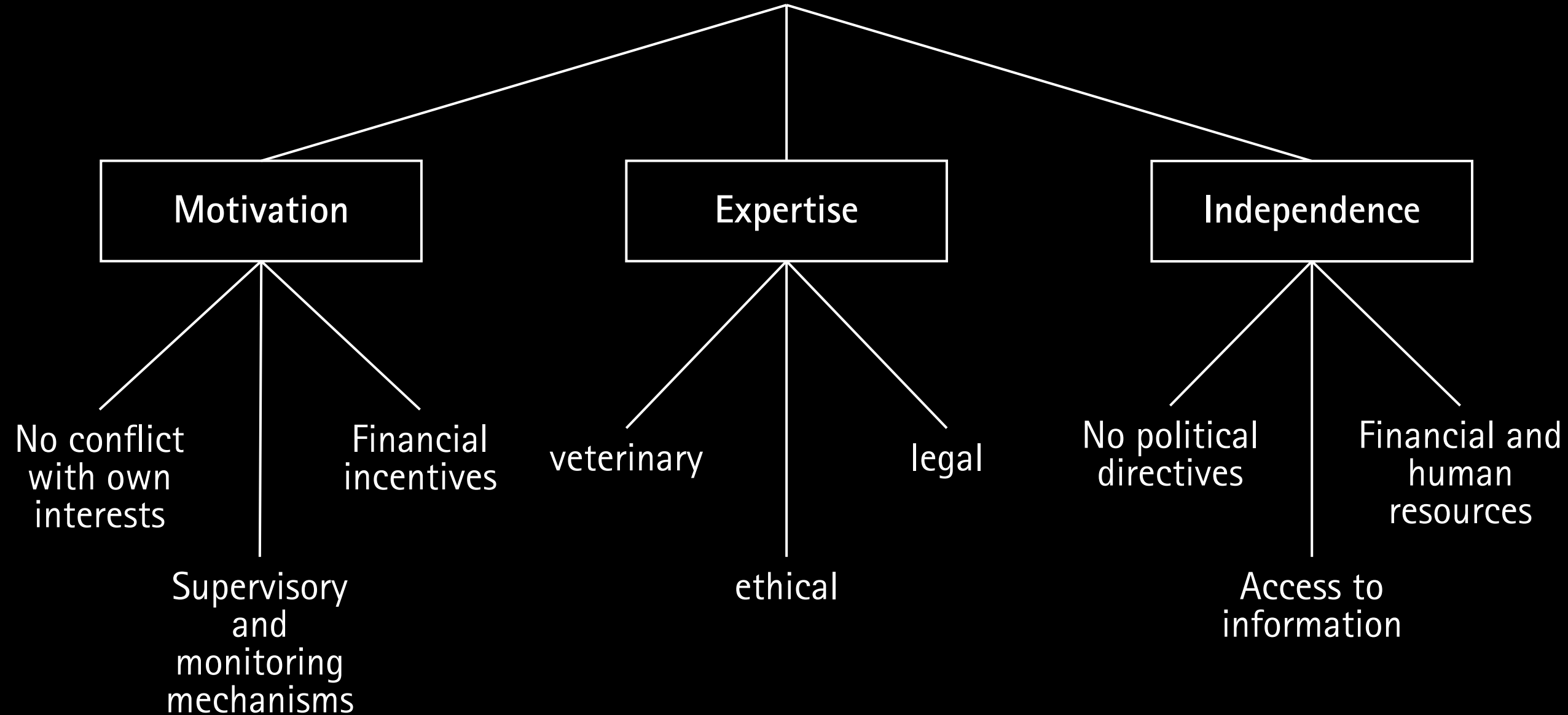
- I. Competent court: guardianship court at the district court
- II. Right to file an application
third parties (-), but **suggestion to the court** to initiate a proceeding *ex officio*
- III. Capacity of H to be a party to court proceedings ≈ (-)
- IV. Appointment of a **guardian ad litem** for H („Verfahrenspfleger“)
§ 276 Act on Proceedings in Family Matters and Matters of Non-contentious Jurisdiction

B. Merits

- I. Person of full age ≈ (-)
- II. Objective need for guardianship ⇒ need for support in legal affairs (+)
- III. Subjective need for guardianship
 - 1. *Illness* = abnormal condition, functional disorder of a process-related nature that **may change for the better or for the worse** ⇒ (-)
 - 2. *Disability* = long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (Art. 1 (2) UN Convention on the Rights of Persons with Disabilities)
⇒ **aimed at human disability** ≈ (-)

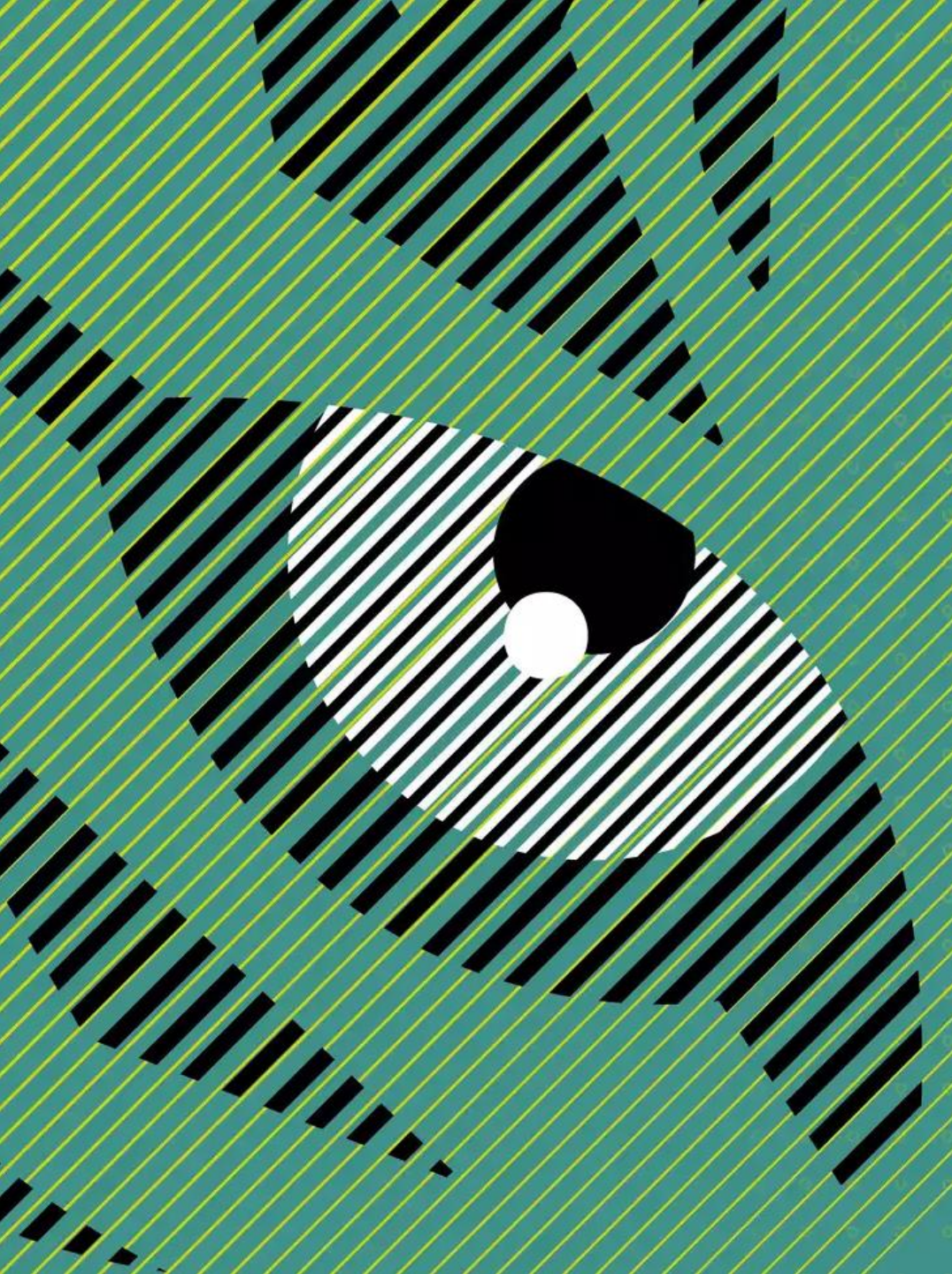
C. Result: A guardian will not be appointed for H. V's request will not be successful.

Criteria for the selection of a representative



Animal agency

- Shift from **paternalistic** approaches (humans know best what is right for animals) to **participatory** approaches
- **Supported and shared models of decision-making** (parallels to disability law)
⇒ enabling autonomous decisions of animals?
- Animals' intentions could be recognised as **non-legal, but normative** (Visa Kurki)
- **Input/reactions** from animals as relevant for legal decisions
- Experimental approaches for **interaction between humans and animals** ⇒ assessment of animals' interests
- Famous experiment by Sarah Brosnan and Frans de Waal: (Female) capuchin monkeys reject a reward in exchange for tokens if they see another monkey get a bigger reward for doing the same job
⇒ Sense of **cooperation, fairness, equality, transactions**



Unit 9:

Animal rights as a social justice movement

Overview

- 1) The role of animal rights activism (student presentation 14)
- 2) Direct action and civil disobedience
 - The necessity defence (student presentation 15)
 - 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 (+)

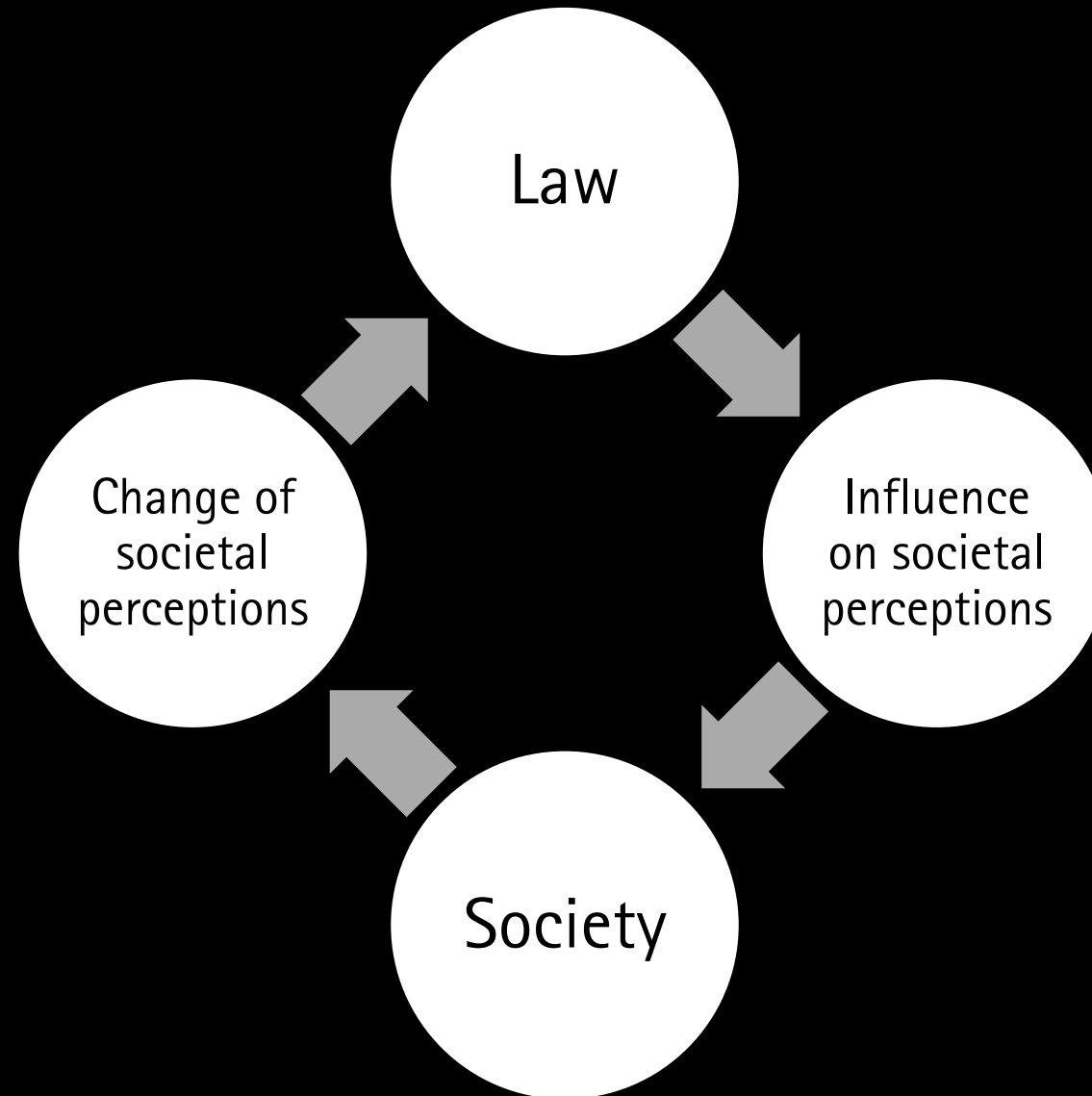
3. Intention to avert the danger (+)

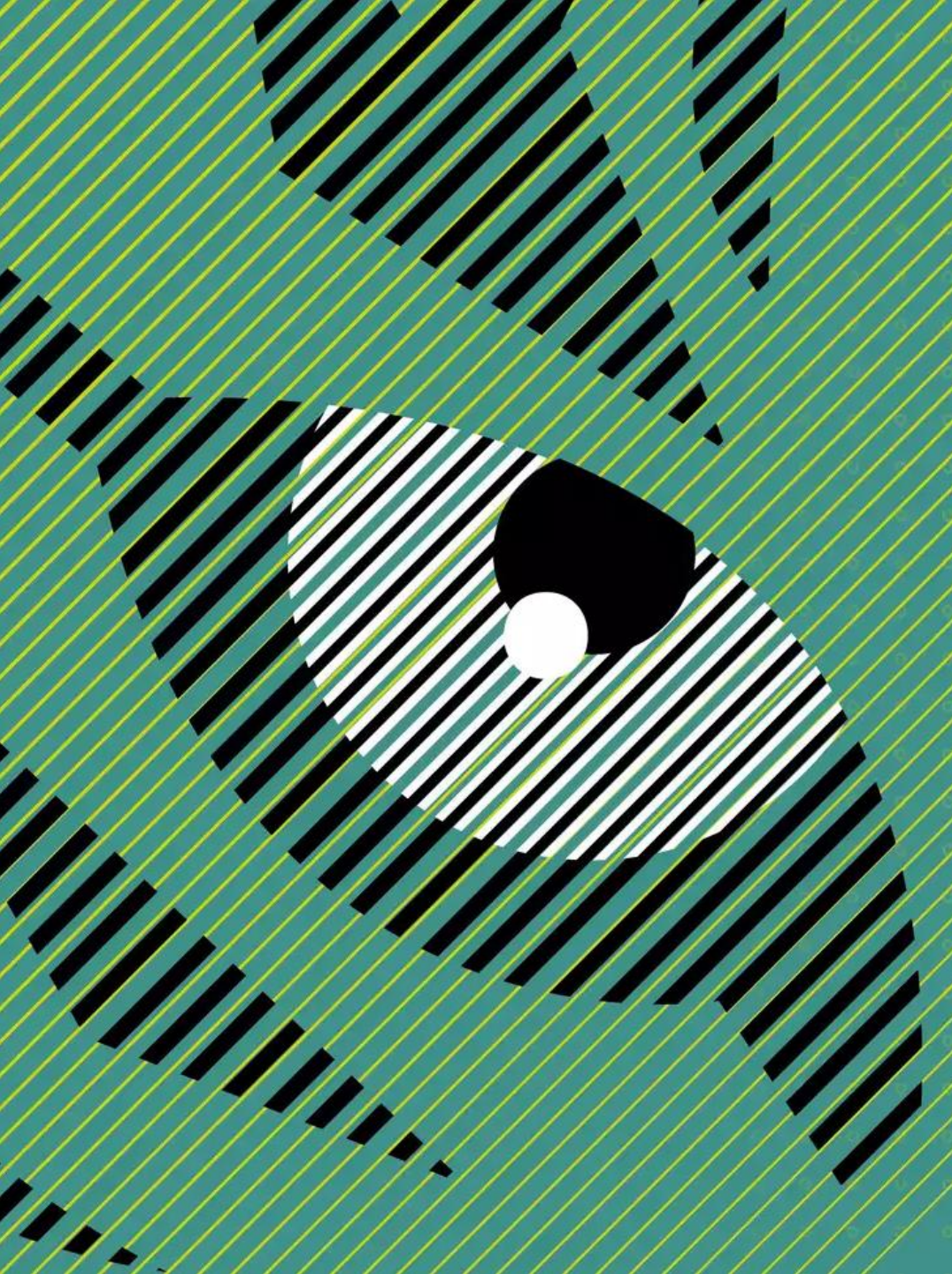
C. Result: A and B's acts are justified. They are not punishable.

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 16)
- 2) Second wave animal ethics (student presentation 17)
 - Similarity vs. difference as focal point
 - Intersectionality
 - Critique of rights and subjectivity
 - Cultural imperialism
- 3) Final discussion

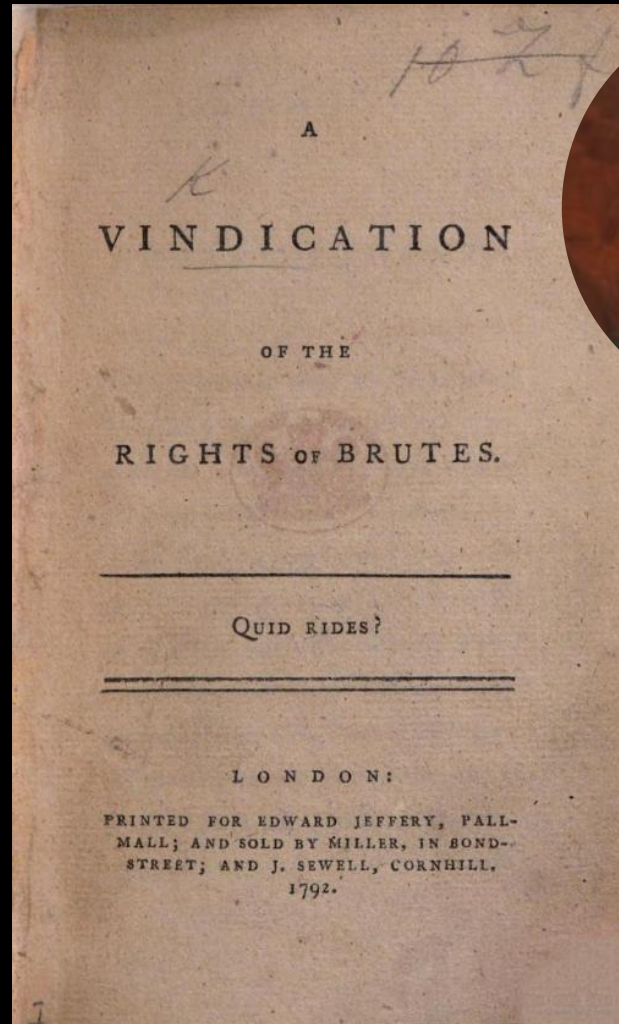
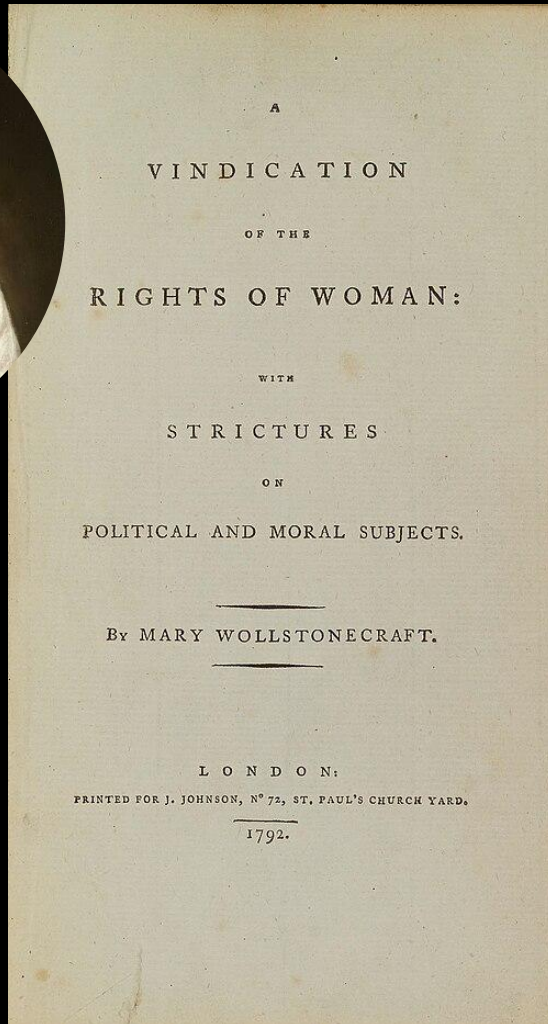
Points of criticism against animal rights

- 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

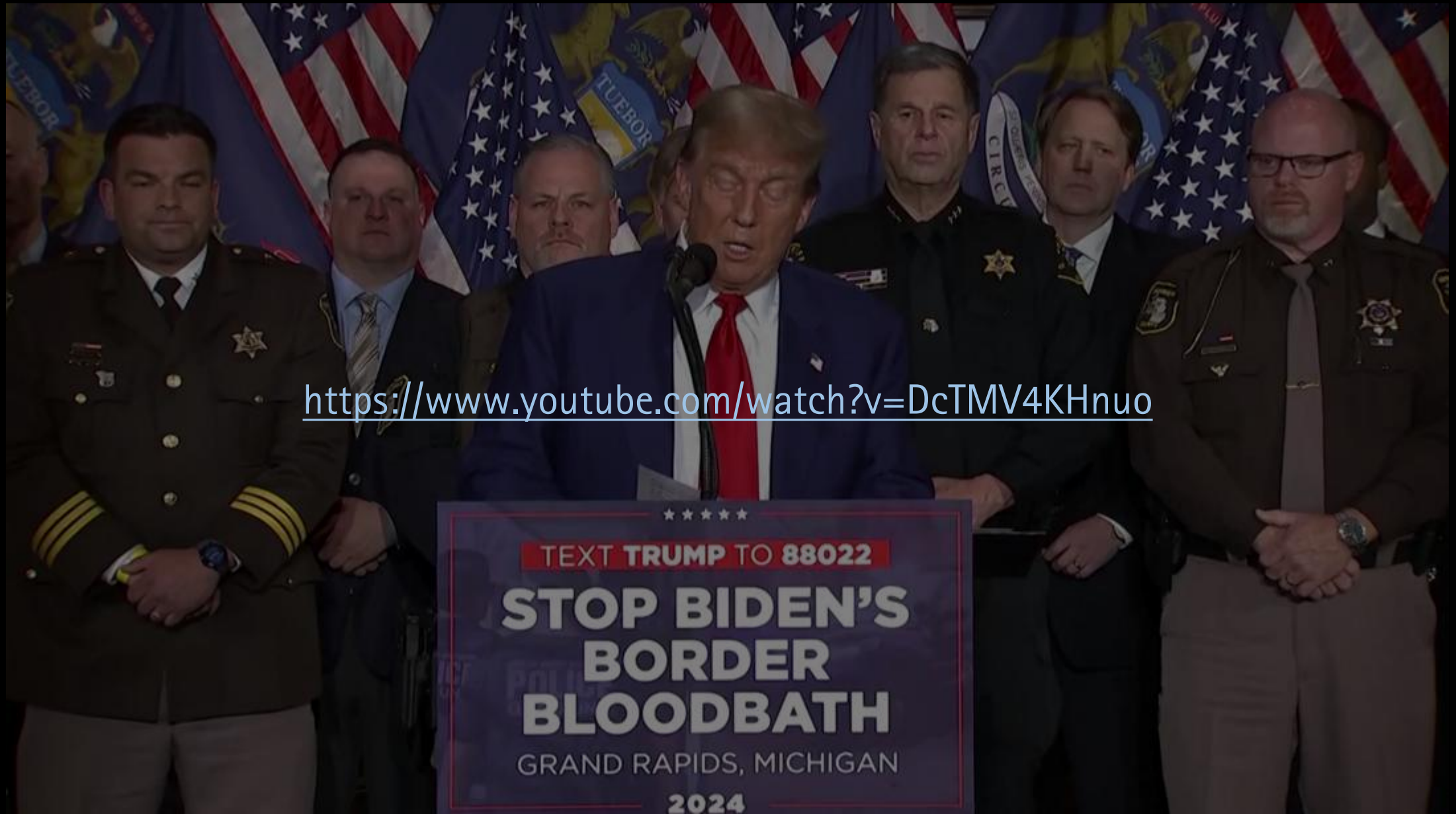
Intersectionality: women's rights

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





*Thanks for
participating!*



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