A common complaint about extraterritorial animal law is that it illegitimately influences the organization of other states and thereby fuels fear of imperialism and neocolonialism. This argument is premised on the idea that the treatment of animals is primarily a local, domestic matter. In this chapter, I stake out a series of arguments that justify expanding animal law across state borders and show that extraterritorial animal law is part of a larger development in international law, in which jurisdictional authority standardly reaches across borders. In the first part of the chapter, I describe the most pressing challenges of animal law in an age of globalized production and ask if concluding a treaty is the most rational approach to solving them. If treaties are not a viable solution, is extraterritorial jurisdiction a reasonable alternative?

Before we can make a judgment about the desirability of extraterritorial jurisdiction in animal law, we must uncover the reasons that prompted states to expand their prescriptive authority in the fields of law in which extraterritoriality prevails. In broadly two areas of law, applying law across borders is considered necessary and legal under international law. Extraterritorial jurisdiction is established in fields of law that regulate economic matters because economic entanglements warrant transborder regulation. Extraterritorial jurisdiction also dominates in criminal law, but for other reasons; partly because of the increased cross-border movement of nationals, and partly because most states have a common understanding of the most repulsive crimes, like war crimes, torture, or inhuman and degrading treatment. In the following, I describe these processes in detail and turn to whether the rationales that underlie these developments—namely, economic entanglement and a shared view that some practices must be condemned—are also present in animal law. If this is the case, these arguments may lend support to extraterritorial jurisdiction in animal law.
case, there is a high chance that instances in which animal law is applied across the border will increase in the future and that they will increasingly be considered legitimate.

§1 Animal Law at an Impasse

Few international norms regulate animals and our manifold relationships with them, and most are concerned with relations of trade among states. In the past decades, international trade in animals and animal products has grown exponentially relative to other sectors. Between 1986 and 2016, trade in meat increased fourfold, and trade in egg and dairy increased more than threefold.1 The research industry experienced a similar surge. Statistics reveal that since 2004, the number of animals moved across borders for research purposes has increased many times over.2 What factors are responsible for the drastic rise of trade in animals and animal products and what regulatory reactions emerged in response thereto?

The steady rise of animal trade can be ascribed to instances of the first dimension of globalization.3 Better means of transport have saved manufacturers, breeders, and slaughterhouse managers time, and allowed them to reach more people in a shorter period of time. By intensifying animal production (e.g., reducing space per animal, using growth hormones and superfoods, mutilating animals, automatic handling and slaughter, and shortening the lifespans of animals), business radically increased its output in meat, eggs, and milk while saving on production time. This trend was registered and promptly adopted by investment strategists. Liberalizing FDI opened up new possibilities to pour large funds into the animal industry and caused the animal-industrial complex to proliferate around the globe.4 In 2009, The Economist reported that China, Qatar, South Korea, Saudi Arabia, and the United Arab Emirates were acquiring unprecedented levels of farmland in other majority world countries5 with the goal of securing their own food demands by producing feed and “livestock”

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1 Between 1986 and 2016, the global trade in eggs increased from 748,241 to 2,107,373 tons, the global trade in meat increased from 17,814,372 to 71,877,429 tons, and the global trade in milk increased from 6,266,492 to 18,878,676 tons: FAOSTAT (search criteria “Eggs”+“Milk”+“Meat”+“Export Quantity”+“World”+“1986, 2016”), available at http://faostat.fao.org/ (last visited Jan. 10, 2019).
3 The three dimensions typically associated with globalization are examined in Chapter 2, §3.
4 The animal-industrial complex is a “partially opaque network of relations between governments, public and private science, and the corporate agricultural sector” that “naturalizes the human as a consumer of other animals.” (Barbara Noske, Beyond Boundaries: Humans and Animals 22 ff. (1997)).
5 In international law, we typically speak of “developing states” or the “Third World” to denote countries in juxtaposition to “developed countries.” These terms imply that development is a standardized and linear process, and that certain countries have finished developing while others are still striving to reach this form of development. Because there are many ways in which states evolve over time, and because nations should be recognized for their different strengths and goals, these terms seem both incorrect and inappropriate. In recognition thereof, scholarship is increasingly using the terms “majority world” and “minority world.” The term “majority world” highlights the fact that the majority of the world’s population lives in parts of the world previously identified as “developing.” Vice versa, the term “minority world” refers to those countries traditionally identified as “developed,” where a minority of the world’s population resides. See, e.g., Shahidul Alam, Majority World: Challenging the West’s Rhetoric of Democracy, 34(1) AMERASIA J. 87 (2008); Samantha Punch, Exploring Children’s Agency
on that land. Investment flows show that the bulk of these acquisitions go to intensive production systems, as in Iran and Pakistan. The end result is that agricultural FDI prompts the majority world to mass-adopt intensive animal production systems, which is problematic among others because these countries are, on average, massively underregulated from an animal law perspective.

The economic globalization of animal industries has led to a host of ethical, social, and environmental problems, which signals the second dimension of globalization. As agribusiness intensifies, animals have less space to move around and are fed high-fat diets, as a consequence of which they suffer from abscesses, lameness, cardiovascular, skeletal, and respiratory diseases, leg deformities, pneumonia, and damage to their digestive systems.

To suppress animals’ resistance to intensification, they are castrated and mutilated—often without anesthetics—and forcefully molted and strained to the point of psychological breakdown, giving rise to aggression, frustration, and lethal stress syndromes. These animals suffer in numbers previously unimaginable. In 2016, more than 73 billion land animals were killed for meat—not including animals killed to produce milk or eggs, and sea animals killed for food.

Also part of the second dimension of globalization are environmental problems caused by global agribusiness. Animal agriculture uses 70 percent of the global freshwater and 38 percent of global land in use, and produces 14 percent of the world’s greenhouse gases, making it the single most disastrous industry for the environment.
that pollute soil and groundwater, overwhelm ecosystems, and cause more greenhouse gas emissions than the global transport sector.\textsuperscript{13}

The agricultural industry is also linked to a host of social problems. Ever-increasing production of animal goods devours larger and larger portions of the world’s crops, reducing the amount of grain for direct consumption by humans or animals.\textsuperscript{14} Meat, dairy, and egg production triggers anthropogenic climate change that affects food security adversely, placing a disproportionate burden on the world’s poorest.\textsuperscript{15} Animal agriculture also jeopardizes public health. The widespread use of antibiotics and antimicrobials to increase animals’ performance causes antimicrobial resistance in bacteria, which often directly transfer to humans (through consumption of animal products) and pose a significant risk to public health.\textsuperscript{16}

Despite the growing knowledge of the ethical, environmental, and social problems caused by globalized animal production, there seems to be no stopping place. According to the UN Food and Agriculture Organization (FAO), the world will need to produce 50 percent more meat by 2050 to meet the rising demand for animal protein.\textsuperscript{17} No country is (yet) committed to divest from animal production, which suggests that the multilevel problems caused by animal agriculture that we are witnessing today will likely proliferate in the coming years. Because animal agriculture spans across the globe and produces negative effects on foreign territory, its regulation exceeds the capacity of any single state and this makes apparent the need for responses beyond the nation-state. Once we begin to theorize about possible solutions, we enter the third dimension of globalization: the juridico-political responses to globalization’s first and second dimension.

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Poore and Nemecek were the first to conduct a meta analysis of ~38,000 farms producing 40 different agricultural goods around the world, to assess the impacts of food production and consumption. They found, specifically, that plant-based diets reduce food’s emissions by up to 73 percent depending where people live. Moreover, the impacts even of the lowest-impact animal products typically exceed those of vegetable substitutes: J. Poore & T. Nemecek, Reducing Food’s Environmental Impact through Producers and Consumers, 360(6392) Science 987 (2018). See also Edgar Hertwich & Ester van der Voet, Assessing the Environmental Impacts of Consumption and Production: Priority Products and Materials 51, 79 (UNEP 2010).


\textsuperscript{15} Because of agricultural industries, as the FAO notes, “Sub-Saharan Africa’s share in the global number of hungry people could rise from 24 percent to between 40 and 50 percent” (UN FAO, How to Feed the World in 2050, High Level Expert Forum 30 (FAO, Rome 2009)).


\textsuperscript{17} UN FAO, How to Feed the World in 2050, High Level Expert Forum 11 (FAO, Rome 2009); UN FAO, Livestock’s Long Shadow 275 (2006).
§ 2 Is Extraterritorial Jurisdiction the Panacea?

The best solution to these global problems is for states to conclude bi- or multilateral agreements that would identify the most pressing issues and point to reasonably available policy options. Unlike extraterritorial jurisdiction, an agreement concluded by states is more likely to satisfy their interests since it can take special concerns into account, is voluntary, and thus more likely to be enforced. Treaty-making offers an opportunity to arrive at a broad consensus and find a long-lasting solution to the many problems caused by globalized animal production.\(^8\)

The difficulty of coming to a broad agreement, however, is easily underestimated, and failure to reach an agreement is the rule, rather than the exception. Even if an agreement is drafted for a specific policy issue, states often profoundly disagree over what the best regulatory measures are to address or solve it. In a seminal article on antitrust law, Guzman used an economic analysis to determine the probability states would conclude an international treaty on jurisdictional matters. He hypothesized that economic incentives are states’ primary motive for seeking or rejecting a treaty, and argued that finding common ground for a treaty will be difficult, if not impossible, when consumers and producers are unevenly distributed among states.\(^9\) Let us assume state A is a majority world country, strongly influenced by investors, and state B is a minority world country, presumably investment-exporting and, therefore, more consumer-oriented. According to Guzman, the optimal policy for state A is to have no policy, since welfare losses are borne by consumers abroad. The optimal policy for state B, by contrast, is to regulate at a level that increases efficiency gains for consumers.\(^10\)

Guzman’s probability analysis can be applied to animal law because economic considerations are central to its policymaking and because a large portion of the world’s animal products is produced in the majority world. Assuming that state A is investment-driven and state B is consumer-oriented, it makes sense for state A not to regulate animal production, so it will tend to underregulate. For state B, the optimal solution is regulation that better satisfies consumer preferences, so it will tend to overregulate. Both states are biased toward protecting either producers or consumers. Based on these disparate preferences, it is unlikely these states will agree on a set of norms that allocates jurisdictional competence among them. These considerations show that treaties, designed to determine the jurisdictional parameters of animal law, are a less feasible policy option than is commonly assumed.

According to Guzman, states are only likely to agree on jurisdictional authority if the ratio of consumption share to production share is about the same in both countries, in which case their interests converge. For instance, if both states produce 30 percent of all global animal products and consume 10 percent of the global animal production output, they will weigh consumer and producer interests equally.\(^11\) In the rare cases where the ratio is roughly equal and treaty convergence is likely, the overall gains of finding agreement, however, will

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\(^10\) Guzman concedes that this is the simplest analytical model, but we can draw the most inferences from it: *Id. at* 1514–5.

\(^11\) *Id. at* 1525.
be modest. If Norway and Germany concluded a treaty on jurisdiction over animal protection matters, there would be a little substantial benefit. But in the unlikely event Germany concluded a treaty with Uzbekistan, we can expect it to positively affect the level of animal welfare in Uzbekistan. But as argued above, the chances of those states reaching an agreement are low. To find common ground, states with strong animal laws would need to lower their well-established standards. Citizens and their home states might consider this unacceptable given their ethical and political views of animals, and it would raise serious concerns on grounds of justice owed to animals. The same difficulties, however, are met by states with weaker animal laws. For them, improving their standards to reach a common agreement with other states might run counter to established cultural, religious, or other social values.

These considerations evidence that treaties, designed to determine the jurisdictional parameters of animal law, are not necessarily the most feasible policy option. Pursuing them may frustrate the very reason for which their conclusion is sought, by driving a wedge between different cultures and societies over the question of what the “optimal treatment” of animals is. At the same time, the multidimensional ethical, societal, environmental, and public health risks caused by globalized animal industries make waiting for an agreement a poor option. One could argue that the downsides of waiting for an agreement could be balanced by the benefits of reaching an agreement, but time is not the only issue here. Since investment typically moves to the state that tolerates the cheapest production at the lowest level of regulation (hence, to state A), state B’s well-established animal laws will always be undermined. So while we wait, perhaps vainly, for an agreement, competition proliferates toward laxity, from which animals suffer most.

In contrast to international treaties, extraterritorial jurisdiction promises to create a dense, global jurisdictional net of overlapping and concurring laws. Schiff Berman claims this jurisdictional net offers us significant benefits. Multiple jurisdictional assertions that overlap and concur decrease the likelihood of regulatory gaps in animal law: “Let both States assert jurisdiction.” Extraterritorial jurisdiction creates an opportunity for political deliberation and negotiation, adapts sweeping or insufficient laws to a specific problem at hand, and leaves space for innovation through competition. Since we are dealing with issues of global governance, whose complexity cannot adequately or fully be addressed by an international treaty, overlapping jurisdiction draws a more realistic picture of lived relationships. The convergence and conflicts of jurisdiction offer an opportunity to recognize and celebrate cultural diversity.

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22 Analogously id. at 1505.
23 See generally on the problems that emerge when countries lower their standards to conclude treaties on jurisdictional matters: IBA REPORT EXTRATERRITORIAL JURISDICTION 12 (2009).
25 The question of whether a race to the bottom exists in animal law is examined in Chapter 2, §3 B. II.
26 Schiff Berman argues that “we might deliberately seek to create or preserve spaces for productive interaction among multiple, overlapping legal systems by developing procedural mechanisms, institutions, and practices that aim to manage, without eliminating, the legal pluralism we see around us.” (Berman, Global Legal Pluralism 10 (2012)).
28 Different from what many may believe, extraterritorial jurisdiction is not adverse to, but may be conducive to multiculturalism. See further on rooted cosmopolitanism as an alternative to internationalization: Will
and prompts gradual improvement of substantive standards, including standards of animal law.  

Consider the steps taken by the United States to protect dolphins during the 1990s. In response to widespread public outrage about the many dolphins killed by common tuna fishing, the United States banned imports of tuna that led to the death of a set number of dolphins. As we will see in our analysis of trade law, these efforts largely failed at the WTO. Though some may see this as evidence for the ban’s inadequacy, these efforts were a key driver of the International Dolphin Conservation Program (IDCP). In 1999, the United States brought together Belize, Colombia, Costa Rica, Ecuador, El Salvador, the European Union, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, Vanuatu, and Venezuela to join the Agreement on the International Dolphin Conservation Program (AIDCP), whose declared objective is to eliminate dolphin mortality. Similarly, the European Union’s efforts to ban the importation of furs sourced from leghold traps caused the United States and Canada to enter into a common agreement with the European Union over trapping standards. Extraterritorial jurisdiction, though opposable on various grounds, can manifestly prompt states to adopt better laws for animals.

But just because extraterritorial law is an effective alternative to hard-to-reach international agreements in some areas, does not mean it will be effective or legitimate in others. In order to understand why states pass extraterritorial laws, and the conditions under which the international community considers these laws legitimate, we must take a closer look at economic and criminal law, where these practices are most common and widely accepted. From these insights, we can begin to formulate a hypothesis about the usefulness and likely acceptance of extraterritorial jurisdiction in animal law.


For details on the Tuna/Dolphin case, see Chapter 3, §2 B. III.


Environmental law might also be considered a “hot topic” for the law of jurisdiction. In environmental law, it is recognized that extraterritorial jurisdiction is necessary to effectively counter environmental risks and eradicate poor environmental practices, based on an understanding of “shared responsibility” for the environment. Zerk, however, asserts that “[…] states do not, as a general rule, attempt to extend their environmental laws to other states. States do apply their environmental laws extraterritorially to ‘global commons’ ” (Zerk, Extraterritorial Jurisdiction 176, also at 9 (2010)). Also Abate notices the different views on extraterritorial jurisdiction in environmental law, which depend on whether global commons are concerned or not (Randall S. Abate, Dawn of a New Era in the Extraterritorial Application of U.S. Environmental Statutes: A Proposal for an Integrated Judicial Standard Based on the Continuum of Context, 31 COLUM. J. ENVTL. L. 87, 89
Areas of law in which extraterritorial jurisdiction is most fiercely asserted by states are those relating to economic matters. In antitrust law, concurring state interests and transborder jurisdictional assertions are a common phenomenon. To protect domestic markets, states sanctioned the formation of cartels in foreign countries, as in the chemical and vitamin industry, the uranium supply market, or the watch industry, which, consequently, garnered the attention of the international community. Similarly, from the 1950s onward, states began to use the law of export controls to steer foreign politics, as when the United States limited exports to China and Cuba to suppress communist regimes. These actions divided the international community, especially since they were used to propagate a specific political agenda. In securities and stock exchange law, cross-border movement in finance boosted international stock exchange and securities transactions, which prompted states to extend their securities law to cover a wide range of transactions. Extraterritorial jurisdiction also dominates the law of mergers and acquisitions, investment control, and banking.
The prevalence of extraterritorial jurisdiction in areas of law concerned with economic matters raises the question of which factors occasion this trend. A common explanation is that regulatory competition prompts extraterritorial jurisdiction: the existence or threat of a race to the bottom causes states to enact laws that transcend their territory, in an effort to reclaim their “endangered” regulatory authority over domestic matters. This claim requires closer scrutiny.

Removing the most obvious barriers to the flow of goods, services, and finances between states has caused economic markets to gradually approximate and level out. This approximation has brought states’ regulatory differences more sharply into focus and accentuated remaining barriers to trade. Corporations began choosing home states based on the advantages they offered, which stoked fear among states that business will move somewhere more advantageous—to places with fewer and less rigid or strict laws—and compelled them to lax their standards. Rather than autonomously exercising their authority, states began to compete with each other through their regulatory systems and learned that they gain a comparative advantage by designing their laws to the investors’ and producers’ liking. These dynamics are commonly described as regulatory competition, and are also known as jurisdictional competition or systems competition.

Regulatory competition among states is frequently encouraged by non-state actors. The Global Competitive Reports of the Davos World Economy Forum established a “Global Competitiveness Index” that examines states’ institutions, infrastructure, macroeconomic environment, educational facilities, goods and labor market efficiency, financial market development, market size, technological readiness, and innovation performance. The index ranks states based on their ability to provide high levels of prosperity to citizens and to create country-specific advantages for multinationals. In this setting, the law operates as a product, an investment-relevant factor that states put on offer to attract customers.

As states compete over jurisdictional authority, regulation tends to converge toward laxity. Corporations predictably seek to maximize their output and revenues, which is more likely when governments intervene less and corporations incur fewer costs than their competitors.

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43 Bratton et al., Regulatory Competition and Institutional Evolution, in International Regulatory Competition and Coordination 2 (1996); Gabor 3 (2013); Koenig-Archibugi, Global Regulation, in The Oxford Handbook of Regulation 413 (2010); Murphy 4 (2004).

44 Eidenmüller argues that systems competition must be differentiated from regulatory competition. Systems competition includes competition not only of legal rules but also of states’ infrastructure, while regulatory competition only refers to the competition of laws: Horst Eidenmüller, The Transnational Law Market, Regulatory Competition, and Transnational Corporations, 18 Ind. J. Global Legal Stud. 707, 715 (2011).

in other jurisdictions. To attract corporations and gain “regulatory market share,” states lax their standards and create incentives for other states to follow suit. As more and more states follow this strategy, there is a global convergence toward a lower common denominator, also known as competition in laxity or race to the bottom.

Animal law scholars often suspect regulatory competition in animal law moves toward laxity. As the market for meat, dairy, and egg products increases exponentially and competition gets tougher, the costs of input factors like labor and animals carry more weight in the corporate calculus, as do factors like production site, speed of operation, and hygiene requirements. The more rigidly laws insist corporations perform in a specific way, such as by determining how animals ought to be bred, reared, transported, or slaughtered, the harder it is for corporations to choose the cheapest factors of production, which they need to outpace competitors on the market. Because policies designed to improve animal welfare commonly place burdens on business, they are prone to blocking market growth. The reverse is also true: because there is always an economically more efficient jurisdiction where capital can move, unhampered competition frustrates establishing, keeping in force, and enforcing robust animal laws.

Economic theorists do not necessarily think competition in laxity is the default trajectory of regulatory competition. From the 1990s on, they have refuted the race to the bottom hypothesis and pointed out that regulatory competition may follow different trajectories. An alternative is convergence toward a higher common denominator, also known as the race to the top, which describes competition between states to promote better regulation through government intervention. The rationale underlying this trajectory is that corporations benefit from adhering to high legal standards, certifications, or quality standards, especially in a legal environment that rewards consumers for bearing the extra cost. The third type of competition trajectory, regulatory heterogeneity, occurs when preferences vary greatly across states, resulting in persistent heterogeneous regulations.

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47 The race to the bottom is also frequently called the “Delaware effect” (coined by David Vogel, Trading up: Consumer and Environmental Regulation in a Global Economy (1995)) or “Zug effect” (Murphy 6 (2004)).


50 The race to the top is also called the “California effect” (Carruthers & Lamoreaux 2 (2009); Murphy 5 (2004)).

51 Murphy 5 (2004).
B. THE RATIONALE OF ECONOMIC ENTANGLEMENT IN ANIMAL LAW

I. Regulatory Competition in Animal Law

To date, economic theorists have not examined the trajectory of competition in animal law. From their writings, however, we can extrapolate factors indicating the different trajectories of regulatory competition, which helps us approximate the trajectory of competition in animal law. Murphy claims three factors give rise to competition in laxity: the location of regulation (production processes and market access regulations), industrial structure, and asset specificity.

Murphy’s first observation is that the location of production processes and market access regulations explain regulatory upward or downward movement. Process restrictions limit or prohibit certain processes of manufacturing or service industries, but they do not visibly change a product (product standards, in contrast, alter the qualities of a product). Murphy argues that if process restrictions are heterogeneous among states, they prompt movement toward the lower common denominator. To improve their competitive position, corporate actors move to territories where restrictions on manufacturing processes are absent or negligible, which allows them to avoid the costs of adapting products to a specific market. The most common type of regulation in animal law is process standards that lay down in detail how animals must be treated or handled. Animal welfare acts, for example, dictate cage sizes, standards of transportation, or slaughterhouse procedures. These standards, and the labels by which they are identified, greatly differ from one state to another (i.e., there is regulatory heterogeneity) and raise costs by forcing corporations to redesign, retest, relabel, and repack products. In animal law, there is thus a strong presumption that animal protection standards lead to competition in laxity.

Market access restrictions are more restrictive than production process regulations since they block access (sale, consumption, distribution, or disposal) of products or services to a market. Murphy’s observation is that market access restrictions spawn protectionism. He analyzes market access regulation in animal law in the context of the Tuna/Dolphin case decided at the WTO Dispute Settlement Body (DSB) and concludes that market

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52 Mainstream regulatory competition theories are still disputed in economics, as scholars tend to think regulatory tendencies result from more complex interactions than simple competition. These processes are influenced by a multitude of regulatory tools, multilevel regulation, and regulation beyond rigid command and control structures. Moreover, scholarly work on policy convergence is spread across numerous disciplines, making it difficult to build theories and extrapolate: Robert Baldwin et al., Understanding Regulation: Theory, Strategy, and Practice 365 (2d ed. 2013).

53 Murphy 11 ff. (2004). These indicators are supported by findings of other regulatory competition experts. Gabor argues that mobility accounts for lower common denominator movement, even when regulatees are not mobile: Gabor 15 (2013). Carruthers and Lamoreaux agree with Murphy that a race heavily depends on the industry’s mobility; resource-dependent industries are less likely to move than capital-intense branches: Carruthers & Lamoreaux 9 (2009).


55 Murphy 12 (2004). Consider in this respect the repercussions of hormone regulation on beef production in comparisons between the United States and the European Union.

56 United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, DS381.
access restrictions for tuna products led to heterogeneous regulation and were therefore protectionist.\textsuperscript{57}

Murphy’s second observation is that concentrated markets facilitate regulatory movement.\textsuperscript{58} The industries that produce and process animals are highly susceptible to monopolistic market tendencies. For example, in the United States, four producers control 81 percent of the beef market, and two producers dominate 56 percent of the meat chicken market; in total, 2 percent of livestock farms raise 40 percent of all animals.\textsuperscript{59} Also outside the United States, agricultural corporations have become extremely powerful and operate almost without competition.\textsuperscript{60} As economic power concentrates among a few firms in the animal industry, the risk of regulatory movement steeply increases.

Murphy’s third observation is that asset specificity of investments and transactions affect regulatory homogeneity. When asset specificity is low (investments can easily be deployed), this facilitates lower common denominator movement, but when asset specificity is high (investments have high transaction costs), corporations push for homogeneous norms. Today, a majority of domesticated animals is owned by multinationals that use them for food, research, and other purposes.\textsuperscript{61} These multinationals, because they do business internationally and operate with mobile assets, find it easy to move animals to countries where production is cheaper. Today, horses are moved across borders so companies can profit from cheap slaughter; fish cages are relocated across territorial seas to evade regulation; sheep are transported by the millions so producers can benefit from business-friendly regulatory environments; and monkeys are relocated to profit from lax laws.\textsuperscript{62} Because the animal industry is marked by low asset specificity (a high degree of asset mobility and low transaction costs), animal law is highly susceptible to a movement toward a lower common denominator.

\textsuperscript{57} Murphy 192 (2004).
\textsuperscript{58} Baldwin et al. 15 ff. (2013); Murphy 14 ff. (2004).
\textsuperscript{60} According to Nierenberg, only a few companies dominate the global meat market worldwide: “Tyson Foods, which touts itself as ‘the largest provider of protein products on the planet’, is the world’s biggest meat and poultry company, with more than $126 billion in annual sales and operations in Argentina, Brazil, China, India, Indonesia, Japan, Mexico, the Netherlands, the Philippines, Russia, Spain, the United Kingdom, and Venezuela. Smithfield Foods, the largest hog producer and pork processor in the world and the fifth-largest beef packer, boasts more than $10 billion in annual sales. More than $1 billion of this is earned internationally from operations in Canada, China, Mexico, and several European countries” (Nierenberg 12 (2005)). In The Global Food Economy, Weis argues that multinational enterprises seek to expand their global playing field by restricting governments’ capacity to regulate them in multilateral trade systems: Weis, The Global Food Economy 6 ff., 128 ff., 158 (2007).
\textsuperscript{61} Well-known multinationals in the food sector include Smithfield Foods, Tyson Foods, Cargill, and Swift & Co.: Kelch 306–7 (2011); Kirby xiv (2010).
\textsuperscript{62} See Chapter 1.
In addition to Murphy’s theoretical model, there are further indicators that point to lower common denominator movement in animal law. Competition in laxity manifests itself in four ways: *de jure* competition in laxity, *de facto* relocation competition in laxity, *de facto* market share competition in laxity, and regulatory chill.63 *De jure* competition in laxity occurs when states actively lower their regulatory standards in response to economic pressure. This is an extreme form of a race to the bottom and is not the most common in animal law but states sometimes use it to conform to industry demands. Starting in 2001, Japan began to lax its drug control laws for all cosmetic products under the three-year deregulatory strategy of its Pharmaceutical Affairs Law.64 Vernon and Nwaogu explained that the deregulation process was triggered by factors of “globalisation of the cosmetics market and the need to remove non-tariff barriers, the perceived high level of safety of cosmetic products and the growing administrative burden of dealing with an increasing number of new products.”65

Similarly, in line with the United Kingdom’s general deregulatory agenda, the Department for Environment, Food and Rural Affairs (DEFRA) announced in 2016 it would hand its regulatory authority over farmed animal welfare to the farming industries.66 Privatizing animal law would, predictably, entail broad deregulation of practices involved in breeding, raising, transporting, and slaughtering animals used for food purposes.67

*De facto* relocation competition in laxity occurs when domestic firms move production facilities to states where standards are less stringent. The 312 percent increase in horse exports to Mexico in reaction to the US ban on funding horse-slaughter inspections in 2006 is a prime example of *de facto* relocation.68 Live animal exports from Australia to the rest of the world is also a kind of industry outsourcing that relocates billions of animals for slaughter to countries with inexistent or weak animal protection laws.69 In the coming years, we are expecting massive agricultural outsourcing from the minority world to the majority world, prompted by heavy investments in farmland.70 This is expected to be the third wave of global industry outsourcing, following the first wave of manufacturing outsourcing in the 1980s and the second wave of information outsourcing in the 1990s. The future of farmed animal production thus undoubtedly lies in the Global South. Relocation and outsourcing are also common in the research industry, especially among biomedical and pharmaceutical institutions and their supplying facilities.71 Kelch summarizes: “Animal abuse is being

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63 Murphy 7 (2004).
64 Deregulation occurred through the abolition of pre-market approval, establishment of a prohibited and restricted ingredient list, and abolition of the designated ingredient list: Vernon & Nwaogu 27–8 (2004).
68 See for an explanation of these events, Chapter 1, §5.
71 For examples, see Chapter 1, §5.
outsourced. Meat production is going south and animal experimentation is heading east. Africa now produces meat for Europe while Brazil does the same for both Asia and Europe. We see animal experimenters abandoning places like Europe in favour of India, Singapore and China.”

*De facto* market share competition in laxity occurs when multinationals increase their market share in animal production in states with lax animal protection standards. Multinational enterprises dominate industries that produce pharmaceuticals, cosmetics, chemicals, food and beverages, clothing, and other products. These enterprises have a tremendous effect on animals and are better positioned than ordinary companies to influence public policy due to competitive advantages in goods markets, readily exchangeable flows of information and assets, an ability to differentiate branded products, superior management skills, global patents and trade secrets, and access to substantial capital. These advantages, and the unparalleled bargaining power they provide to multinationals, uniquely enable, even encourage them to increase their market share in countries where weak animal laws prevail. As a result, multinational enterprises disproportionately influence the quality, quantity, type, location of production, and price of products at the production stage and throughout the entire food and research system.

States may experience a regulatory chill if they decline to raise animal protection standards despite societal demands and new scientific evidence of animals’ interest in leading a meaningful life. For example, in 2002, EU authorities debated whether the long-awaited marketing ban on cosmetic products sourced from animal research must finally be implemented. The Commission expressed its reservations about the ban, arguing that the industry would move abroad or challenge the ban under WTO law. Several EU measures, including import bans on fur and mandatory labeling of eggs, have been weakened after they were introduced because member states feared prices would be undercut and domestic industries ousted. Member states themselves have declined to improve animal protection standards for the same reason, as when Germany refused

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73 Today, the majority of all domesticated animals worldwide are owned by multinationals: Park & Singer 122 (2012).


75 According to Weis, multinationals are like an “hourglass which controls the flow of sand from the top to the bottom” (Weis, *The Global Food Economy* 13 (2007)).

76 Murphy 7 (2004).


to ban shredding male chicks for egg production. Overall, animal law is susceptible to a high risk of competition in laxity and suffers from de jure competition in laxity, de facto relocation competition in laxity, de facto market share competition in laxity, and regulatory chill.

II. Heading for Lower Common Denominator Movement

From an animal law perspective, lower common denominator movement is the worst possible scenario because it cuts back important achievements for animals and thwarts future progress. But for other stakeholders, this trend is not necessarily negative. When regulatory requirements are low, the industry flourishes, which in turn, at least theoretically, benefits the community by creating jobs and ensuring steady tax revenues. Consumers profit from this environment, as animal products can be offered for sale at lower prices and hence are more accessible. Given these advantages, why should we be concerned about a possible race to the bottom in animal law? In the following, I show that these intuitions fail to take into account the many short- and long-term effects of lower common denominator movement in animal law—a failure that frustrates even the goals of the animal industry’s deregulatory agenda.

Today, there is a clear worldwide trend in the agricultural industry toward factory farming where thousands of animals are housed indoors at high density. By 2005, 74 percent of all pigs and 68 percent of all eggs were “produced” in concentrated animal feeding operations (CAFOs). The trend pervades the Global South/Global North divide. Factory farms are the primary production method in the West, in Latin America, and in Asia, with China being the world’s leading producer. CAFOs view animals as “factors of production” and increase output by breeding the most productive strains and depriving animals of space to move, turn around, exhibit natural behavior, and form meaningful relationships.

Extreme confinement causes animals to suffer from chronic, production-related diseases, including liver abscesses, mastitis, ascites, lameness, and uterine prolapse. Breeding methods and food enhancements are geared to accelerate the growth of animals but shorten their lifespans by causing cardiovascular, skeletal, and respiratory diseases, and leg deformities.

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80 A similar version of this argument was published in Charlotte E. Blattner, 3R for Farmed Animals: A Legal Argument for Consistency, 1 GLOBAL J. ANIMAL L. 1 (2014).
81 Here and throughout this book, I use the terms “factory farm,” “industrial farm,” “industrial agriculture,” and “concentrated animal feeding operation (CAFO)” interchangeably. CAFOs typically house more than 1,000 animals in one building: Claire Suddath, The Problem with Factory Farms, TIME MAGAZINE, Apr. 23, 2010.
Where workers wear gas masks, animals must constantly breathe ammonia, pollutants, and the smell of urine and feces, which causes pneumonia. In CAFOs, animals are widely mutilated; their tails are docked; their beaks, teeth, and toes are clipped; their ears are notched; their horns removed; and there are often castrated, mostly without anesthesia. To increase production, hens are forced to molt and cows are given food they cannot process, which seriously damages their digestive systems. In a production facility, where minimum input and maximum output are the only determinants, illnesses, diseases, and mortality are part of the whole package that ensures a facility’s economic survival. Broiler producers, for example, build 30–40 percent mortality into their profitability calculations.

The conditions of factory farming cause animals to suffer aggression, frustration, constant mourning, and lethal stress syndromes. By being individually penned or cramped with others, animals are by design disabled from forming their own relevant community and nurturing their social bonds. They also live deprived of any sensory, olfactory, and intellectual stimuli.

As factory farms proliferated around the globe, the number of animals who suffer from these consequences has drastically increased. Between 1965 and 2005, the worldwide pig population doubled every year, and the population of chickens quadrupled every year. By 2016, 73 billion farmed animals were slaughtered annually, resulting in an “ever expanding boundary of suffering and filth.” As later chapters will show, factory farms are run at the expense of many other concerns, by being one of the greatest contributors to environmental and physiological stress.
pollution,\(^95\) and by threatening human health and global food security.\(^96\) Lower common denominator movement in animal law clearly causes negative externalities on multiple levels that far exceed the short-term benefits it promises.

III. Catalysts for Extraterritorial Jurisdiction

The bargaining power multinational enterprises exert on the formation, amendment, and abrogation of animal protection standards, and their tendency to favor lax laws, suggest that a race to the bottom is immanent in animal law. Though we have found strong indicators for the existence of a race to the bottom in animal law, lower common denominator movement in animal law is not a \textit{sine qua non} for triggering extraterritorial jurisdiction. In the following, I demonstrate that a decisive factor prompting states to apply law across the border is their \textit{reasonable expectations} that such a race is imminent or will eventually occur.

Fears and expectations of competition toward lax animal laws—not their actual existence—are what prevent states from keeping in place and improving their animal welfare standards. In March 2015, 1.17 million citizens signed the European Citizens’ Initiative “Stop Vivisection,” asking the European Commission to abrogate Directive 2010/63/EU and end the use of animals in biomedical and toxicological research. In its response, the Commission essentially ignored the concerns raised, and informed citizens that “a premature ban of research using animals in the EU would likely export the biomedical research and testing outside the EU to countries where welfare standards may be lower and more animals may be needed to achieve the same scientific result.”\(^97\) In Switzerland, Maya Graf, member of the Swiss national parliament, called for a nationwide ban on the most severe experiments done on primates. In response to her petition, the responsible commission argued that it would not adopt the ban because animal research would be outsourced to foreign countries.\(^98\) Shortly before the Swiss Animal Welfare Ordinance (AWO) was revised in 2008, the Swiss organization of bovine producers argued that high animal welfare would be unnecessary if borders remained open and that introducing stricter standards for animals would force them to move abroad.\(^99\) In Austria, farmers argued that the EU Pig Directive would not improve pig welfare, even if strictly implemented by Austrian authorities, because production would simply shift to foreign producers who faced no regulatory barriers.\(^100\) In 2015,

\(^\text{95}\) This is also called “ecological hoof print” (UN FAO, LIVESTOCK’S LONG SHADOW 272 (2006)).
\(^\text{96}\) There is a high chance epizootic diseases will be imported, so security and quality requirements for animal products need to ensure the protection of public health: NICOLE CLAUDIA HENKE, TIERSCHUTZSTANDARDS IM WOHLFAHRTSÖKONOMISCHEN KONTEXT: HÜHNEREIPRODUKTION IN DER EU UND BRASILIEN 41 (2011).
\(^\text{100}\) Barbara Gerzabek, \textit{Experten einig: Verbot der Ferkelschutzkästen verursacht Tierleid, 643.000 Ferkel würden jährlich ”zu Tode geliebt,”} APA-OTS, May 17, 2011.
in its response to an initiative calling for a ban on shredding male chicks for egg production, the German government expressed its concern that the ban might provoke companies to relocate to countries that have no such bans in place. In rejecting the ban, the German Bundestag emphasized that its goal was to find a practical solution to end the mass slaughter of male chicks “not only in Germany.”

These examples show that the globalization of animal production has led states into a proper regulatory impasse. Faced with the options of strengthening or weakening laws for animals, states choose the one they consider safer. This choice, however, is strongly influenced, often even manufactured by corporations that threaten to move abroad. States believe they have broadly two options: (a) keeping corporations at home where “there are at least some laws”—as many say—or, (b) adopting stricter laws and watching corporations move abroad and begin operating in seemingly lawless territory. Both options are extremely sensitive to business preferences, which shows how powerful agribusiness and the research industry are, economically and politically. In labor or human rights law, by contrast, such arguments are nowhere to be found; they are considered misplaced and improper. In animal law, however, they dominate the political debate and make states believe they have to bow to the demands of corporations, so as not to risk losing well-established levels of animal protection. Paradoxically, this is exactly what they do because even if they persuade corporations to stay, states can only do so by lowering or refusing to pass stricter laws for animals. This strategy, in effect, makes it impossible for states to maintain or improve their standards in the long term.

The only way for states to break this impasse and ensure their laws are effective and parallel social progress, is to endow their laws with extraterritorial reach. Fear of regulatory competition in laxity—not actual regulatory competition in laxity—is thus what prompts states to adopt extraterritorial laws. As Gabor states:

Competitive law-making can also emerge from the mere threat of exit, provided there are sufficient incentives for states to retain regulatees within their jurisdiction [ . . . ]. Regulatory arbitrage refers to the additional benefits regulatees could derive from being subjected to the norm or set of norms of a foreign jurisdiction. If such arbitrage poses a threat of movement from one jurisdiction to another, it might trigger preventive action by the law-maker.

By equipping their laws with extraterritorial reach, states strip corporations of their primary bargaining power in the domestic forum, which is their threat to move abroad. Extraterritorial jurisdiction may effectively bar corporations (and individuals) from evading

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102 Id.


domestic law, and thereby prevent competition in laxity.\textsuperscript{105} Indicators of lower common denominator movement are still momentous because they prove these fears are reasonable and justified. Instances of \textit{de jure} lower common denominator, \textit{de facto} relocation, increases in market share and mobility, regulatory chills, and a growing awareness of the global catastrophes caused by lower common denominator movement in animal law, show what is at stake for states and help us understand why states respond (or ought to respond) to these trends with extraterritorial animal law.

\section*{§4 The Universality Rationale}
\subsection*{A. The Universality Rationale in Criminal Law}

Fears of a race to the bottom are not the only reason states give extraterritorial reach to their laws. Criminal law is the other field of law in which jurisdiction frequently reaches across the border. Extraterritorial jurisdiction in criminal law is widely used to regulate terrorism,\textsuperscript{106} trafficking in human beings,\textsuperscript{107} sexual exploitation of children, and child pornography.\textsuperscript{108} Fighting international crime with extraterritorial domestic laws is legal under international treaties like the Convention on Torture,\textsuperscript{109} the Rome Statue of ICC,\textsuperscript{110} and key humanitarian treaties like the Geneva Conventions.\textsuperscript{111}

In criminal law, jurisdiction over crime that exceeds a state’s territory is based on the active or passive personality principles (which is justified with reference to the regulatee’s nationality link to the state), or the universality principle (which is justified with reference to the universal condemnation of certain crimes). Article 7 para. 4 of the International Convention for the Suppression of the Financing of Terrorism, for example, gives states a right to sanction treaty violations on the basis of the personality and universality principles.\textsuperscript{112} The same jurisdictional bases are enshrined in conventions that combat war crimes, torture, and forced disappearance.\textsuperscript{113} Conventions on crimes against humanity and genocide also authorize states

\begin{itemize}
\item \textsuperscript{105} Put differently, the decision to resort to extraterritorial jurisdiction may be based on considerations of efficiency: \textit{Armand L.C. De Mestral & Tad Gruchalla-Wesierski, Extraterritorial Application of Export Control Legislation} 6 (1990); \textit{Jackson, Sovereignty: Outdated Concept or New Approaches, in Redefining Sovereignty in International Economic Law} 13 (2008); \textit{Schuster} 7 (1996).
\item \textsuperscript{106} E.g., Council Framework Decision on Combating Terrorism (2002/475/JHA), 2002 O.J. (L 164) 3, 6, art. 9.
\item \textsuperscript{107} E.g., Council Framework Decision on Combating Trafficking in Human Beings (EC) No. 2002/629/JHA of 19 July 2002, 2002 O.J. (L 203) 1, 3, art. 6.
\item \textsuperscript{109} Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, art. 5 para. 1.
\item \textsuperscript{110} Rome Statute, art. 12 para. 2 and art. 70 para. 4.
\item \textsuperscript{111} See infra note 113.
\item \textsuperscript{112} Especially art. 7 para. 4 prompts states to enact laws with extraterritorial reach: International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 2178 U.N.T.S. 197.
\item \textsuperscript{113} Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31, art. 49; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85, art. 50; Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75
to establish universal jurisdiction over the crimes in question, but they do not require them to do so. In the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, the ICJ clarified that—based on the \textit{erga omnes} nature of the obligations laid down in the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)—“the obligation each State [. . .] has to prevent and to punish the crime of genocide is not territorially limited by the Convention.”

The predominant concern of extraterritorial criminal law lies with \textit{universal crimes} (also called international crimes), like acts of aggression, war crimes, crimes against humanity, genocide, etc. Universal crimes are not to be mistaken for peremptory norms of international law, i.e., norms from which no derogation is permitted. The universal facet of universal crimes derives from the fact that they are of “concern to the world community as a whole,” because they “promote fundamental interests of the world community and uphold humane values.” These norms are \textit{erga omnes} in character, meaning all states have a legal interest in upholding and enforcing them.

What is notable form the jurisdictional perspective is that only the universal condemnation of these crimes gave rise to customary and treaty law that authorizes states to use extraterritorial personal or universal jurisdiction to combat them. The rationale for extraterritorial

\begin{footnotesize}
\begin{enumerate}
\item Peremptory human rights norms are similar to \textit{erga omnes} norms as they represent “projections of the individual and collective conscience” (Andrea Bianchi, \textit{Human Rights and the Magic of Jus Cogens}, 19 EJIL 491, 491 (2008)). Yet, they are dissimilar in respect to their operability: Unlike \textit{erga omnes} norms, \textit{jus cogens} derogates conflicting treaty law (art. 53 VCLT).
\item Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Judgment 1970 I.C.J. Rep. 3, 32 (Feb. 5) [Barcelona Traction, 1970 I.C.J.]: “An essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations \textit{erga omnes}.” (Emphasis in original).
\end{enumerate}
\end{footnotesize}
jurisdiction in criminal law, whether expressed through the universality or personality principles, is thus embodied in this universality dimension.

B. THE UNIVERSALITY RATIONALE IN ANIMAL LAW

I. Recognition of Animal Sentience

As in criminal law, the world community seems to share certain core concerns about animals and how we treat them. A large number of states recognize animals as sentient beings, oppose the most despised acts against animals, demand that animals be treated humanely and that animal suffering be reduced. As I will argue, these steps, taken as a whole, show that there is a universality dimension in animal law which legitimates resorting to extraterritorial jurisdiction.

Most states classify animals objects of law, as a consequence of which they can be bought and sold on the market like commodities. However, animals are manifestly different from a piece of clothing, a table, or any other commodity, notably because they are sentient beings. Animals are living beings who are deeply sensitive to their immediate environment, who have their own preferences and longer-term plans, and who enjoy spending time with their relevant communities. Most states formally recognize animal sentience as the underlying rationale or guiding principle of their animal protection acts. Alternatively, when they apply animal protection acts only to sentient animals, this demonstrates their commitment to sentience.

Article 13 of the Treaty on the Functioning of the European Union (TFEU) requires the European Union and its member states to “pay full regard to animal welfare requirements of animals,” in formulating and implementing the European Union’s agriculture, fisheries, transport, internal market, research, technological development, and space policies, “since animals are sentient beings.” The consequences of tying animal law to animal sentience are exemplified in Directive 2010/63/EU of the European Parliament and of the Council on the Protection of Animals Used for Scientific Purposes. The directive, referring to article 13 TFEU, covers vertebrate animals, cyclostomes, and cephalopods, “as there is scientific evidence of their ability to experience pain, suffering, distress and lasting harm.” The directive also applies to all fetal forms of mammals because they “are at an increased risk of experiencing pain, suffering and distress.” The preamble to the European Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes recognizes that “man has a moral obligation to respect all animals and to have due consideration for their capacity for suffering and memory” and that it is, therefore, “[d]esirous to

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120 Consolidated Version of the Treaty on the Functioning of the European Union, 2016 O.J. (C 202) 01, art. 13 [TFEU]. See further on art. 13 TFEU, Chapter 9, §2 B.
adopt common provisions in order to protect animals used in those procedures which may possibly cause pain, suffering, distress or lasting harm.”

The Finnish Animal Welfare Act (AWA) declares that it applies to all animals and lays bare its objective, which is “to protect animals from distress, pain and suffering in the best possible way.” In France, L. 214-1 of the *Code rural et de la pêche maritime* makes clear that “[t]out animal étant un être sensible doit être placé par son propriétaire dans des conditions compatibles avec les impératifs biologiques de son espèce,” i.e., *all animals that are sentient* shall be kept by the owner under conditions compatible with their species-specific needs. Section 1 of the German AWA aims “to protect the lives and well-being of animals, based on the responsibility of human beings for their fellow creatures. No one may cause an animal pain, suffering or harm without good reason.” The fact that pain, suffering, and harm are relevant shows that German law protects animals capable of experiencing these negative affective states; it therefore is committed to animal sentence.

Under Greek law, “[a]n animal is every living organism that has the capacity to experience feelings (sentient being) that lives on the land, air and sea or in any other aquatic ecosystem or wetland.” The Indian Prevention of Cruelty to Animals Act defines animals as any living creatures other than human beings. Its purpose is “to prevent the infliction of unnecessary pain or suffering on animals [. . .].” In Lithuania, animal sentience is a guiding principle of the Law on Welfare and Protection of Animals: “This Law shall lay down the remit of state and municipal authorities in ensuring the welfare and protection of animals as sentient beings (. . .).” Section 2 para. 1 lit. a of New Zealand’s AWA defines an animal as “any live member of the animal kingdom that is a mammal, or a bird, or a reptile, or an amphibian, or a fish (bony or cartilaginous), or any octopus, squid, crab, lobster, or crayfish (including freshwater crayfish) [. . .].” Prenatal animal life is, within certain limits, also protected under the act. The official Guide to the Welfare Act elaborates on this expansion:

The Animal Welfare Act 1999 has a much wider definition of animal than the Animals Protection Act 1960. It includes most animals capable of feeling pain and applies to all such animals whether domesticated or in a wild state. It excludes animals such as

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124 Animal Welfare Act (Fin.), §§ 1(1), 2(1).
125 Code rural et de la pêche maritime [Rural and Maritime Fisheries Code], Dec. 1, 1979, L 214-1 (Fr.).
126 Animal Welfare Act (Ger.), § 1. Also in Austria, animals may not be killed without a “reasonable cause:” Animal Protection Act (Austria), § 6 (1).
127 Law No. 40/19 (Greece), art. 1(a) (emphasis added).
128 The Prevention of Cruelty to Animals Act (India), § 2(a).
129 Id. preamble.
130 Law on Welfare and Protection of Animals (Lith.), art. 1(1).
131 Animal Welfare Act (N.Z.), § 2(1)(a)(i)–(vii).
132 Id. § 2(1)(b) defines “animal” as including any mammalian fetus, or any avian or reptilian prehatched young, that is in the last half of its period of gestation or development, and any marsupial pouch young, but does not include human beings, or, except as provided in paragraph (b) or paragraph (c), any animal in the prenatal, prehatched, larval, or other such developmental stage.
shellfish and insects as there is insufficient evidence that they are capable of feeling pain.\textsuperscript{133}

According to section 2 of the Norwegian AWA, the act applies to mammals, birds, reptiles, amphibians, fish, decapods, squid, octopi, and honeybees.\textsuperscript{134} The second sentence of the same section, which protects prenatal forms of animal life, is especially interesting: “The Act applies equally to the development stages of the animals referred to in cases where the sensory apparatus is equivalent to the developmental level in living animals.”\textsuperscript{135} In Poland, the Law Regarding Animal Protection protects vertebrate animals and determines that “[t]he animal as a living creature, capable of suffering, is not an object. The human being should respect, protect and provide care for it.”\textsuperscript{136} In the Slovenian Animal Protection Act (APA), animals that “have developed senses for the reception of external stimuli and developed nervous system to feel painful external influences”\textsuperscript{137} are protected. The Slovenian APA further states that the “law is strictly implemented in vertebrates, in other animals, according to their degree of sensitivity in accordance with established experience and scientific knowledge.”\textsuperscript{138}

In Switzerland, “[n]o one may inflict pain, suffering or harm on an animal, induce anxiety in an animal or disregard its dignity in any other way without justification.”\textsuperscript{139} Article 2(1) of the Swiss AWA defines animals as vertebrates, but recognizes that animals may be sentient even if they do not have a backbone: “The Federal Council decides to which invertebrates it applies and to what extent. In doing so, it is guided by scientific knowledge on the sensitivity of invertebrate animals.”\textsuperscript{140} Animal sentience hence is the guiding criterion in determining which animals count as animals for the purposes of the AWA. The Turkish Animal Protection Law states that the law’s purpose is “to ensure that animals are afforded a comfortable life and receive good and proper treatment, to protect them in the best manner possible from the infliction of pain, suffering and torture, and to prevent all types of cruel treatment.”\textsuperscript{141} It, too, explicitly commits to sentience. The UK AWA declares that an animal “means a vertebrate other than man.”\textsuperscript{142} Commentary to section 1 of the AWA shows its focus on vertebrates is justified with reference to their sentence:

The Act will apply only to vertebrate animals, as these are currently the only demonstrably sentient animals. However, section 1(3) makes provision for the appropriate


\textsuperscript{134} Animal Welfare Act (Nor.), § 2.

\textsuperscript{135} Id.

\textsuperscript{136} Law Regarding Animal Protection (Pol.), art. 1(1).

\textsuperscript{137} Animal Protection Act (Slovn.), art. 1.

\textsuperscript{138} Id.

\textsuperscript{139} Animal Welfare Act (Switz.), art. 4 para. 2.

\textsuperscript{140} Id. art. 2 para. 1, second and third sentence. The Federal Council has only reluctantly made use of the possibility to expand the class of sentient animals, namely, to cephalopods and Reptantia: Schweizerische Tierschutzverordnung [TschV] [Animal Welfare Ordinance], Apr. 23, 2008, SR 455.1, art. 1 (Switz.) [Animal Welfare Ordinance (Switz.)].

\textsuperscript{141} Animal Protection Law (Turk.), art. 1.

\textsuperscript{142} Animal Welfare Act (U.K.), § 1 (1).
national authority to extend the Act to cover invertebrates in the future if they are satisfied on the basis of scientific evidence that these too are capable of experiencing pain or suffering.143

The Ukrainian AWA provides that its purpose is “to protect animals from suffering and death as a consequence of being cruelly treated, to protect their natural rights, and to reinforce morality and compassionate behaviour in society.”144 This act, too, protects only those animals who are capable of suffering and thereby commits to animal sentience.

These are just a few examples of the many laws that explicitly recognize animal sentience or define animals for the purposes of their AWAs by resorting to animal sentience. The centrality of animal sentience in states’ AWAs is proof of an emergent universal consensus among states that animal sentience is as an entry point for material protection of animals, and the guiding rationale behind laws that regulate our manifold relationships with them. Animal sentience rightfully occupies this central stage because negative and positive affective states are of intrinsic importance to animals: their well-being matters to the law because it matters to them. The importance of animal sentience, and the moral claim it places on us—that is, de minimis, to protect animals—are thus universally recognized.

II. Condemnation of Animal Cruelty

Most states also condemn cruelty inflicted on animals. Anti-cruelty laws, even if adopted by states that do not explicitly recognize animal sentience, “embody the law’s implicit […] recognition of animal sentience by their efforts to protect animals to some degree.”145 Under common law, two types of conduct can amount to a criminal act. Conduct that is criminalized only by law, and for which there is no social condemnation, constitutes malum prohibendum. Conduct that is considered “naturally evil,” in contrast, constitutes malum in se. According to Wagman and Liebman, most animal anti-cruelty laws are protections from and condemnation of malum in se, like torturing animals, causing physical and psychological harm to them, or depriving them of their most basic needs.146 Australia, Brazil, Canada, the European Union, France, Germany, India, New Zealand, Norway, the People’s Republic of China, Switzerland, and Taiwan are just a few of the range of countries that sanction cruelty to animals and impose obligations onto society as a whole to respect them.147 Despite their distinct regulatory nature (i.e., the kinds of prohibited activities, a hierarchy of norms, penalties for violations, etc.), these norms prove that states have a shared understanding that animal cruelty must be condemned. Sykes argues that the widespread existence of “some

143 Animal Welfare Act (U.K.), § 1(1), Explanatory Notes, Commentary on Sections, Introductory, § 1. Furthermore, vertebrates covered by the act include only domesticated animals, which leaves wild animals essentially unprotected by the AWA: id. §§ 1 (1), 2.
144 Law on the Protection of Animals from Cruelty (Ukr.), preamble.
146 Id. at 141–3.
147 Federal Decree on Anti-Cruelty (Braz.), art. 3(I). For the remaining countries, see WAGMAN & LIEBMAN 152 (2011). Animal anti-cruelty norms are examined in more detail in Chapter 9, §3.
kind of broad legal prohibition of unnecessary cruelty to animals” in domestic laws is also evidence for the general expectation that animals be treated humanely and spared suffering.\(^{148}\)

III. Principles of Humane Treatment and Avoidance of Animal Suffering

The universality dimension in animal law is further reflected in the principle of humane treatment of animals and avoidance of their suffering. The exact content of this combined principle is based on the wording reiterated in the legislation of so many countries. It encompasses an obligation “to treat animals humanely, that is, not to cause them unnecessary suffering.”\(^{149}\) The principle of humane treatment positively provides that animals must be treated humanely. The principle of avoidance of animal suffering negatively protects the same values by determining that no animal shall endure unnecessary pain, suffering, or harm. Together, the principles represent two sides of the same coin.

The number of states that have enshrined this combined principle is remarkable. The following list of countries and supranational organizations is only indicative of the principle’s broad acceptance: the European Union, the Council of Europe, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Costa Rica, Croatia, Estonia, Fiji, Finland, France, Germany, Gibraltar, Greece, Hong Kong, Iceland, India, Indonesia, Israel, Kenya, Latvia, Liechtenstein, Lithuania, Malaysia, Malta, Myanmar, the Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Papua New Guinea, Paraguay the Philippines, Poland, Portugal, Puerto Rico, Slovenia, Solomon Islands, South Africa, South Korea, Sri Lanka, Sweden, Switzerland, Taiwan, Tanzania, Tonga, Turkey, Uganda, Ukraine, the United Kingdom, the United States, Vanuatu, Venezuela, and Zambia.\(^{150}\)

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\(^{150}\) Council Directive 98/58, art. 3, 1998 O.J. (L 221) 23; CoE, Convention for the Protection of Animals Kept for Farming Purposes, Mar. 10, 1976, C.E.T.S. No. 087, arts. 4, 6, 7; *Animal Welfare Code* (Arg.), art. 1; *Animal Welfare Act* (ACT) (Austl.), § 8 para. 1; *Animal Protection Act* (Austria), § 6 (1); *Animal Protection Act* (Belg.), art. 4 § 2; *Cruelty to Animals Act* (Bots.), art. 3 lit. a and b; Federal Decree on Anti-Cruelty (Braz.), art. 3(IV); *Animal Protection Act* (Bulg.), art. 14 para. 2, art. 17 para. 1, art. 20; *Criminal Code* (Can.), § 445.1 (1); *Decree on the Well-being of Animals* (Costa Rica), art. 1 lit. a and c; *Animal Protection Act* (Croat.), art. 4 para. 1; *Animal Protection Act* (Est.), § 4 para. 1; *Animals (Control of Experiments) Act* (Fiji), art. 6 para. 2 lit. a; *Animal Welfare Act* (Fin.), § 1 para. 1 and § 33 para. 1; CODE PÉNAL [C. PÉN.] [Penal Code], Dec. 19, 2015, art. 227-27-1 (Fr.) [Penal Code (Fr.)]; *Animal Welfare Act* (Gec.), art. 1; *Animal Experiments Act* (Gibr.), art. 7 para. 5 lit. b; *Law No. 4019* (Greece), art. 1 lit. b; Protection of Cruelty to Animals Ordinance (H.K.), § 3(1)(a); *Act on Animal Welfare* (Iec.), art. 1; *The Prevention of Cruelty to Animals Act* (India), art. 3; *Indonesian Penal Code*, Feb. 27, 1982, art. 302 para. 1 (Indon.); LCA 1684/96 *Let the Animals Live v. Hamat Gader* 51(3) PD 832 (1997) (Isr.); HCJ 9232/01 *Noah v. Att’y General* 215 PD (2002–2003) (Isr.); *Prevention of Cruelty to Animals Act* (Kenya), art. 6 para. 1 lit. a; *Animal Protection Law* (Lat.), preamble, §§ 2 para. 6, 26 para. 3, 46; *Animal Welfare Act* (Liech.), art. 3 lit. b; *Law on Welfare and Protection of Animals* (Lith.), art. 6; *Animals Act 1951* (Malay.), art. 44 lit. d and e; *Animal Welfare Act* (Malt.), art. 8 para. 2; *Animal Health and Development Law* (Myan.), art. 18; *Animal Law* (Neth.), art. 1.3; *Animal Welfare Act* (N.Z.), art. 3 para. 2 lit. b and c, art. 9 para. 2 lit. b, art. 11, art. 12 lit. c, art. 14 para. 1; *Law for the Protection and Well-being of Pets and Wild Animals in Captivity* (Nicar.), preamble, art. 7 lit. d; *Criminal Code Act*, c. 77, art. 495 para. 1 lit. b
IV. General Principle of Animal Welfare

Together, the recognition of animal sentience, the prohibition of animal cruelty, and the principle of humane treatment and unnecessary suffering of animals are, as scholars increasingly argue, part and parcel of the overarching principle of animal welfare. This principle is a general principle of international law found in domestic laws and in international law. On the international level, there is to date no treaty that expresses states’ uniform commitment to recognize animal sentience, prohibit cruelty against animals, prevent unnecessary suffering, or demand that they be treated humanely. Several international treaties undeniably affect animal welfare, but their purpose, typically, is to facilitate trade or preserve species; neither of these motivations concerns the intrinsic interests of animals. This makes it easy to argue that animals are virtually absent in international law. However, as some scholars argue,
a universal consensus about animal welfare has emerged on the international plane in another form, namely, as a general principle of international law, evidenced by the practice of international organizations, regional treaty law, and reports of the WTO DSB.

The World Organization for Animal Health (OIE, formerly known as the Office International des Epizooties, founded in 1924) is an intergovernmental organization designed to ensure sanitary (and phytosanitary) safety in international trade in animals and products made from their bodies. In 2001, the OIE and its 182 member countries announced their new focus on improving animal welfare, and the organization has since declared animal welfare one of its mandates. Under the OIE, ad hoc groups were established to draft international standards of animal welfare (the codes) that cover, inter alia, transport of animals, animal slaughter for human consumption, and the killing of animals to control diseases. The codes are heavily influenced by the organization’s scientific take on animal welfare. For example, article 7.3.6. para. 4 of the Aquatic Animal Health Code provides:

The following methods are known to be used for killing fish: chilling with ice in holding water, carbon dioxide (CO₂) in holding water; chilling with ice and CO₂ in holding water; salt or ammonia baths; asphyxiation by removal from water; exsanguination without stunning. However, they have been shown to result in poor fish welfare. Therefore, these methods should not be used [...].

The OIE’s strategy is to use scientific methods to make the case that animal welfare ought to be a concern of legislators across the world. Though other strategies relying on political or cultural arguments could be used to set international standards, the organization has so far been successful with its take on establishing animal welfare as a global concern.

The UN has not yet addressed our treatment of animals as a matter of independent concern, but it touched on the subject in some interesting ways. At the 64th Annual Conference of the Department of Public Information for Non-Governmental Organizations in Bonn, Germany, the Bonn Declaration was issued as an official document to the General Assembly Resolution (A/66/750). The Declaration provides that animal welfare is integral to sustainable development and the eradication of poverty, that the Millennium Consumption Goals should respect animal welfare, and that global agricultural production should ensure good animal health and welfare. The Declaration contributes to ongoing negotiations in the

GATT, Chapter 3 examines in more detail conservation treaties that protect animals as groups, but not as individuals. See Chapter 3, §2 E.


Protecting Animals Within and Across Borders

UN and serves as a continual reminder for the organization to bring issues related to animals to the table.\(^{159}\)

In 2012, at the Conference on Sustainable Development in Rio, the UN addressed animal welfare as part of “sustainable consumption and production.”\(^{160}\) The FAO, an agency of the UN leading in international efforts to defeat hunger, created the “Gateway to Farm Animal Welfare,” a multistakeholder platform to exchange national and international knowledge about the welfare of farmed animals. The platform notes that “animal welfare has become an issue of increasing concern in a number of countries, including several developing ones” and that “[t]he massive increase in animal production of the last decades has raised a wide range of ethical issues, including concern for animal welfare, which has to be considered alongside with environmental sustainability and secure access to food.”\(^{161}\)

Also the Council of Europe (CoE) is among the organizations that aim to respond to animal welfare on a supranational level. Since 1968, five conventions dealing with animals were established under the tenets of the CoE, including the Convention for the Protection of Animals during International Transport of 1968,\(^{162}\) the Convention for the Protection of Animals Kept for Farming Purposes of 1976,\(^{163}\) the Convention for the Protection of Animals for Slaughter of 1979,\(^{164}\) the Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes of 1986,\(^{165}\) and the Convention for the Protection of Pet Animals of 1987.\(^{166}\) The purpose of these conventions is to prevent harm done to animals by ensuring their well-being and by more strictly balancing human and animal interests. The pronounced belief of the conventions is that “respect for animals [is] a common heritage of European countries closely linked to human dignity.”\(^{167}\)

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\(^{159}\) 64th UN DPI/NGO Conference Bonn Declaration on Rio+20, Presented to the General Assembly, UN NGO Branch, Department of Economic and Social Affairs (Apr. 26, 2011).

\(^{160}\) WSPA and Partners Get Animal Welfare onto Earth Summit Agenda, WORLD ANIMAL PROTECTION, Sept. 16, 2011.


\(^{162}\) CoE, Convention for the Protection of Animals during International Transport, Dec. 13, 1968, C.E.T.S. No. 065; CoE, Convention for the Protection of Animals during International Transport (revised), Nov. 6, 2003, C.E.T.S. No. 193. The convention lays down duties to ensure the safety of animals and determines that authorized veterinary officers be present; provisions differ depending on the means of transportation.

\(^{163}\) CoE, Convention for the Protection of Animals Kept for Farming Purposes, Mar. 10, 1976, C.E.T.S. No. 087, enshrines common principles on the keeping, care, and housing of animals.

\(^{164}\) CoE, Convention for the Protection of Animals for Slaughter, May 10, 1979, C.E.T.S. No. 102, focuses on transportation of animals to slaughterhouses, handling of animals within slaughterhouses, lairaging, care, and slaughter.

\(^{165}\) CoE, Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes, Mar. 18, 1986, C.E.T.S. No. 123, includes principles on the care and accommodation of animals, conduct of procedure, breeding, education and training, and statistical information.

\(^{166}\) CoE, Convention for the Protection of Pet Animals, Nov. 13, 1987, C.E.T.S. No. 125, sets up principles for keeping of companion animals and provides supplementary measures necessary to protect stray animals.

\(^{167}\) Isabelle Veissier et al., European Approaches to Ensure Good Animal Welfare, 113 APPL. ANIMAL BEHAV. SCI. 279, 280 (2008).
Trade law, in particular WTO law, is also proof of the fact that member states are increasingly concerned about how we treat animals. The *Seals* case, which gave rise to the most recent reports dealing with animal welfare, garnered a great deal of attention by the international community. When the European Union prohibited importing and placing seal products on the EU market by its seals regime, Canada initiated a complaint at the WTO, arguing that the European Union violated its obligations under the WTO law. In a seminal report, the Appellate Body found that the European Union’s import and market access prohibitions of seals and seal products were necessary to protect the European Union’s public morals and were therefore covered by article XX(a) GATT. Suffering inflicted on seals was declared to contravene the European Union’s public values to such an extent that setting a limit to the number of seals to be killed, or simply labeling seal products as deriving from either “good” or “cruel” hunting methods, would “not meaningfully contribute to addressing EU public moral concerns regarding seal welfare.”\(^{168}\) Although the European Union failed to meet the *chapeau* test of article XX(a) GATT, and thus violated the agreement, *Seals* is known as a landmark decision because it explicitly confirmed that concerns for animal welfare can override obligations established under the WTO regime. Importantly, instead of justifying its violation of trade law as part of a broader conservation effort (e.g., on the basis of the Convention for the Conservation of Antarctic Seals),\(^{169}\) the European Union argued that its goal is to protect seals from suffering. According to the panel, the European Union’s justification is valid from a trade law perspective, because its citizens have a shared understanding of how seals must be treated:

For several years, many members of the public have been concerned about the animal welfare aspects of the killing and skinning of seals and about trade occurring in products possibly derived from seals that have been killed and skinned with avoidable pain, distress and other forms of suffering, which seals, as sentient mammals, are capable of experiencing. Those concerns have therefore been expressed by members of the public out of ethical reasons. The Commission received during the last years a massive number of letters and petitions on the issue expressing citizens’ deep indignation and repulsion regarding the trade in seal products in such conditions.\(^{170}\)

Animal welfare thus is a valid concern of members and allows them to invoke the public morals exception, but the DSB has also made some interesting statements on this topic, divorced from its members’ attitudes. The panel in *Seals* held:

\[W\]e are […] persuaded that the evidence as a whole sufficiently demonstrates that animal welfare is an issue of ethical or moral nature in the European Union. International doctrines and measures of a similar nature in other WTO Members, while not

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\(^{168}\) *Seals*, AB Report ¶ 5.279.

\(^{169}\) Convention for the Conservation of Antarctic Seals, June 1, 1972, 1080 U.N.T.S. 175.

necessarily relevant to identifying the European Union’s chosen objective, illustrate that animal welfare is a matter of ethical responsibility for human beings in general.\textsuperscript{171}

Such developments on the international plane are momentous and combined with states’ commitment to treat animals humanely and avoid their suffering, they may evidence the emergence of a shared understanding of our treatment of animals. Sykes identifies this as the “general principle of animal welfare,” which is so widely shared among states and universal to such a degree that it promotes fundamental interests of the world community and upholds humane values. She claims that this “consensus on animal welfare” transcends views of the minority world and lies at the heart of traditions in Buddhism, Hinduism, and Jainism.\textsuperscript{172} Also Bowman et al. found that “[t]here are […] ample grounds for recognising concern for animal welfare both as a principle widely reflected in national legal systems and as a universal value.”\textsuperscript{173} Brels likewise considers animal welfare to be an emerging concern of the international community, arguing that “[b]eing part of the animal community and sentient animals ourselves, all humans can understand animal suffering and there is evidence that almost everybody disapproves it.”\textsuperscript{174} And Trent et al. found that many countries, especially Central and South America, Japan, India, and some African states “demonstrated interest in improving and enforcing their laws”\textsuperscript{175} that seek to protect animals.

Around the world, the question of how we treat animals emerges as an “elementary consideration of humanity.”\textsuperscript{176} Taken as a whole, these developments, as Sykes argues, support the hypothesis that the general principle of animal welfare has a reasonable prospect of evolving into a norm of customary international law in the near future.\textsuperscript{177}

\section*{§5 Interim Conclusion}

At the dawn of each new decade, we like to think we have finally grasped the full breadth of globalization, but its repercussions on the lives of animals have so far eluded public attention and academic scrutiny. Since the 1980s, better means of transport and communication, intensification of animal production, and new modes of financial investment in the animal industry drove a threefold increase in trade in eggs and dairy and quadrupled trade in meat. The globalization of agribusiness has created a multitude of far-reaching problems that heavily compromise—even thwart—efforts to create better laws for animals, along with

\begin{footnotesize}
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\item Sykes, Beasts in the Jungle 55 (2011).
\item Michael Bowman et al., \textit{Lyster’s International Wildlife Law} 678 (2d ed. 2010).
\item Neil Trent et al., \textit{International Animal Law, with a Concentration on Latin America, Asia, and Africa, in The State of the Animals III} 65, 77 (Deborah J. Salem & Andrew N. Rowan eds., 2005).
\item The expression was used in \textit{Corfu Channel} where the Court evaluated Albania’s duties not to let its territory be used so as to violate other states’ rights: \textit{Corfu Channel Case (U.K. & N. Ir. v. Alb.)}, Judgment, 1949 I.C.J. Rep. 4, 22 (Apr. 9) [\textit{Corfu Channel, 1949 I.C.J.}].
\item Sykes, Beasts in the Jungle 128–9 (2011).
\end{enumerate}
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sustainable development, reducing environmental pollution, and ensuring public health and food security.

As we learn more about the negative aggregate effects of globalized industries that use animals, and states’ inability to regulate them, the need for solutions freed from territorial underpinnings is ever more apparent. Unfortunately, we cannot rely on states’ common desire to solve these problems through international treaty-making because agreements tend to converge to the lowest common denominator and because it is difficult for states to come to an agreement in the first place. Analyses borrowed from antitrust law suggest that because consumers and producers are unevenly distributed around the world, some states will tend to underregulate, and others will tend to overregulate—which makes finding an agreement unlikely. At the same time, the ongoing proliferation of ethical, societal, environmental, and public health risks caused by global agribusiness and other industries using animals, make waiting for an international agreement a poor option. One could argue that the downsides of waiting for an agreement will easily be outweighed by the benefits of finding an agreement. But this view fails to acknowledge that the issues at stake are not only issues of time. The time used to find an agreement is time granted to a proliferating competition in laxity, from which animals suffer most.

Extraterritorial laws offer an opportunity for states to respond in a timely fashion to the global problems created by animal industries. Granted, extraterritorial jurisdiction in animal law can easily be misused to impose views and values onto other nations and their citizens, but judging extraterritorial jurisdiction on this basis alone fails to do justice to the concept and its promises. A widely shared state practice of extraterritorial jurisdiction will weave a dense jurisdictional net of overlapping and concurring laws around the globe. This legal pluralism will open opportunities for political deliberation and negotiation, foster innovation and competition, and allow states to adapt sweeping or insufficient laws to a particular case. As such, extraterritorial jurisdiction can be used as a dynamic tool to improve social welfare in an age of globalization, including the welfare and lives of animals.

The first development that supports extraterritorial animal law is the rationale of economic entanglement. Multinational enterprises that operate in industries like pharmaceuticals, cosmetics, chemicals, and food and beverages own most of the domesticated animals in the world and can easily move them across borders for economic gain. The expansion of agricultural production around the globe has accentuated the different levels of animal laws, which in turn prompted states to compete with each other through their regulatory systems by offering producers and investors the most economically efficient laws. Because producers and investors prefer absent or low government intervention, it is to be expected that the competition trajectory in animal law is toward laxity (i.e., there is a race to the bottom). Though regulatory competition experts have not yet examined the trajectory of competition in animal law, Murphy’s theoretical framework allowed us to cautiously begin filling this research gap. Using his indicators, this chapter demonstrated that there is a high risk of competition in laxity in animal law due to deregulation, corporate relocation competition in laxity, market share competition in laxity, and regulatory chill.

The aggregate effects of a movement toward the bottom in animal law would be disastrous, especially, but not solely, for animals. But the existence of actual competition in laxity is negligible for studying the factors that give rise to extraterritorial jurisdiction. Instead, widespread expectation and fear that competition between states causes lower common
denominator movement is the single most important factor prompting states to extend their animal laws across the border. States, in essence, adopt laws with extraterritorial reach because they are interested in preventing competition in laxity and in regaining their regulatory authority over domestic affairs.

The second development that supports extraterritorial animal law is the universality rationale. From a comparative law perspective, there is a widely shared consensus among states on the proper treatment of animals, evidenced by their recognition of animal sentience, condemnation of animal cruelty, adoption of principles of humane treatment, and commitment to avoid animal suffering. Together, these are proof of the “general principle of animal welfare,” which extends to cultures of majority and minority worlds and is universal to such a degree that it “promote[s] fundamental interests of the world community and uphold[s] humane values.” The principle is backed at the international level by the practice of international organizations like the OIE, the UN, and the FAO, and the WTO. Because the belief that animals must be treated humanely and spared suffering is as strong and widely shared as *erga omnes* norms of criminal law, extraterritorial animal laws must, on grounds of consistency, enjoy the same legitimacy as extraterritorial criminal laws.

Together, the economic and universal rationales of extraterritorial jurisdiction in animal law are proof of the fact that states share a strong interest in protecting animals within and across borders. On this basis, it is reasonable to predict that extraterritorial animal law will not only proliferate in the future but will also increasingly be considered legitimate under international law. The next chapter responds to these predictions and shows how states can use trade law as a means to protect animals across the border.

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