
Contents

Preface and Acknowledgments xiii

List of Cases xvii

List of Legal Material xxvii

Abbreviations xlix

Introduction: Protecting Animals in an Age of Globalization i

I. *Mapping the Territory of Animal Law* ii

§1 Cornerstones of Jurisdiction ii

A. Jurisdiction as a Meta-Ordering Doctrine 12

B. *Potentia*, *potestas*, and Other Core Elements of Jurisdiction 14

C. Usefulness of Prescriptive Jurisdiction 16

§2 The Rise of Extraterritorial Jurisdiction 17

A. The Historical Rise 17

B. Emerging Spheres of Jurisdiction 18

C. Globalization and Deterritorialization of Sovereign Space 19

D. The Rise of Jurisdiction Based on Personal and Organizational Sovereignty 23

§3 The Extraterritoriality Framework 25

A. Jurisdictional Norms and the Extraterritoriality Framework 25

B. Extraterritorial Jurisdiction *stricto sensu*, or Direct Extraterritoriality 28

C. The Animal Relation 31

D. Extraterritorial Ancillary Repercussions, or Indirect Extraterritoriality 33

§4 Spatial Dimensions of Animal Law 34

A. Of Humans and Other Animals 34

B. Unconquered Jurisdictional Territory 38

§5 Assistants along the Way: Four Case Groups 43

§6 Interim Conclusion 48

2. <i>Shifting Spatial Dimensions of Animal Law</i>	51
§1 Animal Law at an Impasse	52
§2 Is Extraterritorial Jurisdiction the Panacea?	55
§3 The Rationale of Economic Entanglement	58
A. The Rationale of Economic Entanglement in Economic Law	58
B. The Rationale of Economic Entanglement in Animal Law	61
I. Regulatory Competition in Animal Law	61
II. Heading for Lower Common Denominator Movement	65
III. Catalysts for Extraterritorial Jurisdiction	67
§4 The Universality Rationale	69
A. The Universality Rationale in Criminal Law	69
B. The Universality Rationale in Animal Law	71
I. Recognition of Animal Sentience	71
II. Condemnation of Animal Cruelty	74
III. Principles of Humane Treatment and Avoidance of Animal Suffering	75
IV. General Principle of Animal Welfare	76
§5 Interim Conclusion	80
3. <i>The Unanswered: Indirect Protection through the GATT</i>	83
§1 Does the Trade Law Jungle Leave Room for Animals?	85
A. Animal Law vs. Trade Liberalization	85
B. Trade Law as Indirect Extraterritoriality	88
C. Labels, Tariffs, Taxes, and Quantitative Restrictions	91
§2 General Agreement on Tariffs and Trade (GATT)	94
A. Most-Favored-Nation Obligation	94
B. National Treatment Obligation	94
I. Note Ad Article III GATT	94
II. Article III GATT	96
III. Process and Production Methods (PPMs)	99
C. Reduction of Quantitative Restrictions	107
D. Schedules of Concessions	107
E. GATT Justifications	109
I. Article XX(g) GATT	109
II. Article XX(b) GATT	111
III. Article XX(a) GATT	112
F. Extraterritorial Animal Protection in the GATT	115
I. Terminology and Means of Interpretation	116
II. General Treaty Analysis of Articles XX(b) and (g) GATT	119
III. Jurisdictional Analysis of Articles XX(b) and (g) GATT	122
IV. General Treaty Analysis of Article XX(a) GATT	124
V. Jurisdictional Analysis of Article XX(a) GATT	126
§3 Interim Conclusion	127

4. <i>The Ignored: Indirect Protection through the TBT, the SPS, the ADA, the AoA, and the Special Treatment Clause</i>	131
§1 Agreement on Technical Barriers to Trade (TBT)	132
A. Scope of the TBT	133
B. Article 2 TBT	135
C. Extraterritorial Animal Protection in the TBT	138
§2 Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)	139
A. Scope of the SPS	140
B. Articles 2–5 SPS	140
C. Animal Welfare vs. Animal Health: The Role of the World Organization for Animal Health (OIE)	142
D. Extraterritorial Animal Protection in the SPS	147
§3 Anti-Dumping Agreement (ADA)	147
A. ADA and Article VI GATT	147
B. Extraterritorial Animal Protection in the ADA and Article VI GATT	149
§4 Agreement on Agriculture (AoA)	149
A. Applicable AoA Provisions	149
B. Extraterritorial Animal Protection in the AoA	152
§5 Special Treatment Clause	152
§6 Interim Conclusion	155
Indirect Extraterritorial Protection of Animals in Trade Law: Evaluation and Outlook	156
5. <i>The Unexplored: Direct Extraterritoriality</i>	161
§1 Jurisdictional Principles in Animal Law	161
§2 Territoriality Principles	163
A. Protecting Animals Abroad through the Territoriality Principle	163
B. Protecting Animals Abroad through Subjective and Objective Territoriality Principles	166
C. Territoriality Principles in the Extraterritoriality Framework	171
§3 Active Personality Principle	172
A. Natural Persons	172
B. Legal Persons	174
C. Parent Corporations, Branches, and Subsidiaries	175
I. Dissecting the Multinational	176
II. The Multinational as a Single Legal Unit	186
III. Synthesis	188
D. Active Personality Principle in the Extraterritoriality Framework	190
§4 Protective Principle	192
A. Protecting Animals Abroad through the Protective Principle	192
B. Protective Principle in the Extraterritoriality Framework	196
§5 Interim Conclusion	196

6. <i>Extended Jurisdiction through Foreign Policy, Soft Law, and Self-Regulation</i>	199
§1 Extended Extraterritorial Jurisdiction	200
A. Investment Rules	200
B. Export Credits	204
C. Bilateral Investment Treaties (BITs)	206
D. Free Trade Agreements (FTAs)	208
E. Impact Assessments	211
F. Reporting	215
G. Corporate Social Responsibility (CSR)	220
H. Codes of Conduct	224
I. OECD Guidelines for Multinational Enterprises	227
J. Extended Extraterritorial Jurisdiction in the Extraterritoriality Framework	229
§2 Interim Conclusion	230
7. <i>Lex Ferenda: Direct Extraterritoriality</i>	233
§1 Passive Personality Principle	234
A. Functional Animal Nationality	234
I. The Need for a Stable Jurisdictional Link to Animals	235
II. Nationality of Animals as Goods	238
III. Nationality of Animals as Passport Holders	239
IV. Nationality of Animals as Legal Hybrids	242
V. Functional Nationality	246
VI. International Legal Limits	247
VII. Acquisition of Nationality	249
B. Protecting Animals Abroad through the Passive Personality Principle	251
C. Passive Personality Principle in the Extraterritoriality Framework	253
§2 Universality Principle	253
A. Protecting Animals Abroad through the Universality Principle	253
B. Universality Principle in the Extraterritoriality Framework	258
§3 Effects Principle	259
A. Protecting Animals Abroad through the Effects Principle	259
B. Effects Principle in the Extraterritoriality Framework	263
§4 Interim Conclusion	263
Synthesis of Direct Possibilities and Case Groups in the Extraterritoriality Framework	265
8. <i>Parameters of Substantive Law</i>	273
§1 Moral Trajectory of Extraterritorial Animal Law	273
A. Moral Trajectory in General International Law	274
I. Global Justice	274
II. The Precautionary Principle	276
B. Moral Trajectory in Trade Law	278
C. Moral Trajectory in Animal Law	280
I. From Property Protection to Animal Protection	280

II.	Toward Pathocentrism	282
III.	Pathocentrism and the Moral Trajectory of Animal Law	286
§2	Moral Consistency	286
§3	Guide to a Hierarchy of Extraterritorial Animal Laws	290
A.	Minimum Standards	290
B.	Hierarchy of Presumptions	292
I.	Presumption in Favor of Transparency	293
II.	Presumption in Favor of Recognizing Animal Interests	296
III.	Presumption in Favor of Integrating Animal Interests	296
IV.	Presumption in Favor of Extensive and Detailed Laws	297
V.	Presumption in Favor of Adequate Interest Balancing	299
VI.	Presumption in Favor of Prohibitions	303
VII.	Presumption in Favor of Animal Rights	304
§4	Duty to Protect and Respect Animals Across the Border	307
A.	Learning from the “Protect, Respect and Remedy” Framework	308
B.	The “Protect, Respect and Remedy” Framework in Animal Law	311
§5	Interim Conclusion	316
9.	<i>Comparative Vantage Points of Extraterritorial Animal Law</i>	319
§1	Equivalence of Criminal, Administrative, and Civil Animal Law	320
§2	Applying Constitutional Animal Law Extraterritorially	321
A.	Brazil and Egypt: From Conservationism to Pathocentrism	322
B.	Germany, Luxembourg, and the European Union: Animal Protection as a State Objective	325
C.	India: From the Duty of Compassion to Animal Rights	328
D.	Switzerland: Animal Dignity	330
E.	Constitutional Animal Law in the Extraterritoriality Debate	334
§3	Applying Criminal Animal Law Extraterritorially	334
A.	Basics of Criminal Animal Law	334
B.	Advanced Criminal Animal Laws	335
C.	Advanced Liabilities	340
D.	Corporate Criminal Liability	341
§4	Applying Administrative Animal Law Extraterritorially	344
A.	Basics of Administrative Animal Law	344
B.	Protection of Farmed Animals	346
C.	Transportation Standards	354
D.	Slaughter Standards	358
§5	Interim Conclusion	363
10.	<i>Legality of Extraterritorial Jurisdiction under International Law</i>	365
§1	Countering Extraterritorial Animal Law	365
A.	Objections	365
B.	Forms of Protest	370

§2	Conflicts of Animal Laws	372
A.	Addressing Cultural Clashes	372
B.	Emergence and Classification of Jurisdictional Conflicts	373
C.	Preventing and Mitigating Jurisdictional Conflicts	376
I.	The Rule of Law and the Prohibition of Double Jeopardy	376
II.	Principle of Reasonableness	378
D.	Resolving Jurisdictional Conflicts	380
I.	Unilateral Resolution	380
II.	Bilateral and Multilateral Resolution	383
§3	International Legal Limits	385
A.	Principle of Sovereign Equality	386
B.	Right to Territorial Integrity	387
C.	<i>Domaine Réservé</i> and the Principle of Nonintervention	388
D.	Principle of Self-Determination of Peoples	392
E.	Influence of the Extraterritoriality Framework on International Legal Limits	394
§4	Legal Consequences of Exorbitant Extraterritorial Animal Law	395
§5	Interim Conclusion	398

II. *Conclusion: Toward Legal Pluralism, Postcolonialism, and Interspecies Justice* 401

BIBLIOGRAPHY, NEWSPAPER ARTICLES, AND PRESS RELEASES 411

INDEX 449