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Fundamental rights for primates?

The voters of Basel-Stadt are to decide whether all primates in their canton should have fundamental rights. Is this just monkey business, or is there more at stake?



Humans granting primates a “right to life”? An initiative in Basel-Stadt wants to achieve just that.

Photo: iStockphoto

JÜRIG STEINER

Imagine the scene. A primate is sitting in court. Its lawyer is summing up her argument in a case that has been brought because the primate feels its life has been put in danger. Will it soon be possible – in Basel at least – for primates to bring their own “human rights cases” to court? Will interpreters have to specialise in monkey speak? Will we be providing apes with legal support? Will child and adult protection agencies have to extend their area of responsibility to include the 300 species of non-human primates?

Campaigners in the canton of Basel-Stadt want to push through a popular initiative that would grant primates “fundamental rights to life as well as physical and mental integrity”. In biological terms, humans also belong to the primate family – reason enough for the “primate initiative” to provoke some eye-catching responses and questions since it was launched in 2016. What is certain is that the shock waves will reverberate abroad if the voters of

Basel-Stadt approve the initiative (set to be put to the electorate in 2022). Never before will animals anywhere in the world have been awarded fundamental rights as a result of direct democracy.

From the outset, the authors of the initiative have denied that they are trying to extend all human rights to non-human primates or suggesting that we should be humanising primates or putting them on an equal footing with humans. For example, they say it would be absurd to give primates other basic rights such as freedom of expression, freedom of assembly or religious freedom, because primates would never be able to exercise these. On the other hand, they insist that there is neuroscientific and behavioural evidence to show that primates are communicative, sensitive, empathic, social creatures, and that a constitutional article to protect primates from violent death as well as physical and psychological suffering is completely justified, given that current laws fall far short of achieving this.

“Damage to property”

According to University of Berne law professor Peter V. Kunz, animals are regarded as property under Swiss law: “Hence, when we kill an animal, this does not constitute killing in the legal sense, but damage to property.” It would be a paradigm shift if fundamental rights for primates were enshrined in the constitution, Kunz says, because non-humans would be recognised as legal entities for the first time.

Giving primates fundamental rights is an idea that is rejected by those who believe that it undermines animal testing in the pharmaceutical industry as well as primate captivity at Basel Zoo. The primate initiative was launched by Sentience Politics, a “political organisation that fights for the rights of non-human animals”, as its executive director Silvano Lieger puts it. The animal rights NGO also campaigns for a better choice of vegetarian and vegan food in public-sector canteens in Swiss cities and was responsible for a federal popular initiative to abolish factory farming. By advocating constitutional rights for primates, Sentience Politics has taken up a cause first championed by such figures as the Australian philosopher and ethicist Peter Singer, who wrote the 1975 bestseller “Animal Liberation”.

No direct consequences for zoos or the pharmaceutical sector

The cantonal parliament of Basel-Stadt ruled the primate initiative unacceptable because it feared the initiative would contravene federal law if enacted into the cantonal constitution. However, the Federal Supreme Court corrected Basel-Stadt on this point in autumn 2020 and decided to give the canton’s electorate the opportunity to vote on the contentious issue – with one important caveat: only the canton’s public organisations and institutions would be bound by the resultant amendment to the cantonal constitution if the initiative was accepted. A yes vote would therefore only have indirect consequences for private entities, such as pharmaceutical companies or Basel Zoo.

Does this mean granting primates fundamental rights simply boils down to semantics and has no tangible impact? “The initiative has more than just symbolic value,” counters renowned animal and climate law specialist Charlotte Blattner, who is a senior researcher at the Institute of Public Law of the University of Berne. Blattner has been studying the ethical and legal aspects of the primate initiative for a number of years. “The key issue is whether society manages to find a means of truly respecting and safeguarding the fundamental interests of animals, i.e. their right to life and to physical and psychological integrity,” she says.

Animal use instead of animal protection?

In 1992, Switzerland became the first country in the world to enshrine the notion of animal dignity in its constitution. Its Animal Welfare Act is strict compared to similar legislation in other countries. However, statistics show only around 2,000 violations being punished each year, mostly with fines of up to a few hundred francs. Blattner believes that animal welfare in Switzerland is only at a superficial level, because human interests are ultimately always given precedence over animal interests. For example, federal acts and ordinances define the permitted methods of killing animals in minute detail. “Basically, the Animal Welfare Act could also be referred to as the Animal Use Act,” she says.

Therefore, Blattner regards the primate initiative as the first step towards a wider social debate about a more equitable relationship between humans and animals – including animals less similar to humans. “What about pigs?” she asks. “They also want to live and not feel pain.” Blattner is at pains to stress that granting animals fundamental rights will not result in fewer fundamental rights for humans. On the contrary. “Animal welfare standards are commonly poor in places where humans are also treated badly,” she adds. Take factory farms, where working conditions are often difficult. Conversely, new studies have shown that countries promoting animal rights also treat their citizens better and are committed to improving the lives of vulnerable people.

The real challenge arises when we take a long-term view. Will we reach a tipping point where fundamental rights for animals spell the end of animal use as we know it? Will veganism become the only possible alternative? This is the subject of heated academic debate, says Blattner, although the majority of her colleagues endorse the vegan option. Professor Markus Wild, who specialises in animal philosophy, has taken the issue further and applied it to climate change. Given the dramatic decline in biodiversity, humans have no other option but to rethink their relationship with animals if they are to save themselves, he argues. In this respect, the primate initiative could prove to be a meaningful beginning.

sentience-politics.org

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