



Policy paper

Political Representation of Animals - Designing First Steps

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Representation is commonly understood as a basic element of democracies that enables the population to participate in decisions via proxies or agents. To date, the struggle for adequate political representation of vulnerable groups has largely excluded animals. It is time that states and state communities close this institutional 'void'. Human communities regulate the lives of animals, increasingly via laws, and so the latter deserve to be represented in human political institutions, too.

We think the time is ripe to explicitly demand an adequate representation of animals for at least two reasons.

- First, animal advocacy organisations emphasise the need for institutional reforms allowing them to tackle the sources of animal suffering more effectively (see the campaign #EUforAnimals calling for an EU Commissioner for Animal Welfare). We believe such institutional reforms can be more successful when aligned to existing forms of democratic representations.
- The second reason is that theoretical reexaminations of political representation allow for an inclusion of animals. To acknowledge animal advocacy as a genuine form of political representation is likely to encourage reforms and enhance the political status of animals.

We think there are good reasons animal advocacy

should be understood and framed as a form of political representation and as such receive more public attention and support. We propose first steps towards a future where animals are adequately represented. In the future, and in exchange with other NGOs, we want to become more concrete on institutional processes and changes enabling political representation of animals.

1 The broader picture - raising awareness for the issue of representation of animals

Representation is the fundamental idea of modern politics.¹ It is commonly understood as an element of democracies that enables the population to participate in decisions via proxies or agents. When democracies are portrayed as being "successful", "functioning", "just", vulnerable groups of the society, including minorities, are represented adequately. However, animals have been excluded from the concept of political representation for a long time. This has changed. Many states have implemented laws to protect animals for their own sake. And animal (protection) advocacy is recognised widely - if not officially - as an important part of politics. But besides animal protection laws and politics, the role of animals in representative democracies remains a blind spot: There is a lack of rules and institutions to define and consider animal needs and interests. At the same

¹Runciman, D. und Vieira, M. B. (2008): Representation. Cambridge: Polity.

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time, the public seems to believe that animal interests are to be considered in political decision making². Who speaks for animals on what basis? And to what extent are these political voices to be heard and implemented? These questions remain largely unanswered both in political practice and theory. The recognized societal importance of animal protection and welfare contradicts the general assumption that democratic institutions shall serve human concerns only.

Two recent developments give reason to our claim that more emphasis should be put on means and ways to enable genuine political representation of animals.

First, animal advocacy organisations emphasise the need for new institutional reforms helping them to pursue animal interests - and combat suffering - more effectively (see the campaign #EUforAnimals, calling for an EU Commissioner for Animal Welfare). We believe such institutional reforms can be more successful when aligned to existing forms of democratic representation. Some institutional changes have already been implemented in the last years throughout the EU. After pressure from civil society, the German Government declared to establish the position of an independent Federal Commissioner for Animal Protection, who, inter alia, could review legal initiatives relevant for animal health and suffering. A current campaign to establish an EU Commissioner for Animal Welfare received support by both society and policymakers. We believe such institutional reforms could be real game changers for the animals. To make them more coherent and convincing, we argue that they should be seen in a broader framework of political representation. Advancements in the legal sphere can be a role model for strengthening political representation of animals. Several jurisdictions in Europe recognize the interests of animals, either by way of requiring that the State takes into account the protection of animals³; or by providing the state with competences to regulate animal protection

²This is indicated by a recent representative survey in Germany, commissioned by Animal Society. Two thirds of the respondents found that the perspective of animals was "not adequately represented in politics." See https://animalsociety.de/uploads/Animal_Society-Tierschutzpolitik_im_Spiegel_der_Gesellschaft-Berlin_2021.pdf p.9

³This the case of the EU (Article 13, Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C202/54), Germany – where the Constitution considers the protection of animals to be a State objective (Staatszielbestimmung) (Basic Law of the Federal Republic of Germany: 23 May 1949 (as Amended to 11 July 2012), Art. 20a), Italy (Constitution of the Italian Republic: 11 December 1947 (as Amended to 2022), Art. 41), and Luxembourg (The Constitution of the Grand Duchy of Luxembourg, 1868 (as Amended to 12 March 2009), Art. 11bis).

issues.⁴ Such provisions in the countries' constitutions set significant precedents in terms of representing animal interests in the legislature. Most importantly, obligations for the legislature to take into account animal welfare in legislative and decision-making processes have had positive effects on animals and further set the basis for progressive rulings by the courts.⁵ These positive dynamics in the legal sphere wait to be transferred to the political sphere, because in political institutions, comparably little progressive change has occurred.

Second, the theoretical and common understanding of political representation changes. The traditional view of political representation is that only those (human) constituencies are represented who can actively elect their representatives and hold them accountable.⁶ This traditional model stands in contrast with a common political understanding of representation, in which a variety of views and interests should be considered in the parliaments or elsewhere in political decision making, even if those affected cannot vote. Children and future human generations, for instance, are groups with an increasing political weight, who cannot vote, yet it would be difficult to argue that their views and interests should not be represented. The same is true for animals. Therefore, political theorists are rethinking political representation. Instead of elections as legitimising forces, they focus more on "representative claims" and actions of those who speak and act for others politically. Within those theories, the political work of NGOs, even if unelected, is treated as a form of representation. In consequence, the political status of animals would be enhanced.⁷ When thinking outside the box of traditional representation, there is a real chance to recognize animals as members

⁴This is the case of Austria (Federal Constitutional Law of the Republic of Austria: 1 October 1920 (as Amended to Federal Act No. 65/2012 of 25 July 2012), Art. 11(1)(8) and Art. 11(9)), Switzerland (Federal Constitution of the Swiss Confederation: 18 April 1999 (as Amended to 15 March 2012), Art. 80), and Slovenia (Constitution of the Republic of Slovenia: 23 December 1991 (as Amended to 27 February 2003), Art. 72).

⁵For positive rulings related to animal protection on the basis of constitutional provisions related to animals, see, for instance, in Germany: . 1 BvR 2186/06 (3 July 2007) ECLI:DE:BVerfG:2007:rs20070703.1bvr218606 (on the use of cast-iron hoofwear) and 2 BvF 1/07 (12 October 2010) ECLI:DE:BVerfG:2010:fs20101012.2bvf000107 (on egg-laying hens).

⁶Ahlhaus, S. (2022 forthcoming): Political representation of Animals. In: Peters. A. (Ed.) Oxford Handbook of Global Animal Law.

⁷Ahlhaus, S. (2022 forthcoming): Political representation of Animals. In: Peters. A. (Ed.) Oxford Handbook of Global Animal Law. Saward, M. (2006). The representative claim. In: Contemporary Political Theory 5: 297–318; Peters, A. (2021, S. 582): Animals in International Law. Pocketbooks of the Hague Academy of International Law.

of our political communities and act accordingly.

2 What exactly does representation of animals mean and how is it justified?

2.1 Animal representation is more than animal protection

When decision-makers stress that animal welfare or animal protection is being taken into account in political decisions, it is often unclear - for non-experts, but also for professionals - whose interests are actually at stake and who formulates them. On the one hand, animal welfare organisations are treated as stakeholders by the governments and administrations. Furthermore, the notion of "animal welfare science" may suggest that science or veterinary medicine can define the adequate or necessary level of animal welfare protection⁸. Finally, animal welfare is conceptualised as a public or state good that is in the general interest.

Representation of animals is neither pure medical or biological expertise, nor should it be confused with common lobbying of a human interest group. There is no scientific textbook out of which demands from the perspective of animals can be ascertained. Nor is there, currently, any objective ethics that tells us when animals would consent to some political result. Even if there are scientific treatises, e.g. on "species-appropriate animal husbandry" or "animal-welfare friendly slaughter", political representation is not necessarily bound to these explanations. However, since animals cannot easily object to the contents of the representation themselves, accuracy and an analytical approach to animal needs are central. If there is scientific research on key issues, such as whether animals suffer or rejoice under certain circumstances, reference should of course be made to it. The art of successful political representation consists in articulating promising claims in the best interest of animals. To date, there are only few scientific approaches that design a framework for animal representation, but the interest is growing.⁹

One thing seems clear: In contrast to animal welfare policy, the representation of animals seeks to pursue the interests of animals in the broader sense, and focuses

⁸In economic terms, animal welfare is presented sometimes as a public (human) good. This contradicts the ethical conception of animal protection as "for the sake of animals". Since the matter of public goods opens up a whole new discussion, it is not further investigated here.

⁹Hoffmann, J. (2022): Representation of animals in politics. Report for Global Priorities Institute. University of Oxford, S.2.

not only on the avoidance of pain and suffering. To make this distinction more precise, a legal or political clarification becomes necessary of what it means that animals are sentient, subjective beings - or, like the Swiss constitution declares, that living beings have dignity.¹⁰ Legal innovations in this direction are being discussed.¹¹

2.2 Why animals should be represented politically

Political representation is generally a complex concept and undertaking, not only in the case of animals. We already mentioned that representation is about enabling groups of individuals to participate in political decision making via proxies or agents. But what exactly is represented ("who are the people and what are their interests?!") and who should represent societal concerns ("elected politicians, other state officials?!") can be answered in different ways. It is part of the evolution of democracy that political representation remains an open concept that adapts to changing societal expectations and power constellations. Important to the modern concept of political representation, however, has always been the idea that being affected by decisions necessitates representation. For some time now political theorists have argued that this applies to non-human animals as well.¹² We know that individual animals (depending on the species) can feel, perceive, some even think, and make decisions. They are sentient beings. It is widely acknowledged that animals are affected by many political decisions. This is indicated by a survey commissioned by Animal Society in Germany.¹³ European law recognizes the sentience of animals and provides the legislatures of member states with the mandate to "pay full regard to the welfare requirements of animals".¹⁴ The German law declares that animals are "not things."¹⁵ Hence, in the context of political representation, states only have to make clear and implement effectively what the law already recognizes: That animals count for their own sake and are independent of human

¹⁰Ebd.

¹¹Raspé, C. (2013): Die tierliche Person. Duncker und Humblot, Schriften zur Rechtstheorie, Heft 263.; Gall, P. Raspé, C. (2021): Tiere brauchen Vertreter:innen im Recht und in der Politik. In: W. Neussel (Hrsg.), Verantwortbare Landwirtschaft statt Qualzucht und Qualhaltung (S. 279- 286). München: oekom.

¹²Smith, K.K. (2012): Governing Animals. Animal Welfare and the Liberal State. Oxford University Press.

¹³In the survey, 63% of the respondents agree that animals and their needs are regularly affected by politics, 22% do not agree, Animal Society e.V.: Tier(schutz) politik im Spiegel der Gesellschaft. (2022, S.17)

¹⁴Article 13, Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C202/54

¹⁵For example, the German Civil Code (BGB) explicitly provides that animals "are not things."

interests.

3 Practical steps to move forward

3.1 Animal advocacy should be acknowledged as integral part of political representation

Animal advocacy can be a form of political representation, if it strives for the best possible outcome for animals. The mere claim that “animal welfare has been considered”, on the other hand, does not meet the demands of adequate representation. To reduce the risk of misunderstandings, and as a first step towards clarity, actors who claim to represent animals should explicate their role and duties in this function, and ideally have them acknowledged by the state and public. If animal advocacy groups are officially recognized as representatives, their demands will have more political weight. Including those demands that would have unpleasant consequences. Not all animal welfare groups may wish to act as political representatives. For instance, some may put their focus on care-work. Furthermore, the explication of actors, roles and duties of representation enables transparency. Only if the public knows who speaks for which groups of animals, potential gaps of representation, for instance regarding areas of human use of animals or less popular animal species can be identified.

We ask policy makers to acknowledge non-governmental animal advocacy as an integral part of political representation.

3.2 Claims must be formulated from the perspective of animals

Politics consists of compromises, it strives for the common good, not for particular interests. Not only representatives of the political community, but also representatives of animals must, if necessary, also seek a balance with human interests with regard to the goods provided by animals. Like with legal human rights, there is an area that may not be negotiated from the perspective of animals, and one day, there may be fundamental legal rights for animals too. But as the history of human rights shows, even these had to be negotiated in formal political processes, and to this end, political representation is a central element. Only those present at the negotiating table will have their interests heard.

Prior to the finding of compromises, the best possible outcome from the perspective of animals must be determined. Already at this point there is the risk that widespread human interests, such as the use of animals for food or re-

search, will influence the process of interest articulation. “Animal welfare friendly slaughter”, for instance, is a term where the perspective of the animals is blurred by interests of animal use.

Therefore, within the practice of representation, two methodologically different procedures should be taken into account: the articulation of the interests of animals and the weighing of interests to seek compromises. The articulation of interests must strictly refrain from taking into account human interests and needs. The weighing of interests should make clear which vital interests are involved and which normative premises influences the final decision.

We encourage public institutions and animal advocates to agree on a list of interests from the perspective of animals that serves as a reference in politics.

3.3 The consideration of animal interests in politics must be transparent

Animal behaviour and conscious experience are sometimes hard to interpret. The animals’ interests are fluctuating and contradictory at times. Due to this difficulty, it is especially necessary to be transparent and open for criticism as to how and why one has come to the respective conclusion. We cannot expect answers to the question of animal feeling or thinking that do not leave any doubts. But we may strive for the best explanation for why animals behave the way they do and what this tells us about their sentience.¹⁶

Transparency and openness is likewise important for the interpretation of the best political strategy from the perspective of animals. Today, different animal advocacy organisations pursue different strategic approaches to achieve political success. For instance, the divide between the “animal rights” and the “animal protection” movement, wherein the former considers the latter to show too little ambition and focus too much on compromises. When involving such organisations into decision-making, the public needs to understand which actors have been heard and for what reason. This in turn allows for critical remarks regarding the right balance, e.g. of the participation of animal rights and welfare groups.

A third area where transparency is important are ethical norms and presuppositions that guide decision making. Public opinions on the ethical treatment and our relationship with animals change. It is likely that politicians will change the ethical ground of their decisions too. A reference system of central norms needs to be installed that makes it easy for the public to identify and compare

¹⁶Wild, M. (2012): Tierphilosophie. In: Erwägen Wissen Ethik, 23(1):21-33

the ethics behind political decisions. Representation does not require equal treatment of different species. It does require clarity on how policy makers legitimise inequality.

Transparency is necessary to ensure public oversight, e.g. by making decision-making processes at all levels comprehensible to the public. **We encourage policy-makers to enable transparency regarding the way they consider the animal perspective in their decisions.**

3.4 Representation of animals needs its own public institution

Next to officially recognizing NGOs (see chapter 3.1), new public and governmental institutions need to be developed. Innovative forms of representation of those constituencies, that are unable to vote, are also being discussed for example in the area of future generations and children.¹⁷

First of all, it is possible to incorporate the interests of animals in existing institutions. The keyword for this discussion is “animal mainstreaming”. This term is based on the concept of “gender mainstreaming”, which had a significantly positive influence on gender politics. “Gender mainstreaming” means that the interests of all genders are equally considered in public and political matters. Analogous to this term, animal mainstreaming is a call to consider the interests and needs of animals in all public and political matters. This does not only include agriculture and research but also, for example, financial policy or sports.¹⁸

Animal mainstreaming as a consideration of the animal perspective in existing political institutions is important. Yet, it is not enough to effectively ensure adequate representation. In contrast to “gender mainstreaming” animal demands are often unclear, since equal treatment of human and animal interests (all species) is impossible in many areas. Compromises at the governmental level (parliaments and ministries) must be measured against the best possible results from an animal perspective. Only by doing so, it is possible to

identify adequate and inadequate “considerations” as well as good and bad compromises. It is therefore central to have a separate public institution which represents the perspective of animals. Only in combination with such an institution can animal interests be framed as concrete claims and “animal mainstreaming” fulfil its full potential.

We encourage policy makers to design a new public institution which integrates the animal perspective into decision-making.

4 Outlook

This policy paper is designed as an inspiration and starting shot for strategies and campaigns seeking to strengthen the political voice of animals. In the future, we want to build on these ideas. We are looking for partners to develop our proposals and demands at both the national and international (EU) level. Subsequently we want to become more concrete about the necessary institutional changes towards political representation of animals.

¹⁷For instance, an innovative legislative institution is a parliamentary body in Israel, called the Commission for Future Generations, that existed from 2001-2006.

¹⁸Further reading: Wild, M. (2019): Animal Mainstreaming - Motivation und Bedeutung eines neuen Konzepts in der Tierethik. In: Diehl, Elke, Tuider, Jens (Hrsg.); Haben Tiere Rechte? - Aspekte und Dimensionen der Mensch-Tier-Beziehung (= bpb Schriftenreihe Band 10450), p. 323-335.; Ladwig, B. (2020): Politische Philosophie der Tierrechte. Suhrkamp.