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Fundamental rights for primates

Policy paper

Nonhuman primates are highly complex beings, possessing an intrinsic, essential interest in living a life of bodily and mental integrity. However, current legal provisions worldwide hardly accommodate these interests. Therefore, nonhuman primates need to be protected by fundamental rights which guarantee that their essential interests are respected. In this position paper, we first propose a scientific and moral basis for such rights and subsequently give several arguments for why such rights are needed. We conclude by suggesting a number of ways to implement fundamental rights to life and physical as well as mental integrity for nonhuman primates.

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AUTHORS:

RAFFAEL FASEL, SENTIENCE POLITICS

CHARLOTTE BLATTNER, PHD-CANDIDATE IN INTERNATIONAL
LAW AND ANIMAL LAW, UNIVERSITY OF BASEL

ADRIANO MANNINO, PRESIDENT, SENTIENCE POLITICS

TOBIAS BAUMANN, DIRECTOR OF STRATEGY, SENTIENCE
POLITICS



Fundamental rights for primates

Introduction

Ever since Charles Darwin's seminal work, it has been clear that adhering to views of the world which present the human being as "the pride of creation" or as the top of a "great chain of being" cannot be justified. Despite the extraordinary characteristics which human beings have developed over time, we should, according to Darwin, "bear in mind that he (man) is but one of several exceptional forms of primates."^[1] More precisely, the human being belongs to an order of more than 300 primate species.^[2] Compared to many other animals, primates feature a large brain, a complex social structure as well as a high physical and mental capacity to suffer. However, all too often, these characteristics and abilities determine the fate of those primates who do not belong to the species *Homo sapiens*: For instance, nonhuman primates are considered especially suited for biomedical research, they are exhibited for amusement as well as for purposes of education and conservation, and they are kept as exotic pets.

The more scientific findings on the remarkable characteristics of nonhuman primates we obtain, the more difficult the moral justification of such practices becomes. According to one of the most crucial principles of fairness, equal things should be treated equally and unequal things should be treated in an unequal way. In this position paper, we point out that despite nonhuman primates and humans being unequal in some respects, the morally relevant qualities — their mutual interest in not suffering and in not being killed — are of comparable value. Therefore, nonhuman primates — like human beings — are entitled to a fundamental right to life and a fundamental right to bodily integrity.

This extension of legal protection to nonhuman primates via fundamental rights has become self-evident, given the moral progress towards a non-discriminatory society which we have been experiencing for several decades. Not so long ago, people were considered inferior and were discriminated against based on arbitrary criteria such as their skin colour, ethnicity, origin or sex. These allegedly primitive people were deprived of many, if not all of their fundamental rights. Forced labour, serfdom,

mistreatment and the refusal of appropriate political representation are only a few examples of the injustices that befell these people. In many places, intensive societal debates led to the integration of these people into the circle of those bearing fundamental rights and, thus, to the recognition of their interests as equally valuable in both moral and legal terms. Slavery and serfdom were formally abolished, and people who once had to perform forced labour are now protected in their fundamental rights on both the national and international level.^[3] Women obtained franchise and complete property rights.^[4] The interests of children and disabled people are nowadays protected by fundamental rights as well.^[5] Recent decades have witnessed additional progress taking place in terms of LGBT rights.^[6] Despite the remaining room for improvement, these cases of both moral and legal progress constitute essential milestones in creating a more just society. Yet empathy and the rational application of moral and legal principles such as fundamental rights ought not only to apply to human beings, but also to nonhuman animals. This position paper aims to highlight why the interests of nonhuman primates need to be protected by fundamental rights. In Switzerland, for instance, we demand in a political initiative the introduction of a fundamental right to life and a fundamental right to bodily and mental integrity for nonhuman primates at the cantonal level. Emphasising the particular abilities and interests of nonhuman primates, the following chapters show how current national legal provisions and their implementation still subordinate even the most essential of these interests — those of life and integrity — to trivial human interests. Hence, we argue that primates need to be protected by the fundamental rights to life and integrity in order to guarantee that their vital interests are respected. We conclude by showing that potential objections and reservations against the demand for fundamental rights for nonhuman primates prove unfounded.

Primates

Biological systematics and distribution

Primates constitute a particular order within the class of mammals and comprise both human and nonhuman primates.[7] The order of primates can roughly be divided as illustrated in figure 1.

Within the superfamily apes, the two families gibbons and hominids are distinguished. The latter comprises the two species of orangutan, the two species of gorilla, chimpanzees, bonobos and humans.[8] Since the beginning of the 1990s, however, some scientists have proposed to classify humans, chimpanzees and bonobos within a single genus,[9] based on more recent findings in genetic research. Comparing genes in human beings to those in chimpanzees, gorillas, orangutans, and Old World monkeys, as well as in mice, researchers find that humans and chimpanzees are most closely related: they share 99.4% identity at functionally important DNA sites — “those scrutinized and shaped by natural selection.”[10] This genetic evidence provides support for two previously proposed taxonomic changes: firstly, that the family Hominidae should include all extant apes; and secondly, that the genus *Homo* should include the three extant species and two subgenera, *Homo (Homo) sapiens* (humankind), *Homo (Pan) troglodytes* (the common chimpanzee), and *Homo (Pan) paniscus* (the bonobo chimpanzee).[11]

Nonhuman primates living in the wild can be found in Africa, India, Southeast Asia and South America.[12] However, many nonhuman primates are held in captivity, especially in North America and Europe. They are often kept in zoos or in cages by either private companies or public institutions. In Switzerland, for instance, 251 nonhuman primates were used in research in 2014,[13] and Basel Zoo alone held around 130 nonhuman primates in 2015.[14]

Characteristics and abilities

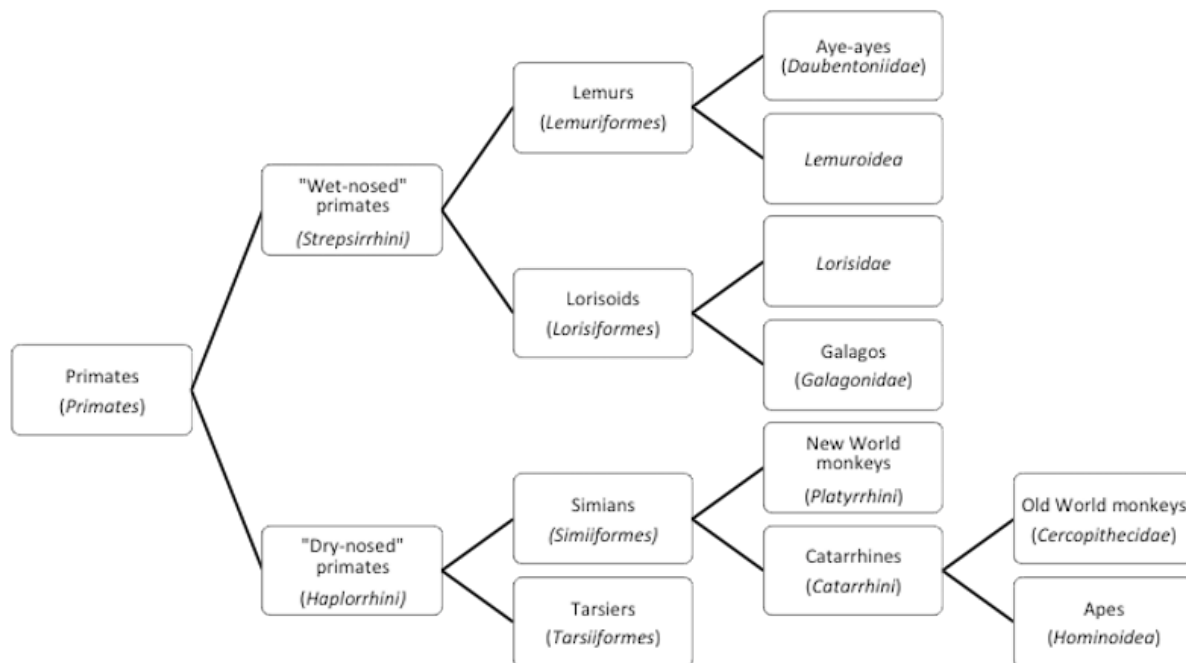
Characteristics that all primates possess — apart from physical properties like specialised nerve endings in hands and feet highly adapted to grasping[15] — include extraordinary behavioural traits and abilities. Among other things, primates show high social intelligence whose emergence and development is ascribed to the requirements of their complex social life.[16] Young primates stay dependent on adults for a relatively long time. This allows them to learn the relevant skills for surviving and living in a complex social group.[17] This includes the ability to feel empathy towards other primates.[18] The findings

of a study on rhesus macaques, for example, show that they prefer to go without food if doing so allows them to save their fellows from electric shocks.[19] Furthermore, primates grieve for deceased relatives and friends.[20]

Just like human primates, nonhuman primates learn socially through a process which is stimulated first by the mother and later by extended groups.[21] By applying the “do-as-I-do” learning technique, primates teach each other how to forage for food, rummage through the woodlands and make and use tools.[22] In particular — but not only — with regard to great apes (*hominids*), such activities are described as cultures and traditions.[23] For example, in West Africa, two groups of chimpanzees have been observed cultivating different traditions: members of the group living west of the river Sassandra-N’Zo crack nuts in a specific way, while members of the group living east of the same river do not crack nuts at all, even though there is a comparable amount of nuts on both sides of the river.[24]

Equally remarkable are the communication skills displayed by nonhuman primates. Through vocalisation and various gestures, they are able to exchange feelings, plans, and ideas, both with their fellows and with individuals of other species. For this purpose, they have distinctive sounds and dialects which are unique to their groups.[25] Certain primates have even learned to communicate using abstract symbols. For example, Kanzi — a bonobo who lives with the Ape Cognition and Conservation Initiative (ACCI) in Iowa, and whose cognitive skills have been studied for decades — is proficient in more than 400 lexigrams (i.e. symbols on a keyboard). This allows him to communicate with humans about objects, places, activities, experiences and future plans.[26] In another case, chimpanzees who had learned a sign language from humans were subsequently able to teach it to younger chimpanzees, the latter successfully learning the language without additional human assistance.[27]

Furthermore, primates are able to put themselves in the position of other individuals. For instance, some primates actually fool others by anticipating their behaviour; that is, they pay attention to what the others see, hear or intend to do, and go on to adapt their own behaviour accordingly.[28] This behaviour is linked to primates’ ability to mentally travel in time: they are able to both remember past events and foresee future ones. Contrary to popular belief, recent studies have shown that primates are able to anticipate future needs (such as hunger or thirst) even though they do not yet feel the particular need at that point in time.[29] Chimpanzee Santino, living in a Swedish zoo, was even observed systematically collecting

Figure 1: *Primate taxonomy*

and hiding stones and other projectiles which he would later throw at groups of visitors passing his compound.[30] Also, primates are able to recognise themselves in the mirror — an ability that researchers consider as evidence of self-awareness.[31]

Finally, there is no doubt nowadays that all primates are sentient beings. This is mainly explained by the fact that they possess a highly developed central nervous system with brains structurally similar to those of humans.[32] Being able to feel physical as well as mental pain, primates may suffer from mental illnesses like depression as well as from serious behavioural disorders induced by negative experiences, like maternal neglect or mistreatment.[33]

This overview shows that nonhuman primates are individuals possessing high social intelligence, self-awareness, a sense of the past and the future, as well as a distinct ability for experiencing pain.

Animal welfare regulations

In many countries worldwide, animal welfare regulations are in force that apply to nonhuman primates. These regu-

lations differ substantially in the extent to which they provide legal protection to nonhuman primates. However, even the most ambitious among them do not provide sufficient legal protection: the core of nonhuman primates' interests in living and integrity remains unprotected down to the present day. This insufficient legal protection has a significant real life impact, since the weighing up of interests stipulated in animal welfare regulations usually disadvantages any nonhuman animals involved. Hence, a serious improvement of the protection of nonhuman primates' interests can only be achieved by granting them fundamental rights which guarantee the protection of their interests in life and integrity.

The following overview presents various international demands for fundamental rights, highlighting the ways in which nonhuman primates' essential interests are not protected to a sufficient degree. In contrast to human primates, the core content of these interests is not legally protected, and in practice nonhuman primates' interests are subordinated to even trivial human interests. Therefore, nonhuman primates need the degree of legal protection provided by fundamental rights which exceed existing animal welfare regulations.

International demands for fundamental rights and political advances

The particular characteristics and abilities of nonhuman primates has prompted both political demands for legal changes as well as legal proceedings in different countries worldwide. Recently, various political advances have aimed at improving the legal protection of nonhuman primates. In addition, there have been several lawsuits that tried to set precedents for the rights of nonhuman primates. These approaches express the growing awareness of the — at times striking — drawbacks regarding nonhuman primates' legal protection.

In 1975, U.S. lawyer Stephen Burr proposed in a peer-reviewed article “[...] an act establishing standards of care owed to certain types of animals”.[34] Distinguishing between three different classes of animals, the standards demanded in his draft bill include the following protection: animals in class A, i.e. the most cognitively advanced ones, including great apes, should have the right to life.

In 1980, a campaign to grant great apes the fundamental rights to life and integrity started in **New Zealand**. [35] However, only after the **Great Ape Project (GAP)** was founded in 1993 by philosophers Paola Cavalieri and Peter Singer [36] and became an international movement that tries to achieve fundamental rights for great apes by political means, did the New Zealand campaign gain momentum. In an effort to include nonhuman great apes in a “community of equals” with human beings, GAP campaigns for granting chimpanzees, gorillas, orangutans and bonobos the fundamental rights to life, freedom and bodily and mental integrity. [37]

The Great Ape Project New Zealand (GAPENZ) targeted the country's animal welfare legislation, which was then under review. Enacted in 1999, the new Animal Welfare Act bans harmful experimentation on nonhuman hominids, i.e. any nonhuman member of the family Hominidae, be it a gorilla, chimpanzee, bonobo, or orangutan. Hence, the Act does not accommodate the demands for fundamental rights articulated by GAPENZ, limiting its immediate impact. Still, the new law can be considered a small but important step in “the legal dismantling of speciesism within the hominid family”.[38] The Act recognises those interests of nonhuman hominids which cannot be easily trumped by human interests. This is perceived as the Act's most significant asset as it arguably constitutes a quasi-right, i.e. at least a weak right. Also, it is argued that the refusal to include specific rights in the Animal Welfare Act should not be considered a rejection of the hominid rights concept as

such, but rather that the idea should be put to wider public debate. [39]

In 2015, the Green Party of Aotearoa New Zealand proposed amendments to the Animal Welfare Act of 1999, which would prohibit the killing of nonhuman hominids and provide a penalty for the offence. [40] The Green Party perceives the need for such a right to life for non-human hominids as a crucial follow-up in the Animal Welfare Act, since the very stipulation that prohibits experimentation on nonhuman hominids constitutes a danger for those individuals that can no longer be used for that purpose. They face a greater risk of being killed and are more vulnerable to other kinds of abuse and exploitation, the Green Party argues. In general, a prohibition on killing would protect all nonhuman hominids in captivity without commercial value. [41] However, the Animal Welfare Amendment Bill failed. [42]

In **Switzerland**, the insufficient legal protection of nonhuman primates has been questioned several times in the form of parliamentary measures. In 2006, a parliamentary initiative demanding a “Ban on medium and heavily strenuous animal experiments with primates” [43] was submitted, based on the report “Research on primates — an ethical assessment” by the Swiss Federal Commission on Animal Experiments and the Swiss Federal Ethics Committee on Non-Human Biotechnology. In addition, the interpellation “Marmoset experiment at ETHZ” in 2006 as well as the postulate “Experiments on primates” [45] in 2007 also aimed at improving the legal protection of nonhuman primates. More recently, a parliamentary measure demanding a “Ban on straining animal experiments with primates” [46] was submitted in 2015 (with no outcome yet).

In **Austria**, the animal rights group Association Against Animal Factories started legal proceedings on behalf of chimpanzee Matthew (affectionately called “Hiasl”) in 2007. The group's goal was to convince the judge to declare Matthew a person and to appoint a legal guardian that would represent Matthew in court. Primatologist Volker Sommer and other experts supported the case scientifically. The group argued that Austrian law recognises all members of the genus “homo” as persons [47] — and because chimpanzees share 99.4% of human genes, as pointed out before, [48] they belong to this genus. Besides, the biological definition of “person” refers to the possession of a “theory of mind” which chimpanzees do have. Being accepted as a person was a requirement for Matthew to enforce his interests and to start legal proceedings in which he could claim for damages against those respon-

sible for his abduction in 1981 from Sierra Leone, when he was ten months old.[49] Such compensation was needed to secure his future, as the Vienna animal shelter where Matthew lived began to encounter financial difficulties in 2006.[50] Appealing to the highest possible court, none of the courts accepted the case, stating that the applicant had no legal standing. Because no Austrian court had addressed the key issue of personhood, instead avoiding it by refusing the case for technical reasons, the group decided to file a lawsuit with the European Court of Human Rights arguing that Matthew had been denied a fair trial.[51] The European Court of Human Rights then rejected the case as well, stating once more that the applicant had no legal standing.[52]

The goal of this lawsuit was not to win fundamental rights for Matthew (let alone for great apes or nonhuman primates more generally). The goal was merely to ensure that Matthew be recognised as a person instead of being regarded as a thing — which would neither have required any change of Austrian civil law nor have constituted a political decision.[53]

In **Spain**, the Parliament's environmental committee approved in 2008 a resolution which aimed at implementing the demands of the Great Ape Project (GAP). However, nothing followed from this approval.[54] Thus, so far, fundamental rights for great apes do not exist in Spain.

In **Germany**, the Giordano Bruno Foundation submitted in 2014 the petition "Fundamental Rights for Great Apes" to the Bundestag. The petition — similar to the resolution in the Spanish parliament — demands the amendment of Article 20a of the German Fundamental Law by the following paragraph: "The right of great apes to personal freedom, to life and bodily integrity is protected." Well-known primatologists supported the petition, and the Foundation also perceived approval for the demands amongst the majority of the German population. However, the announcement of the petition was rejected by the German parliament's petition committee in the same year, arguing the petition did not have any chance of success.[55]

In the **United States** — in contrast to Matthew's case in Austria — a Manhattan Supreme Court justice implicitly recognised in 2015 that chimpanzees could be considered legal persons and do have fundamental rights to integrity and freedom. The Nonhuman Rights Project (NhRP) had petitioned the Court for a writ of *habeas corpus*, demanding to investigate the lawfulness of the chimpanzees' captivity.[56]

The **Nonhuman Rights Project (NhRP)** was founded in 2007 by attorney Steven M. Wise. The group's goal is to

change the current law that separates humans from non-humans. More precisely, they try to achieve legal personhood for (initially) some of the most cognitively advanced animals, e.g. chimpanzees, elephants, dolphins, and whales. These nonhuman animals should be recognised as persons who have, *inter alia*, fundamental rights to bodily integrity and to freedom; they should not be perceived any longer as things which do not even have the capacity to possess any legal rights. In order to gain such legal rights for nonhuman animals, the organisation has undertaken a long-term strategic litigation campaign. The NhRP filed its first lawsuits in 2013 on behalf of captive chimpanzees and plans to bring in further actions.[57]

Finally, in 2015, media announced that orangutan Sandra, living in the Buenos Aires Zoo, had been granted unprecedented legal rights in **Argentina**.^[58] More precisely, an Argentine appellate court was reported to have issued a writ of *habeas corpus* that had been petitioned by AFADA, an Argentine animal rights organisation, on behalf of Sandra. On closer inspection, however, it turned out that "the court had neither issued a writ of *habeas corpus*, nor granted Sandra personhood for any purpose, nor ordered her to be moved to a sanctuary."^[59]

Similarly, but referring to animal rights more broadly, Germany was reported by the media to have guaranteed rights to animals back in 2002 in an amendment to its Constitution (making it the first European Union member to do so). The altered clause, obliging the state to protect animals, was presented as a milestone since "the federal constitutional court will have to weigh animals' rights against other rights, like those to conduct research".^[60] Again, on closer inspection, this legal change was not about animal rights that would effectively protect animals' interests (in bodily integrity, e.g.) but merely about animal welfare.^[61]

Considering the progress in animal welfare regulations worldwide may at least provide some cause for optimism regarding animal rights and, more specifically, fundamental rights for nonhuman primates. In **Switzerland**, for example, there have been several legal reforms aimed at improving the status and protection of animals since the beginning of the 1990s: in 1993, the "dignity of the creature" was added to the constitution. In 2003, a change to the Civil Code was brought into effect, stating that animals are in principle not objects. In 2008, the "dignity of animals" was stipulated in the completely revised Animal Protection Act. Finally, in 2010, the internationally followed referendum on the countrywide introduction of "Animal Attorneys" took place (the initiative failed, unfortunately).^[62]

In **Canada**, the General Assembly of the Province of

Quebec adopted a modification of the Quebec Civil Code changing the legal status of animals from property to sentient beings in 2015. The legislation states that "animals are not things. They are sentient beings and have biological needs." [63] Recognising animals as sentient beings instead of perceiving them as mere property may be an important step towards granting them legal personhood. Equally, recognising animals' biological needs may be considered a part of the path to recognising their essential interests in living and in bodily and mental integrity.

In this regard, broader political advances worldwide have aimed at improving the legal protection of animals in general, including nonhuman primates. They pertained to animal experiments, [64] hunting, [65] and zoo animals. [66]

Alongside these national measures, calls for fundamental rights for nonhuman animals are growing ever louder at an international level. For example, the *Universal Charter of the Rights of Other Species* as well as the *Declaration of Animal Rights* demand that nonhuman animals be awarded the right to life, the right to bodily and mental integrity, the right to freedom of movement and other fundamental rights. [67]

This overview makes clear that our call for fundamental rights to life and bodily and mental integrity for nonhuman primates is part of a significant global movement.

The measures mentioned here show human concern in many countries worldwide over the insufficient protection of nonhuman primates. However, in all cases the progress made in the area of animal protection fails to take sufficient account of the outstanding abilities and interests of primates, since none of the present measures guarantee the fundamental rights of nonhuman primates to life and bodily and mental integrity. But these are precisely the rights that are indispensable for nonhuman primates, as we lay out in the next chapter, "Fundamental rights for primates".

Fundamental rights for primates

Why fundamental rights?

Current animal protection regulations worldwide and their application to the protection of the fundamental interests of nonhuman primates to life and integrity are insufficient, since under current law these central interests of nonhuman primates are not protected anywhere, and in practice their interests are subordinated to even trivial human ones. The interests of nonhuman primates need

special legal protection. This protection can only be guaranteed through fundamental rights. Fundamental rights have several central advantages over animal protection laws:

Fundamental rights possess a core area of protection that must not be restricted under any circumstances. So, whilst in the usual area of protection a weighing up of conflicting interests is possible (see the subchapter "Restrictions to fundamental rights"), the interests of the core content must never be traded off. This core content of fundamental rights guarantees that the most central aspects of an interest so protected can never be sacrificed to opposing interests, however great the latter may be. In comparison to simple bans, such as bans on cruelty to animals, fundamental rights also have the advantage of being more general. This creates room for dynamic future interpretations, which can further the protection provided by the right. To illustrate: the fundamental right to life guaranteed to humans is not simply the counterpart of the criminal prohibition on murder. For unlike this prohibition, the fundamental right to life has come to be interpreted so as to give the state a positive responsibility to protect people in cases where a killing, a disappearance or a risk to life is threatened. [68] In other words, fundamental rights are not limited to negative banning, but also provide a positive steer in the direction of protecting particular interests.

Moreover, fundamental rights have a social function which is not achieved by simple bans. Things are also "protected" through bans, but only those individuals that possess characteristics and interests which are particularly worthy of protection have fundamental rights. Whoever falls under the umbrella of a fundamental right enjoys a higher status than things or beings who do not have those rights. Bearing fundamental rights also has a social signalling value: by recognising nonhuman primates as bearers of fundamental rights, it is impressed upon other members of society that the interests of primates are equally valuable as the comparable interests of other bearers of such rights. This means that the interests of all individuals who possess the fundamental rights to life of integrity should be protected equally in relation to these interests. [69] In this way, bearers of fundamental rights will be measured by the same yardstick, or to put it another way, they will find themselves on an equal footing as far as their interests protected by fundamental rights are concerned. This guarantees that the fundamental interests of nonhuman primates will be taken seriously and will not be subordinated to trivial human interests. This function of fundamental rights also explains why histori-

cally the achievement of fundamental rights was of central importance for groups that were not previously taken seriously by the law. The struggle for fundamental rights was therefore important for slaves, black people, women, disabled people and other groups, not only because it brought with it the prohibition of other injustices, but because it admitted them into the circle of those bearing fundamental rights.

Since fundamental rights bring with them a strong legal and social protection, they are often described as “trump cards”.[70] They protect the interests of their bearers especially well and even guarantee the core content of such interests absolutely. An efficient protection of the interests of nonhuman primates to life and integrity therefore requires a fundamental right to life and a fundamental right to integrity.

Can only humans have fundamental rights?

Is there a reason why only humans should have fundamental rights? As was shown above, the species *Homo sapiens* does not present a special order of mammal. In fact, humans comprise only one of over 300 species of primate. Does this mean that there is no difference between human and nonhuman primates? This question of “anthropological difference” has been heavily debated for some time.

Arguments which are often used as grounds for such a difference are rationality, conceptual thinking and capacity for abstraction, the ability to put oneself in the shoes of another, the possession of a soul, humour, anticipation of future events or conditions, aesthetic taste, use of tools, construction of tools, technology, free will, the ability to follow rules, personality and culture.[71] However, none of these characteristics and abilities actually present qualities possessed exclusively by *all* humans and by *no* nonhuman primates.[72] Expressive characteristics and abilities, such as an aesthetic taste or a complex language, may indeed be confined to humans, when narrowly defined. However, they are not characteristics and abilities that all humans have to the same extent. Young children, people with severe learning disabilities and people with advanced dementia do not have these characteristics and abilities. A few expressive markers, such as the use of tools or consciousness, arguably belong to all humans, but are also known amongst nonhuman primates and other animals.

Other than membership in the species *Homo sapiens*, which is common to all humans, there is no characteristic or ability that could form the basis of an anthropological difference between humans and nonhuman primates. But falling back upon species membership as a basis for

the conferment of fundamental rights violates the moral principle of species neutrality, whereby equally ranked interests must be considered independently from species membership. In principle, rights should be made as independent from membership to a particular species as they are from membership of a particular gender, ethnicity or age group.

Moreover, the debate over anthropological difference does not only break down because there is no morally significant difference between human and nonhuman primates. Even if there were such a difference, the discussion is on a hiding to nothing: a characteristic that all humans possess exclusively would at the most justify a fundamental right protecting that particular characteristic. Fundamental characteristics and interests, like those for life and integrity, belong to nonhuman primates, too.

Justifications

What reasons are there for an individual to have fundamental rights? Fundamental rights, as already shown, serve to protect the particular abilities and interests possessed by an individual. Below, we set out which abilities and interests are relevant for nonhuman and human primates as a basis for their fundamental rights to integrity and to life.

The fundamental right to bodily and mental integrity

The fundamental right to bodily and mental integrity serves in the first place to protect its bearers from excessive physical and mental pain.[73] **Physical** pain means an “unpleasant sensory experience, which is associated with current or potential material damage or is described in terms of such damage.”[74] Some criteria for the definition of pain can be brought into play: the possession of a central nervous system, an avoidance mechanism, protective motor reactions, such as reduced usage of the affected part of the body, physiological changes, compromises between stimulus avoidance and other motives, opioid receptors and indications of reduced sensitivity to pain with the use of local anaesthetics or analgesics, as well as high cognitive ability and consciousness.[75] Like human primates, nonhuman primates also have a central nervous system, learn avoidance behaviour, make compromises between stimulus avoidance and other motives (e.g. acquiring food), have opioid receptors, show reduced sensitivity to pain under local anaesthetic or analgesic and have high cognitive abilities and consciousness. Hence, just like human ones, nonhuman primates fulfill all the cri-

teria for experiencing physical pain.[76] It follows from this that nonhuman primates also have an interest in remaining physically unharmed.

Freedom from **mental** pain means protection from psychological suffering that reaches a certain minimal intensity.[77] Not only human primates, but also nonhuman primates can be mentally harmed. So the animal protection law also specifies that the welfare of nonhuman animals is only ensured where “harm and fear are avoided”. From the perspective of evolutionary biology, there is no indication that nonhuman primates are fundamentally any different from humans in this regard. As set out above, nonhuman primates are highly intelligent, which makes them particularly susceptible to psychological traumas. Research on nonhuman primates has shown that they suffer from serious mental illnesses such as depression and other mental disorders because of negative experiences like social separation, social withdrawal, maternal neglect or abuse.[78] Since nonhuman primates can suffer from such mental disturbances, they have an interest in remaining mentally unharmed.

The fundamental right to life

The death of an individual is often associated with pain. Because nonhuman primates are sentient beings who experience pain, they have a strong interest not to die. Even if, however, their death could be brought to pass painlessly, this would not mean that nonhuman primates had no interest in living. Nonhuman primates have the ability to look back into the past and to anticipate the future. In other words, they do not live simply in the present, but lead a transtemporal life. Even a painless killing breaks off this life and violates their preference to live on. Moreover, abilities like the experience of pain serve to avoid dangerous behaviour and through this to ensure one's own survival, at least temporarily. For these reasons, nonhuman primates have a fundamental interest in living. Finally, life is particularly worthy of protection, because it forms the logical precondition of all other fundamental rights, like that to integrity.

Restrictions to fundamental rights

As with those of humans, it is also the case for the proposed fundamental rights of nonhuman primates that they are subject to certain recognised restrictions. A restriction in fundamental rights is possible if it does not violate the core content, if a legal basis exists, if it is justified by a public interest or the protection of the fundamental

rights of third parties, and if it is proportionate.

With human primates, as with nonhuman ones, the fundamental right to life means a prohibition on arbitrary killing. What counts as “arbitrary” should be measured by the same standard as is used for human primates. A killing for the simple purpose of a medical trial or because of a lack of enclosures would not constitute sufficient grounds and would violate the fundamental right to life. On the other hand, there would be no violation of this fundamental right if a nonhuman primate were killed to prevent an otherwise unavoidable serious endangering of another good (for example, the life of a child). Such a restriction of a fundamental right is therefore justified if the four criteria mentioned above for a legitimate restriction are met. The same is true for the fundamental right to bodily and mental integrity. For humans, too, this right does not guarantee an absolute protection from physical or mental restrictions.

Nevertheless, it is central that fundamental rights — despite leaving room for potential restrictions — represent trump cards that bring their bearers to the same level as other bearers of fundamental rights in cases of weighing up interests against one another. Through this, their interests become considerably more protected than the interests of individuals who possess no fundamental rights, and the core content is absolutely guaranteed.

Objections and responses

A series of objections could be raised against the demand for fundamental rights to life and bodily and mental integrity for nonhuman primates, which will be analysed and responded to below.

Is zoo-keeping justified?

Objection: This demand would lead to the closure of all zoos!

Response: The demand for fundamental rights to life and bodily and mental integrity for nonhuman primates does not mean that no nonhuman primates can be held in zoos any more. Zoos must simply ensure that the fundamental rights demanded for nonhuman primates are observed. In practice, this means that in relation to the fundamental right to life, nonhuman primates must not be killed for arbitrary reasons. If this cannot be guaranteed, then zoos must take suitable action in order not to violate this fundamental right. In addition, zoos must guarantee the fundamental right of nonhuman primates to bodily and mental integrity. In general, this would be met if zoos themselves

did not inflict any physical and psychological harm, and also took positive measures to avoid such damage.

Is medical research rendered impossible?

Objection: This demand renders biomedical research impossible!

Response: Our demand is not directed against biomedical research. It merely requires that research projects do not violate the fundamental rights of nonhuman primates to life and integrity. For example, further research on nonhuman primates would be conceivable if it did not overstep the degree of seriousness 0 — that is, trials that place no burden upon animals and in which general results are not significantly restricted.

“Human rights” for primates?

Objection: This demand gives primates human rights!

Response: The claim that the proposals made here give “human rights” to nonhuman primates is false. What is demanded is simply a fundamental right to life and a fundamental right to bodily and mental integrity for nonhuman primates. These fundamental rights certainly do mirror the relevant fundamental rights for humans, as the foundations for both sets of rights are the same. However, they cannot be equated with human rights, since the category of “human rights” contains more than the two fundamental rights proposed here by us. For instance, human rights also encompass the rights to freedom of expression and to religious freedom. As nonhuman primates do not possess the characteristics that ground these fundamental rights, they also have no interest in these rights and so no need for protection in relation to these rights. Our demand therefore does not lead to nonhuman primates being conferred with all of the fundamental rights held by humans.

Impracticability?

Objection: You can’t give primates fundamental rights, as this would be completely impracticable!

Response: That nonhuman primates cannot exercise their fundamental rights themselves does not mean that they shouldn’t possess any. Many other human primates are either temporarily (as in the case of small children or coma patients) or permanently (as in the case of persons with severe physical disabilities or advanced dementia) incapable of exercising their fundamental rights themselves. In many countries state institutions ensure that the fundamental rights of these people are observed, too. The securing of the fundamental rights of nonhuman primates

could be guaranteed in a similar way. The appointment of an ombudswoman or an independent primate advisor would be conceivable, to secure the life and integrity of nonhuman primates.

A slippery slope?

Objection: If we start giving nonhuman primates fundamental rights, then soon dogs, cats, cows, rats, and even insects and plants will have fundamental rights too!

Response: Our current proposal restricts itself to nonhuman primates, which, as demonstrated above, possess characteristics and interests which justify their entitlement to these two fundamental rights. This does not exclude the possibility that other animals presenting the relevant characteristics might also come to enjoy the same (or other) fundamental rights. These proposals concern only nonhuman primates because of the particular urgency of the recent failures to recognise them. However, this doesn’t lead to a “slippery slope”, as first of all it would need to be demonstrated which other individuals have the necessary characteristics and interests. Also, fundamental rights are subject to certain restrictions in any case. Thus, even if further individuals obtained fundamental rights, it does not follow that this would prohibit necessary compromises.

No rights without responsibilities?

Objection: Primates can’t have any rights, because they can’t fulfil any responsibilities!

Response: Bearers of fundamental rights don’t have to be in a position to exercise responsibilities themselves. Small children and people with severe developmental disabilities or advanced dementia are not in this position, but are still protected by fundamental rights. This would be no different for nonhuman primates.

An undermining of human rights?

Objection: If we give primates fundamental rights, we undermine human rights!

Response: Quite the opposite: our proposal strengthens human rights. Current concepts of human rights are poorly underpinned theoretically, as they either support rights on the basis of membership of the human species (a circular argument) or fall back upon putatively specific human characteristics like autonomy and rationality. The latter line of argument places the fundamental rights of people with learning disabilities, small children and people with advanced dementia on very shaky ground, as many

of these people are not in fact autonomous or rational to varying degrees. Supporting arguments are often used to secure their rights, such as the argument that such people belong to a species whose normal members are autonomous and rational. But these supporting arguments are not theoretically persuasive: if for example the rights of a “normal” person (if one could even agree what “normal” means) were definitive of the rights of a small child, then every small child would receive the right to vote and a driving license, and be held criminally responsible to the same degree as an adult. That such arguments are not plausible means that the related human rights concepts fail to justify the fundamental rights of those people who have most need of them. In contrast to this, our proposal would form a secure foundation for the fundamental rights of humans who are marginalised by conventional formulations of human rights: small children, severely disabled people and those with dementia are also capable of suffering and have an interest in living. For precisely these reasons we must protect their fundamental rights to life and integrity (as well as all other applicable rights).

Anthropocentrism?

Objection: The demand for fundamental rights for nonhuman primates is anthropocentric: it only gives rights to those animals which are most like humans!

Response: Our demand relates to a particular order of species (primates) on purely practical grounds. The restriction to nonhuman primates is not based on moral grounds. Other animals need fundamental rights too, if they have the characteristics and interests necessary to these rights. From a historical point of view, this approach is not unprecedented. In the history of fundamental rights, the circle of those bearing rights has always expanded

gradually.

Conclusion

Nonhuman primates are highly intelligent, social beings, who are capable of suffering and have the ability to remember past experiences and to plan for future events. They have a fundamental interest in living and in bodily and mental integrity. The relevant national and international legal regulations hardly take these interests into account, since the animal protection laws themselves allow infringements upon the central core of life and integrity, and in practice the fundamental interests of primates are subordinated to even trivial human interests. For their interests to be taken seriously, nonhuman primates therefore require legal protection which goes further than animal protection regulations. Fundamental rights offer such protection. Fundamental rights cause the interests of their bearers to be recognised as equally valuable, and so their interests are better protected than those of individuals who have no fundamental rights. Fundamental rights are therefore often described as trump cards. Moreover, through fundamental rights the core of the protected interests is absolutely guaranteed. Possible objections and considerations that could be raised against this demand for fundamental rights for nonhuman primates to life and integrity show themselves to be unfounded.

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Sentience Politics is an anti-speciesist political think-tank. We advocate a society which grants moral consideration to all sentient beings, regardless of their species membership. Our activities include political initiatives and the composition of scientific position papers, in order to encourage rational discussion on important issues.

Our philosophy is based on effective altruism: How can we use our limited resources (time and money) to reduce as much suffering as possible? Sentience Politics uses rationality and empirical science in order to identify and implement the most effective strategies. We also use this approach in order to select and prioritize the causes that we work on.

Sentience Politics was founded as a project of the Effective Altruism Foundation (EAF) in 2013. EAF is an independent think tank and project overseer founded at the intersection of science and ethics by a team of young, interdisciplinary individuals. It is a part of the fast-growing Effective Altruism movement, and aims to improve the lives of as many sentient beings as extensively as possible. In order to achieve this goal with limited resources, EAF uses rational thinking and evidence-based approaches.

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