

# Governments must provide fundamental rights to certain animals: scientist

October 7 2019, by Floris Van Den Driesche

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Legal proceedings conducted on behalf of apes and animals who are starved for the purpose of an ecological project. What position do animals actually have in the rule of law? And what changes need to be made? Ph.D. candidate Janneke Vink defends her dissertation on 10 October.

The position of [animals](#) in law is a truly fascinating topic, but one that is only considered in the margin in legal studies according to Vink. "When I was a student, it was briefly mentioned in Property Law that animals are items of property, just like tables and houses. Now, according to the

Civil Code they are no longer items of property, but what that means exactly remains unclear. It is constantly claimed that we have [human rights](#) because we are human. But why are people the only party that has legal personality? When you think about it, animals look more like humans than tables and houses. And truth be told, people are actually animals."

It is often claimed that the way we humans treat animals is the greatest injustice of the modern age, Vink says. "That is something that should motivate all lawyers: the law does not exist to bring about injustice. If there is any truth in that claim, then this is a huge issue in law, which after all facilitates the way we treat animals." Because of her curiosity about the subject, Vink decided to conduct research into the position of animals in the democratic state under the rule of law. There is currently much [public interest](#) surrounding this issue. "In the [nature reserve](#) Oostvaardersplassen animals are starving in full glare of the public because they are part of an ecological project, and animal activists are breaking the law. There are also continuous examples of abuse in livestock farming and legal action is being taken on behalf of apes."

This latter example concerns the number of legal cases in the United States in which animal rights organisations are trying to persuade judges to grant "claimant" chimpanzees the right to physical integrity.

## **Individuals with interests**

In brief, Vink's research deals with the question of whether governments have a responsibility towards animals and, if so, how this responsibility could have an impact on government institutions. The dissertation starts with a democratic theory in line with the principles that currently shape the foundation of the democratic state under the rule of law.

"To that, I add the scientific fact that animals are individuals with certain

interests, something that for a long time was ignored in political and legal philosophy. From this democratic theory of an "interspecies" it then follows that governments of democratic states under the rule of law should take the interests of "sentient" animals on their territory seriously."

## **What are sentient animals?**

"Sentience is explained as being the property of experiencing consciousness and feeling," Vink continues. "But if you ask a philosopher what 'consciousness' is exactly, you end up with more questions than answers. The point is that an individual (human or some other species) can experience a sense of wellbeing. This explains why—ethically speaking—you could be allowed to kick a table or tree, but not a pig. If we want to have a just legal system, then this distinction must be visible in the law: a table or tree has no benefit from constitutional protection against torture; a sentient animal (so also humans) does. We humans like to think we are different from other animals, but when it comes to aspects in the law which are of fundamental importance, then it is precisely here that we display great similarities. It is now time to acknowledge this in our legal system as well. But which species are sentient is a question that goes far beyond the limits of political and legal philosophy, and a question to which natural scientists are fortunately continually formulating answers."

Vink puts forward, on the basis of this "interspecies" theory, a number of criteria which a democratic state under the rule of law ought to meet in relation to the position of animals. "If we compare the current democratic state under the rule of law to this standard, it appears that on a number of points we come up short. Animals have absolutely no guarantee that their interests are considered by government authorities and their protection in the law is ambiguous and uncertain. For the enforcement of animal welfare standards, animals are completely

dependent on many uncertain factors: finance, kind human nature etc."

In a democratic state under the rule of law you would expect that the most fundamental interests of individuals are protected, but the fundamental interests of non-human animals are permanently under threat. The researcher considers a number of political and legal options to improve this situation, such as granting a permanent seat in parliament to animal rights representatives, setting up an extra-parliamentary committee for animal affairs, but also including animal welfare in the Constitution and granting animals fundamental rights. Vink believes that these legal options are preferable

## **Animal welfare as a national objective**

In her dissertation Vink comes to the following conclusions: governments of democratic states under the rule of law have a responsibility to take account of the interests of sentient animals on their territory. If they do not do so, they undermine the political principles that form the foundation of the democratic state under the rule of law and thus also in the long term their own credibility. The best way in which the position of animals in the long term could be implemented is by certain fundamental rights for certain animals. In the short term, the introduction of animal rights however is undesirable, and including animal welfare as a national objective in the Constitution is a more obvious step. She points towards examples in countries that already have such provisions in their Constitutions, such as Germany and Switzerland.

Vink's research is receiving much media attention, both at home and abroad. She recently spoke in a parliamentary committee (in Dutch) on the new legislative proposal for a ban on ritual slaughter without stunning. "And I also recently provided an opinion to the Belgian parliament on a legislative proposal to include animal welfare in the Constitution."

Provided by Leiden University

Citation: Governments must provide fundamental rights to certain animals: scientist (2019, October 7) retrieved 23 June 2024 from <https://phys.org/news/2019-10-fundamental-rights-animals-scientist.html>

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