

**Sexuality with Animals (Zoophilia) –
an Unrecognized Problem in Animal Welfare Legislation**

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Abstract

Sexuality with animals (zoophilia) has always been an element of human culture, and it still is today, even far more widespread than generally thought. While zoophilia was severely penalized on ethical and religious grounds for centuries, the age of enlightenment led to more rational views on this topic and consequently milder punishment until finally the sanctions were lifted in most countries.

Apart from presenting a summary about the changes in legislation dealing with zoophilia in the course of time, this article tries to provide an outline of today's legal position on zoophilia in the world. A closer look at the existing laws points out the loopholes with the respective criminal codes and animal welfare legislations regarding the punishment of zoophilic actions. Taking into account modern ethical animal welfare concepts, the viewpoint of the "dignity of the animal" as an important factor in the revision of existing laws, as well as the need for revised legislations as a result from this new idea are discussed.

Keywords: *zoophilia, animal welfare legislation, dignity of the animal, animal abuse*

Introduction

Sodomy, Zoophilia, Bestiality and other Terms

Sexual contacts between human beings and animals have a long history. In the course of this history not only the general perception, but also the naming of such deeds has changed. In the German colloquial language, sexuality between human beings and animals is generally called "sodomy". This term stems from the biblical city of Sodom on the dead sea, the population of which was infamous for their excessive and depraved lifestyle – namely for their distinct tendency towards various forms of fornication. Until recently, the term sodomy was not used exclusively to distinguish sexual intercourse with animals, but also for any "unnatural fornication", which means any sexual practice not serving the purpose in the procreation of children. In many cultures today, this is still so. According to the Catholic Church, other sexual acts such as coitus with the devil or any non-Christian or sometimes even an offence of virtue in marriage (e.g. coitus in "unnatural positions", masturbation or "pollution", which means the very first ejaculation) were called Sodomy. Moreover, the term "Sodomy" is capable of being misunderstood and not suited for the sole description of intimacy with animals, because in many languages (such as in English and French) it stands primarily or even exclusively for same sex practices between human beings.

Occasionally, sexuality with animals is paraphrased in terms such as "fornication with animals" or "bestiality". Today, the scientifically correct term of "*zoophilia*" should be used (Beetz 166; Miletski 5 and Rosenbauer 3). Although the literal translation simply means "affection" or "love" towards animals (Hunold 17; Hoffmann 606; see also Rosenbauer 4), it expressly denotes not a "normal" love for animals in terms of a mere emotional – platonic – devotion but rather a strong, erotic relationship towards an animal, in such a manner, that it leads to its inclusion in sexually motivated and targeted acts, with the direct intention of sexually arousing one-self, the animal or another party. Against this background one can distinguish between five sexual acts between human beings and animals (Massen 57): Genital acts

(anal- and vaginal intercourse, insertion of fingers, hands, arms or foreign objects), oral-genital acts (fellatio, cunnilingus), masturbation, frotteurism (rubbing of the genitalia or the entire body on the animal) and voyeurism (observation by third parties during sexual interactions with animals). Whereas not sexually motivated acts, such as the petting or hugging of animals, riding, and any conscious or unconscious fantasies of zoophilic acts (Beetz 171; Friday 150) or the mere observation of intercourse between animals do not fall into the terminology of "zoophilia", in the above mentioned sense (Kinsey, woman 384; Muth 18).

Zoophilia is a phenomenon, which is ultimately as complex as sexuality itself and comprises just as many varieties. Therefore, the boundaries between the respective sub-groups (such as zoerasty, zoostuprum, zoofetishism etc.) can be blurred. For the sake of clarity, we shall abstain from further differentiations, with one exception, that being to distinguish between violent and non-violent zoophilia. As not all animals are compliant according to the humans' wishes and let them perform sexual intercourse, it is frequently effectuated by using physical enforcement. If the sexual tension does not find immediate release, it occasionally leads to acts of destruction, for which mechanical instruments such as pitchforks, broomsticks or tapered sticks are used at times (Berg 81; Merki 178; Muth 36; Stettner; von Hentig 72). The results of this abuse are often grave injuries, even up to the death of the animal (Weidner 44). If it is sexually stimulating or even satisfactory for a committer to inflict pain to an animal, to mutilate or even kill it, it is called "zoosadism" (Weidner 4), of which again several trends are known (Hentig 69; Masters 121). For example, there is the type called "cattle stabber". This is a person who kills cows, horses, sheep and goats in the context of his sexual deeds (Rosenbauer 12). Other offenders strangle chickens, geese and ducks during the sexual abuse or cut their throats, in order to stimulate themselves by watching the dying animal twitch (Dekkers 96; Hoffmann 610). In many places, specialized prostitutes allow their clients to involve animals, which they brought along themselves or which are made available in intimate acts, respectively, to torture, and to kill them (Hunold 22 and 40; Rosenbauer 12). A fur-

ther form of zoosadism consists of setting sexually excited animals on girls or women (Hunold 40; Masters 24). However, it remains to be said, that not every slaying of an animal after a zoophilic act necessarily springs from a sadistic drive. Some animals die as a result of unwanted "accidents" or are killed in the aftermath of the deed by the doer, arguably, because of their disgust about their own deeds (Muth 36).

Zoophilia in the Course of Time

Sexual interactions between human beings and animals have constituted an integral part of almost all cultures and religions and have been considered a primal phenomenon of human society (Miletski 8; Muth 41). According to numerous traditions, zoophilia appears to have played a significant role also with ancient peoples (Masters 20 and 83). Thus many totem cults trace back to the concept of an animal ancestor (Rosenbauer 19) and the sexual union between a human and animal, resulting in the procreation of mixed creatures (Dekkers 101; Hentig 7; Guggenbühl 37; Massen 77).

Scope

Sexuality with animals has always been an element of human culture – and it still is today, even if it is hardly noticed by the public. While the description and discussion of almost all other sexual practices in print media, film and TV are a part of everyday life zoophilia remains a social taboo (Massen 11). The media reports are very scarce (one exception, e.g. Illi, 18) and even Animal Welfare Organizations seem to address zoophilia only reluctantly.

Reliable research or statistics about the frequency of zoophilic contacts in the total population are lacking. Despite the fact that sex with animals isn't illegal per se in many countries, an affected person will hardly admit publicly and voluntarily to their respective affinity. As neither surveys nor criminal procedures allow drawing reliable conclusions about

the actual extent, the effective magnitude of zoophilia can only be guessed. Aggravating circumstances are that many, if not most, cases remain undiscovered.

For lack of current numbers, today's specialized literature mostly falls back on the data of the so-called Kinsey-Report, with which the assumption that sexual acts with animals were a rare phenomenon in our society was already impressively disproved in the middle of the last century. The study conducted by Zoologist and social researcher Alfred C. Kinsey and his associates, between 1938 and 1947, was based on 20'000 interviews about the sexual behavior of North-American men and women. This study brought to light that eight per cent of the male and three and a half percent of the female total population of the USA, respectively, had had at least one zoophilic contact. Among the rural population, which had direct access to animals, 17 per cent of the men surveyed, gave accounts of intimate experience with animals leading to an orgasm (Kinsey, man 621). In some communities, the quotas of up to 65 per cent were determined (Kinsey, man 622). In the urban population, however, the percentage was a much lower one: up to four per cent depending on the level of education – possibly due to lack of respective options – whereas zoophilic contacts took place in particular during temporary sojourns to the country (Kinsey, man 621). Although the total percentage already comes up to the immense figure of approximately eight million US-citizens, it can only be a mere fraction of the data because one has to take into account that many people concealed such experiences because of it being outlawed under pain of punishment at the time of the survey as well as moral reasons and a sense of shame.

Even though the Kinsey-Report is sixty years old and its generally blurred terminology was often erroneously interpreted and misunderstood (Rosenbauer 36), its figures are still considered the most comprehensive today . Subject to the aforementioned reservations and the certainty, that many factors have changed in the meantime, the study allows drawing at least certain conclusions to today's conditions. Thus one can assume that zoophilic actions today, – in America as in Europe – are just as widespread as they were in Kinsey's times. However, it

has to be considered, that today there are far more pets than in earlier times (Goetschel/Bolliger 84) and access to such animals is thus as easily possible for urban people (Kinsey, man 621; Massen 137; Masters 35). Therefore, not only the total number of sexual relations with animals can be assumed to be much higher, but particularly an increase in the amount of women involved as well (Dekkers 185).

How big the number of affected people is in reality, can only be guessed. The estimated number of unknown cases has to be much higher than generally anticipated. Because the topic is persistently hushed-up and the scarcity of literature on this subject, it is understandable that zoophilia is believed to be a rare phenomenon. But the many ads in the notorious magazines, as well as the overwhelming amount of zoophilic material that can be found on the Internet prove that this is a false conclusion, providing indications of an underground scene (Beetz 215).

Legal Discussion

Historical Abridgement

From a judicial point of view, zoophilia has been judged in various ways in the course of time (Dekkers 155; Masters 37; Merki 28; Muth 43). Probably the oldest and first mention is to be found in the Hittite compendium of laws (Massen 91; Muth 44) which dates back to approx. 1300 B.C., where sexual acts committed by men – but not by women (Kinsey, woman 386) – with certain animals (e.g. cattle, sheep, pigs or dogs) were prohibited under penalty of death (Dekkers 158; Kinsey, man 619; Massen 91; Masters 39; von Hentig 16). The remarkable thing is not only the severity of the penalty but also the fact, that other crimes, such as manslaughter, arson or battery were only penalized with fines (Massen 91). After mono-ethical Judaism crowded out religious animal cults in all societies, Mosaic legislation contained explicit bans on acts of zoophilia (Hunold 43). In the Old Testament, as well as in the Talmud, zoophilia is considered a disregard of divine Creation (Weidner 5) and any party in such an

act – man, woman and animal – invariably was punished with death by stoning (Dekkers 158; Krings 12; Merki 31). The Talmud even outlawed any woman from being alone with an animal, in order to rule out any suspicion from the outset (Christy 31; Muth 45).

Beginning with modern times, most other states of our culture did not consider zoophilia a sacrilege against God anymore. However, especially in countries of Germanic and Anglo-American legislation such acts remained outlawed for a long time, to some extent, until today. Thus the single states of Germany, Austria and a large part of the Swiss Cantons adhered to sanctioning zoophilia as elements of a crime, as did England, the North American and Scandinavian states (Merki 80). The reasoning behind the retention of the bans were now to be found, depending on the opinion of the respective legislator, in the fact, that sexuality with animals was general arousing disgust on the one hand and led to "disdain of marriage", "endangering of family life" or "de-population" and lastly to a "deterioration" of the state (Dekkers 168; Muth 46; Weidner 9). Moreover, human dignity became an ever more important argument, which was gravely offended by any sexual contact with an animal. This kind of sexual misconduct was considered such a fundamental breach of duties, that such a perpetrator not only relinquishes their own dignity but also harms the socially important awareness of self-worth of all mankind (Grassberger 94).

Today's Legal Position

As laid out before, modern criminal law makes a clear distinction between law and ethics and leaves the punishment for moral transgression exclusively to society (Arnold/Eysenck/Meili 2096; Dekkers 189; Ford/Beach 167; Hoffmann 615). Against this backdrop zoophilia was exempt from punishment in over 80 per cent of European states in 1950 (Muth 105). In the course of the last century Scandinavian countries followed their Roman examples and deleted the offences of sexual contacts with animals from their criminal code (Stettner 173). As a rule, acts of zoophilia are only relevant by law if the offence is considered as a cruelty to animals,

which has become part of almost all national animal welfare legislation. If animals demonstrably suffered pain or damages, in the context of sexual acts, the deed has to be prosecuted. In some countries, bans on sexual acts in front of minors can be found (Stettner 174), where only very few European countries strictly prohibit the production, distribution and the possession of zoophilic pornographic material. In Italy, Spain or the Netherlands, for example, such material is legally and publicly available in erotic shops.

German and English-Speaking States

The only countries to have adhered to their fundamental bans on zoophilia, in part until today, are those of Germanic and the thereby heavily influenced Anglo American legislations. However, varied legal definitions exist within those legislations, as demonstrates the subsequent overview over the current legal status in various German and English speaking states. The legal status of the specified countries is comparable to the Swiss legal status in many areas, which is why repetitions are omitted largely and the elaboration focuses on the specific differences.

Switzerland

With the coming into effect of the federal criminal code (StGB/CH) on 1 January 1943, Switzerland has maintained a standardized national criminal law. Until this point in time it left was up to the individual cantonal legislators, to rule on acts of zoophilia (Merki 88). The cantonal criminal code was divided into three groups differing fundamentally from each other. While French and Italian speaking cantons relied heavily on the idea of enlightenment and therefore did not prosecute any sexual acts with animals per se, such acts were, for moral considerations, still outlawed under threat of punishment in most German speaking cantons (Krings 44; Merki 98). The severity of the punishment depended foremost on the "similarity of coitus" of the crime. Not all acts offending morals and shame were outlawed,

but rather only physical contact with the genitalia of an animal and vice versa with the intention to trigger sexual stimulation or satisfaction in oneself or the animal (Merki 133). In the course of time the interpretation of offence for “unnatural fornication” underwent several changes (Merki 133; Muth 54). Finally, any person placing their genitals on the body of an animal and using it similarly as in natural coitus, was considered an offence. It was not required for the person neither to conjoin their genitals nor to reach sexual climax. Any act that was solely intended in the stimulation or satisfaction of the animal thus remained exempt from punishment (Muth 56). The third group of cantons consisted of a combination of Romanic and Germanic law, insofar as sex with animals was only punishable if it invoked a public offence (Merki 102). The creation of the Swiss Penal Code (Strafgesetzbuch, StGB/CH) aimed at unifying the entire Swiss criminal law and adjusting the conflicting cantonal positions. In fact in 1942 seven cantons made use of the authorization Art. 335 StGB/CH and incorporated the offence of "fornication with animals" into their penal law. Basle-Country and Appenzell Inner-Rhodes, were the only cantons to adhere to this offence, so that today, zoophilia is still incurring a penalty in two Swiss cantons. According to the competent cantonal judiciary authorities no respective sentences have been passed for decades.

The federal animal welfare legislation that came into force in 1981 (TSchG/CH) does not contain an explicit ban on zoophilia (Vogel 15). According to art. 2 an animal must not be exposed to unjustified pain, suffering, damages or fear (Goetschel 34). Actual penal regulations can be found in art. 27-29, whereas, again, sexual actions with animals are not explicitly forbidden (Merki 174; Vogel 85). At best, the offence of cruelty to animals applies. If an animal is demonstrably abused, overstrained, respectively, willfully and excruciatingly killed in the context of sexual acts, the perpetrator can be penalized with a prison sentence of up to three years or a fine of up to Swiss Francs 40'000, provided he acted deliberately (i.e. knowingly and willfully). In case of a negligent offence the penalty is either confinement or payment (Goetschel Kommentar 189).

Because zoophilia is basically exempt from punishment, the conscious supplying, lending or selling of animals for such purposes is not prohibited. Therefore, it is also legal to train and accustom animals to sexually targeted deeds. Such acts, again, could only be considered punishable if the criteria met with the requirements for an offence of cruelty to animals according to art. 27, e.g. the animals have provably been abused, overstrained or killed in an excruciating manner.

Despite the fact that according to Swiss legislation (with the exception of the cantons of Basle-Country and Appenzell Inner-Rhodes) zoophilia is not considered an offence by itself, a zoophilic act conflicts with the federal penal code. If an animal belonging to another person is used, for example, the offence of damage to property according to art. 144 StGB/CH has to be considered. According to this clause, a person damaging, destroying or rendering inoperative other's property can be penalized with up to three years in prison or a fine. According to Swiss legislation, animals are no longer considered mere things as of the beginning of April 2003 (Goetschel/Bolliger 145). Because a new article was inserted in the Swiss penal code (art. 110 Ziff. 4^{bis}) at the same point in time art. 144 StGB/CH explicitly applies also when an animal is injured or killed, if the perpetrator is not identical with that of the owner. Contrary to the above mentioned offence of cruelty to animals, damage of property, respectively, injury or killing of an animal according to art. 144 StGB/CH is only prosecuted if committed deliberately and even then, only if the owner of the animal makes a claim. The negligent injury or killing of another's animal thus remains just as exempt from punishment as the deliberate act when the owner consents to such deed or subsequently renounces from instituting legal proceedings (Goetschel/Bolliger 152). Contrary, as it is the case with the offence of cruelty to animals the requirements for an offence according to art. 144 StGB/CH are already fulfilled, however, if the animal is damaged only slightly, which means, that in order to make a claim for damage of property, neither extensive pain, suffering nor damages have to be inflicted on the animal.

Germany

The German “Reichs-Criminal Code” (RStGB) of 1871 outlawed zoophilia on pain of penalties in § 175. Since its creation the respective paragraph was greatly disputed, mainly because it outlawed male homosexuality at the same time. In 1935 these two crimes were retained under the national socialist legislation, however they were divided by content. From then on “fornication with animals” was recorded in § 175b RStGB and penalized with up to five years in prison.

After long-term political discussions about whether or not zoophilia was to be retained in the criminal code (Weidner 10) the respective paragraph was deleted without substitution in the context of the extensive reform of the sexual criminal code in 1969. Up to this point in time an annual figure of approx. 200 people were convicted of sexual acts with animals (Beetz 193; Hoffmann 615; Rosenbauer 21; Weidner 36), any such deed is no longer prosecuted in Germany as of 1st April 1970. As reasons for the abolition of the regulation, its marginal meaning in the judicial practice and the fact that most perpetrators had abnormal affinities by nature and thus were not scared off by pain of punishment, were cited. It was also argued that there were no criminal political motives for the retention of this penal norm. The fact that a person debases him- or herself by committing a zoophilic act, did not provide sufficient cause for legal sanctioning and observations that zoophilic people would go on to commit other sexual offences later on, did not justify the culpability of fornication with animals either. Furthermore it was reasoned, that punishment for the offence in the context of cruelty to animals would be considered if an animal had suffered distress or rough handling in the framework of any sexual act and that the animal as a piece of property, per se, was sufficiently protected by the existing criminal regulations about damage to property (Frey, Rechtslage 1; Weidner 13).

As is the case in Switzerland, zoophilic acts are threatened by penalty in Germany, if they involve obvious cruelty to animals. According to § 17 TierSchG any person who either

inflicts substantial pain or suffering by using brutality, respectively, causes continuing or repetitive pain or suffering will be punished with prison of up to three years or a fine. The same threat of punishment applies for the killing of an animal in the context of a zoophilic action, because such an action is not regarded as a reasonable cause for animal slaughter according to the animal welfare legislation (Ort/Reckewell 337). If an act of zoophilia cannot be penalized for lack of any of the aforementioned reasons, an administrative offence according to § 18 TierSchG may pertain. According to this article, a person commits an offence if they inflict significant pain or suffering without reasonable causes to any animal in their possession or in their voluntary or imposed care. Both the deliberate as well as the negligent act are punishable, if the animal's owner commits such deed. However, if a third party causes an animal significant harm, an intentional or eventually intentional act is required in order for such deed to become punishable. Therefore, it has to be proven that the person inflicted the injuries knowingly and willingly on the animal or at least considered them possible and accepted them. Such administrative offence is only penalized with a maximum fine of 25'000 Euro and it is not prosecuted by a court but rather by an administrative authority (Buschmann 11; Frey, Rechtslage 2; Ort/Reckewell 409; Stettner 173).

In Germany, as is the case in Switzerland, many deeds related to zoophilic actions find their legal boundaries in the national criminal code. According to § 303 StGB/D a person who deliberately and unlawfully injures or kills another's animal can be punished with up to two years in prison or a fine upon motion for damage of property of the aggrieved. If need be offences of trespassing according to § 123 StGB/D ("fence-hopping") or the instigation of a public offence if a zoophilic act is committed in public § 183a StGB/D may also apply. Additionally any person who produces or distributes zoopornographic material or commits similar actions is punished with up to three years in prison or a fine. Contrary to Swiss legislation German law allows for the mere purchasing and owning of such material.

Austria

According to § 130 of the code of law issued in 1852 in Austria, and continuing into the 1970's sexual acts with animals were threatened with up to five years in prison. Not only acts similar to coitus were punished under this law but also the mere contact of the person's genitals anywhere on a living animal, with the intention to satisfy the sexual drive, respectively to ease any sexual tension of the person (Merki 131).

Based on this regulation, about fifty people were convicted annually. However, in 1971 it was abolished without substitution, for criminal political as well as theoretical legal considerations. It was argued that zoophilic "aberrations" did not pose a threat for the general public and in most cases only happened to adolescents, so that the state could leave the defense to other social mechanisms without having to fear a spreading of zoophilia. Furthermore, it was argued, that a threat of punishment and the enforcement of a sentence would have hardly any discouraging effect.

A norm, on how zoophilic actions should be penalized, cannot be found in the Austrian criminal code (StGB/Ö) or in the respective animal welfare legislations of the nine individual provinces, respectively, in the new uniform national animal welfare legislation, which comes into effect on 1st January 2005 (TSchG/Ö). The Austrian criminal code only prohibits the advertising of fornication with animals in its § 220a StGB/Ö. Whoever uses print or film or any other method to publicly appeal for sex with animals or approves of such an act in a manner suggestive to a third party, can be penalized with up to six months in prison or with a fine of up to 360 day's rates.

The offence of cruelty to animals is also governed by the criminal code until the beginning of 2005 (Goetschel/Bolliger 108). According to § 222 StGB/Ö, such an offence is on hand if an animal is "abused brutally" or "inflicted with unnecessary agony". Such an offence is punished with a prison sentence of up to a year or 360 day's rates. Again, a zoophilic act is only sanctioned if the animal suffers from substantial pain, damages or distress. With the

coming into force of the new uniform Austrian animal welfare legislation on 1st January 2005 (TSchG/Ö), the offence of cruelty to animals is carried over into this new legislation. Any violation of this regulation will then be punished with a fine of up to 7'500 Euro, respectively 15'000 Euro in case of recurrence.

The production of any zoophilic image and the trade therewith is regulated under the national law on pornography, in Austria. Under this law, actions like the manufacturing, publishing, importing and exporting, distributing or the public offering of obscene writings, images and the likes are considered a crime, provided that they are carried out with commercial intentions. The penalty for such an offence is a prison sentence of up to a year and an additional fine of 360 day's rates (§ 1 Pornografiegesetz). As in Germany, the mere possession of zoopornographic material is legal in Austria. The same applies for the passing on or making available of such material as long as it is not done with commercial intentions and is not consciously handed on to teenagers under the age of 16. Otherwise, according to § 2 of the law on pornography, a prison sentence of up to six months or a fine of up to 360 day's rates can be imposed.

Great Britain

Up to the middle of the last century British law stood out for its severe penalties for sexual acts with animals. The so-called "consummated fornication " with animal, for which the slightest penetration of the male genitals sufficed, was punished with a prison sentence of ten years up to life. The mere attempt at such an act as well as other zoophilic actions were threatened by punishment such as prison or jail sentences (Merki 130).

In § 12 Sexual Offences Act, established in 1956, zoophilia is clearly defined as a punishable deed. The so-called "buggery" included any intercourse "in any manner between man or woman and beast", and up until recently, threatened any anal or vaginal sexual contact with an animal with a lifelong prison sentence. However, such a conviction required the participa-

tions of jurors in the trial (Stettner 174). The crown law committee addressed the aforementioned regulation among other issues in a report about sexual offences published in 1984. The brains trust arrived at the conclusion, that zoophilia was to remain to be considered a punishable act and that an abolition of the existing regulation would be construed as the general tolerance of such practices, which would bring about the danger of the increase of such offences. However, the committee recommended judging this offence in summary proceedings, i.e. without the participations of jurors. The committee also suggested reducing the maximum penalty to six months in prison. However, the placing of animals for zoophilic acts was declared punishable under threat of up to five years in prison.

For the time being, the respective changes in the legislation were not initiated until British parliament recently addressed the issue of culpability of zoophilic actions in the context of the revision of the sexual criminal law. In July 2000, the committee in charge of the criminal law revision, again argued for the implementation of this offence into the sexual criminal law. The existing sentence was recommended to be decreased to five years in prison, as the drastic extent of a life sentence seemed outdated. It was also discussed whether zoophilia was in fact a criminal behavior, and if so, whether this should then continue to be an offence in the sexual criminal law, or rather whether it was to be integrated into animal welfare legislation. Contrary to their German colleagues, the British criminal law experts confirmed both the criminality of such behavior as well as the necessary punishment by sexual criminal legislation (Beetz 194). This conclusion was justified in particular by the fact that not only the human dignity, but also the dignity of the animal was infringed upon by such an act and that an animal could not freely consent to it. Furthermore, it was reasoned, that zoophilia was not just a mere expression of loneliness and closeness in any case, but primarily a sexual crime that reflects a deranged behavior of the offender. The close connection between animal abuse and sexual crimes was stressed as well as the existing connection between abuse of animals and children, as a result of recent research.

The change in legislation was resolved in November 2003, so that the new Sexual Offences Act came into force in May 2004. Paragraph 69 is entitled "Intercourse with an animal" and it declares both the deliberate as well as the negligent anal or vaginal penetration into an animal with a human penis as well as the causing and the permitting of such action as punishable. The sentence for this offence is either a maximum imprisonment of 6 months or a fine or both by conviction by a single judge, respectively, a prison sentence of up to two years in case of a conviction by a jury .

USA and Canada

The North American legislation is influenced in many parts by British law (Miletski 3). However, in the USA there is no national norm about the admissibility of sexual acts with animals in force, so that its regulation falls into the fields of responsibility of each state. With the exception of Illinois (Miletski 31) and New Hampshire, zoophilia was considered a severe crime in all the North American states well into the last century. In California, Colorado, Idaho, Missouri, Montana, Nevada, New Mexico and South Carolina it was even prohibited under penalty of a prison sentence for life (Christy 30; Massen 139). In general, "bestiality" was subject to the same retributions as homosexuality (Kinsey, woman 387), of which only very few trials are documented.

The culpability of zoophilia has been abolished in over twenty North American states in the meantime, partially referring to the Kinsey-Report, according to which sexual contacts with animals are said to occur mainly during adolescence for a short "experimental phase" (Beetz 194). In approximately half of the states sexual contacts between man and animal are still illegal, whereas such offence is either considered a felony or a misdemeanor (Arkansas, Delaware, Georgia, Idaho, Indiana, California, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New York, North Carolina, North Dakota, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington

DC und Wisconsin, 1999; Miletski 32). While legislation in California, Delaware, Georgia, Minnesota, North Dakota, Utah and Wisconsin explicitly names these offences as "bestiality" or "deviate sexual act" (California Penal Code 286.5., Delaware Statute Title 11 777., Georgia Statute 16-6-6., Minnesota Statute 609.294., North Dakota Statute 12.1-20-12., Utah Code, 76-9-301.8., Wisconsin Statute 944.17., Idaho Code, Art. 18-6605., Montana Code, Art. 45-5-505., Massachusetts Statute 272 Art. 34., Michigan Penal Code 750.185., Rhode Island Statute 11-10-1., Washington DC Code, Art. 22-3502.), it falls into the general category of "crimes against nature" in many other states. In Idaho, for example, such an "infamous crime against nature, committed with mankind or with any animal" is punished with a prison sentence of at least five years, whereas in Montana it is sanctioned with a prison sentence of up to ten years or a fine of up to 50'000 US-Dollars. Other penalties include: prison sentences of up to twenty years (Massachusetts), prison up to 15 years (Michigan), prison sentences between seven to twenty years (Rhode Island) or imprisonment of up to ten years and/or fine of up to 1'000 US-Dollars (Washington DC). Contrary to countries of Germanic or Romanic legislations, zoophilia represents a cause for divorce in many North American states by civil law (even in some where the offence per se is exempt from punishment). Other states are discussing the re-introduction of the culpability of this offence.

Apart from the aforesaid, there are many federal laws, which prohibit zoophilia in the context of other actions in the entire United States of America. This applies when youths under the age of 18 are involved or for cases where animal pornography is involved (United States Codes Chapter 71 ("Obscenity")). Furthermore, sexual acts with animals of a third party are treated as offence of damage of property.

The legal position in Canada is comparable to the one in the USA, whereas the Canadian criminal code provides a general sanction on zoophilia. According to art. 160 any person committing such action, or forces another person to such action or entices a person under the

age of 14 to such action, will be judged in a summary proceeding and can be penalized with a prison sentence of up to ten years (Criminal Code of Canada, Section 160).

Critical Appreciation

Insufficient Legal Protection of Sexually Exploited Animals

The analysis on hand not only shows that sexual practices with animals are much more common than generally assumed, but also that such actions are not penalized in most countries similar with our culture, by the state anymore. The question whether a zoophilic action apart from being an ethically debatable issue, is an infringement of the law, has been increasingly answered in the negative since the age of enlightenment. Only the Anglo-American legislation has adhered to the once ubiquitous sanctions, while they were first lifted in countries of Romanic and later also of Germanic legislation considering the strict distinction between law and moral. However, it is generally accepted, that a zoophilic action is to be sanctioned when the animal involved suffers substantial pain, damage or distress. Most animal welfare legislations therefore penalize such cruelty to animals with more or less severe sentences.

So at least sadistic or any other form of violent zoophilic treatments are recognized as issues to be regulated by the respective animal welfare legislations, which is just and equitable. However, one should question the fact that apart from English-speaking countries, any sexual action involving animals is exempt from punishment as long as there is no provable act of cruelty on hand. The lack of specific bans on zoophilia is generally defended with the argument that animals are sufficiently protected by the existing legislation. A closer look at the existing regulations show that this opinion cannot be followed:

1. As laid out before, the national animal welfare laws only protect animals involved in zoophilic actions, if it can be proven that they suffered significant pain, damage or distress. However, such acts remain exempt from punishment if the animal does not suffer any such

pain or damages or if such pain or damages are of a minor nature. The fact that animals are not sufficiently protected in this manner is documented in several surveys. According to a study in Germany at the end of the sixties, approximately seventy per cent of all zoophilic acts were carried out in a violent manner (often zoosadistically) (Weidner 32). While these offences would still be penalized under the existing national animal welfare legislations, the remaining thirty per cent of used animals remain unprotected today because they did experience any considerable damage (Stettner 172). It can be assumed that because if the large number of unknown cases the percentage of zoophilic actions that remain exempt from punishment is much higher. If one is to believe the affirmations of zoophiles, whereby sexual acts with animals generally happen free of any violence and that zoosadistic practices constitute the rare exception (Hoffmann 607), the number of animals defenselessly exposed to sexual actions, increases again considerably.

Altogether it has to be assumed, that today zoophilic contacts rarely happen for zoosadistic reasons, although sexual components have to be taken into consideration with any animal abuse (Massen 69). A look into the statistics of national verdicts in Switzerland, for example, shows that one single person is convicted for cruelty to animals in the context of a sexual act (see: www.tierimrecht.org/de/faelle). The social taboo of this issue sometimes seems to affect even the investigating authority and courts, when in practice, they do their best in avoiding to investigate or name the motives behind an obvious act of zoophilia. In practice the prosecution of cruelty to animals is difficult in general, as the necessary evidence is not easily provided. In order for an abuse to be penalized according to art 27. of the Swiss animal welfare legislation, an animal has to have demonstrably suffered from continuous and agonizing pains. Proving that an animal died as a result from excessive strain due to sexual acts, also regularly poses substantial problems to the investigating criminal authorities, if the cause of death cannot clearly be identified or a correlation between the death of animal and the zoophilic act cannot be demonstrated. If there are no veterinary findings of injuries in the

genital area or other physical damages or when it cannot be established without a doubt that an animal was overstrained by rugged fixing or any other means, the investigation is dismissed and the accused person is acquitted, because zoophilia is not punishable on its own. Other aggravating factors for zoophilic prosecution are the facts, that contrary as is the case with other sexual offences, a victim of zoophilic actions is not only mute, but normally can be legally killed and thus important evidence can be destroyed. If the animal is the property of the acting person and the killing happens free of fear and pain, then such a person cannot be held accountable, as most national animal welfare legislations, with the exception of the respective German and recent Austrian legislation (Ort/Reckewell 337), do not foresee a general conservation of life for animals (Goetschel/Bolliger 214).

2. Although the conviction of a person for damage of property can be based on minor damages, this regulation does not provide sufficient legal protection for the affected animals either. As is the case with the regulation on trespassing, the respective clauses do not aim at the wellbeing and the integrity of the animal, but merely at property of the aggrieved owner. The norm calls for the wounding or killing of another's animal, which can only be effectuated by a third party. If its owner wounds an animal, such offence is not considered damage of property in the legal sense. In this case, only the (very restricted) national animal welfare legislation can apply. Furthermore, the prosecution for damage of property is only initiated when the aggrieved party lodges a complaint. Third parties, not entitled to ownership of the respective animal, are not authorized to lodge such a complaint, so that no enquiry can be initiated without the animal's owner's consent, even if the owner refuses such enquiry for paltry excuses. Punishment resulting from damage of property (respectively, injury or killing of an animal according to a country's criminal code) is also ruled out, if the respective action was committed negligently. The same applies for acts committed by a third party, who, however, acted on permission of the owner, who made his animal available for zoophilic acts free of charge or against payment or who instigated somebody to such action, in order to get sexually aroused.

All the same, the consent of an owner to damages to his animal by a third party is again limited to the prohibition of cruelty to animals, provided that pain and distress are considered minor. At least severe damages can thus not be justified by the consent of the owners.

3. Finally, animals are not completely protected from zoophilic abuse by the many existing laws on hardcore pornography, as these regulations are predominantly supposed to secure the protection of the sexual integrity of mankind. The public and private presentation of animal pornography, as well as the producing, importing, offering and distributing of the respective products is generally prohibited, but not the zoophilic action itself. In fact, whoever participates in such practices within the boundaries defined in the laws of cruelty to animals and damage of property, can do, as they like. A conflict with the law only ensues, if such person subsequently describes or documents his or her experiences to third parties in any manner. This instance stands for a downright absurd legal position (Massen 13), whereas not the punishability of animal pornography, but the exemption of punishment for the zoophilic action itself is to be reprimanded. When judging hardcore pornography cases, the Swiss federal court regularly confirms, that such cases concern the "depiction of severe perversions, respectively, especially abnormal and repulsive sexual practices" (Schwaibold/Meng 1066). One cannot but agree with this line of argumentation, however, one should bear the consequences resulting thereof and outlaw any zoophilic action per se.

Violation of the Dignity of the Animal

Modern criminal law concepts are based on the essentially correct thought, that legal provisions should not enforce public morals in an enlightened liberal and secularized constitutional state and in addition, that every penal norm imperatively requires an acknowledged legally protected right. When determining those legally protected rights, which are fundamentally violated by any sexual act with animals, historical lines of argumentations are no longer suit-

able in today's day and age (Muth 59). Thus, according to modern interpretation of law, zoophilia in fact, cannot be penalized because it offends against Divine creation, Christian ethics or public morals, respectively, because a person practicing zoophilia hurts society. Already established legally protected rights such as morality, human dignity, normality and naturalness of sexuality or the protection status of youth, marriage and family do not justify the reasons for the protection of animals and incidentally were not aimed at such purpose in the past. Rather, the aforesaid arguments were always subject to predominantly anthropocentric views, although they did at least indirectly protect the animals, by leading to general bans on zoophilia.

Today, sexuality with animals has to be viewed under an additional important viewpoint, which does not exclusively center on mankind and its interests and which has remained largely unconsidered by jurisprudence so far. This factor is the *dignity of the animal*, which since 1992 has been protected in Switzerland by the Swiss constitution as one aspect of the "dignity of the creature" (Goetschel/Bolliger 239; Goetschel, *Würde* 141; siehe dazu übersichtsmässig Goetschel/Bolliger 239ff. oder umfassend Goetschel, *Würde* 141ff.; Gotthard M. Teutsch, *Die "Würde der Kreatur"*, Bern/Stuttgart/Wien 1995; Peter Krepper, *Zur Würde der Kreatur in Gentechnik und Recht*, Diss., Basel/Frankfurt 1998 und Heike Baranzke, *Würde der Kreatur? Die Idee der Würde im Horizont der Bioethik*, Würzburg 2002). Until today, Switzerland is the only country in the world to have implemented this viewpoint into its constitution. Modern animal welfare legislations are based on the ethical idea that animals are emotional creatures and thus are to be respected and protected not only in the interest of mankind but also for the sake of their own good. The recognition of the dignity of animals is one of the main pillars in modern animal welfare concepts in the gradual legal dissociation the mere status of being an object or a thing. This idea transcends the mere prevention from suffering, pain, damage and fear und denotes a general respect of the physical and mental integrity of every individual animal. This includes, for example, protection from humiliation, ex-

cessive exploitation and interference with an animal's appearance, as well as, the restriction of certain kinds of contacts with animals, which are not linked to obvious damages, but which concern other animal interests which are to be respected by mankind.

According to this view one important aspect of the dignity of the animal, is its sexual integrity. Along the lines of the sexual integrity of mankind – which is recognized by modern criminal law concepts as a legally protected right – it includes the unhindered sexual development and sensation, the protection from damaging decision-making by sexual exploitation of dependencies and the protection from sexual harassment. The dignity of animals is thus not only injured by violent, but rather any zoophilic act, which does not correspond to the intentions of the animal and therefore is effectuated by using some form of force. This is especially important before the background, that not all animals suffer physical damage or proclaim their aversion to intimate contacts with people. In fact there are numerous animals that remain relatively inexpressive during sexual acts and who obediently submit to it. Thus apart from the physical sufferings, the psychological distress of the affected animals is even more hidden from the public. The fact that zoophilic relationships can be mutual and that animals can develop such a strong affection towards a person, that it can contain a sexual component, shall not be disputed (Rosenbauer 7). There appears not to be any major difficulty on the animal's part, to enter into an intimate relationship with a person, and it is particularly easy to sexually arouse and satisfy a male animal. Sometimes animals (allegedly) voluntarily participate in zoophilic acts or even take the initiative (Dekkers 31; Massen 17, 31; Muth 40). However, in general, an animal only does this if it is used to such behavior, i.e. it has been trained to such unnatural behavior and has thus been artificially focused on a human sexual partner (Frey, Sodomie 2). As a result of such training these animals only offer little or no resistance when sexually approached by a person (Frey, Rechtslasge 4). Apart from this trained behavior some natural reflexes and instinctive acts are exploited for zoophilic contacts (Muth 40; Stettner 172; Weidner 43). Such conditioning does not only infringe upon the free sexual development

of opinion of an animal, but also holds the danger of the creation of a strong dependency. Thus an animal that had repeated sexual intercourse with a person can commit to this person in such a manner, that it loses all interest in sexual interaction with others of its kind (Ford/Beach 165; Masters 76).

The violation of its sexual integrity, thus firstly, does not depend upon the question what an animal feels during a zoophilic act, but rather whether such act complies with its freewill. People generally cannot factually discern whether such a behavior by an animal happens voluntarily. Because of the communicational barrier between man and animal it naturally remains unclear, what exactly an animal feels during a zoophilic act, that does not evidence any substantial pain, suffering or damage. As it is the case with humans it has to be assumed, that the substantial damage of the wellbeing of animals can only partially be reconstructed from subsequent clinical findings (Luy 3). One cannot even say whether those animals that were sexually imprinted to human beings feel good during sexual intercourse, with a person. Whether zoophilia in fact ever happens on mutual consent, i.e. is wanted and appreciated by the animal, can only be guessed. Rather one has to act on the assumption, that the animal's consent is forced either through an artificial fixation on a person or by use of other psychological violence. The labeling of such acts as "animal love" or "sexuality in partnership", as people affected, in order to stress the strong emotional bond, often call them, misjudges such circumstances and seem euphemistic in the light of the different methods in practice (Hunold 36; Massen 105).

Despite the continuing affirmations of zoophiles, that their intimate relationship with animals is not characterized by violence and subordination, but rather by a mutual attitude of respect and trust, it remains a fact, that animals are first and foremost exploited to satisfy the sexual urges of people and are degraded to sexual objects even if the intercourse remains free of violence. In our society, many animals are admittedly used against their will for other purposes, such as animal testing or the production of food. Under the aspect of the dignity of

animals, these intentions are debatable as well, however, contrary to zoophilia most of these actions are socially justified, as long as they abide by the legal conditions. Incidentally, other arguments from supporters of zoophilia fail against the backdrop of the violation of the dignity of an animal. Thus it is completely irrelevant that no offspring can result from zoophilic contacts and that usually the physical health of neither man nor animal is harmed, if proceeded with the necessary caution (Muth 103). The comparison to homosexuality, which was frowned upon until a few decades ago, but which today is accepted by the majority of people, and as it is often made by affected zoophiles, is then just as unfit.

Conclusion: Necessity for Special Elements of Crime

The study at hand demonstrates, that sexual acts with animals are not just a matter of peripheral importance in our society, but rather, that they are merely turned into peripheral matters by making such acts a public and also legal taboo. The vast amount of respective material on the Internet, which invites people to imitate such actions and which makes one believe that zoophilia is nothing but a harmless variety of sexuality, related to a new lifestyle, disproves the allegedly minor social impact.

In the fifties, the Kinsey research already presumed that the frequency of sexual acts with animals was already at an alarming level and that such actions would occur more frequently, if the conditions to commit these actions were more convenient (Kinsey, man 622). Exactly this has happened by the fact that today, with the exception of a few Anglo-American countries, most states only prosecute such deeds if substantial and provable damage or pain is inflicted upon an animal. Zoophilia represents a problem in animal welfare *in general*, regardless of its factual spreading and possible physical violence (Stettner 171). As the social aversion towards sexual abuse of animals by mankind obviously does not sufficiently restrain zoophilia, the problem has to be solved by the national legislators.

For the past decades, ethical animal welfare concepts, which impose the responsibility for the care of an animal in its custody, have been gaining in importance, both nationally and internationally. Against this backdrop zoophilic actions have to be considered punishable acts not only in cases of obvious abuse, but also on the basis of possible psychological damages incurring in the animal used for such act (Buschmann 1; Frey, Rechtslage 4). Because zoophilia infringes unquestionably upon the sexual integrity of an animal in any case, it above all, represents a violation of the dignity of an animal and thus constitutes a fundamental concept in animal welfare (Goetschel, Würde 154).

Apart from a few Anglo-American states, animals are not provided with sufficient legal protection from sexual exploitation anywhere in the world. Far from it: the legal requirement for proof of obvious injuries even creates a legal space for exploitation and denies animals a defensive right towards despotic sexual acts. Indeed, the opinion that generally everything that happens by mutual consent of the parties involved is allowed in sexuality, and that the state should not dictate nor prohibit certain practices, has been established in our cultural area. But this kind of tolerance must not be abused at the expense of the animal and the line should be drawn where a sexual partner, with equal rights, does not consent to an action. Apart from the fact that animals, because of their mere existence in human care, are not to be considered equal in this sense, their consent to zoophilic contacts can only be assumed.

Against the background of fellow creatureship, many national legislators repeatedly and explicitly declared their support for the obligation to provide for the welfare of an animal in custody. With regard to sexual actions, however, such obligations are not formulated in a way that the risk of physical or mental damage is minimized from the outset. Thus the legal distinction between admissible and inadmissible zoophilia neither takes into consideration the fact that an animal's suffering can only rarely be evidenced, nor that the animals affected are creatures in need of protection, who cannot stand up for their own rights and who are abused mostly covertly. In order to "nip zoophilia in the bud" and to avoid positive radiation into the

area of abuse, which is difficult to control, clear and general bans on zoophilia are necessary (Luy 3). Even a constitutional protection of the dignity of the animal (as it presently only exists in Switzerland) is not enough, although the basic principle could be directly put into use. According to the penal law maxim "no punishment without law" a specific criminal norm is required, that defines in detail which behavior is punishable and which behavior is not.

Respective offences could be entitled "sexual acts with animals" for example, and its wording could follow the proscriptions of such acts with children (Bolliger 164; Goetschel, Würde 154). Despite the fact that the doctrine still rejects such a comparison by the majority (Schwaibold/Meng 1072), it is hard to see against the background of the unquestionable fact that animals can feel physical and psychological pain (Luy 1), why they should not be afforded a similarly restrictive legal protection of sexual exploitation, as are children and other people in need of protection (Luy 3). It is generally recognized that the sexual freedom of an individual ends where the right for self-determination of another begins. People who cannot assert their legal positions on their own, (such as children, disabled or other persons who entangled in special power or dependency relationship with the perpetrator), are rightfully protected by modern laws through restrictive acts. Sexual contacts with these persons are prohibited because of their basic need of protection, whereas it is irrelevant whether they possibly participated voluntarily in such act or are in actual fact physically damaged by it. To equate creatures, capable of feelings and suffering within this category, to people in respect of their being worthy of protection from sexual exploitation, is only a consistent development under both ethical and legal aspects and does not constitute an improper humanization.

For reasons of orderly legal considerations, general bans on zoophilia should not be included in the national penal code, but rather should be added as an offence to the catalogue of forbidden actions in animal welfare legislations (Schwaibold/Meng 1066), as it is currently being stipulated by animal welfare organizations in the ongoing revision of the Swiss animal welfare legislation. Moreover, physical injuries of animals as a consequence of zoophilic con-

tacts would remain punishable as an offence of animal abuse. The only exception of any sexual act with an animal would be veterinary indications, which serve the assisted reproduction of animals.

The question of exactly which acts fall under the term "sexual act with an animal" can generally be based on the jurisdiction of the national laws on animal pornography. Of course not every single physical contact is to be considered a zoophilic action. The touching of human genitalia by the muzzle of an animal, for example, is not necessarily a relevant problem of animal welfare per se and often is only an instinctive reflex of nursing animal. If a person systematically exploits such behavior pattern, then such action cannot be not reconciled with the dignity of the animal. However, any coital action, i.e. sexual intercourse by use of the genitalia of both person and animal, either of the opposite or of the same sex, as well as any action resembling sexual relations (i.e. with the deliberate intention to achieve sexual satisfaction by physical contact of the human or animal sex organs with the human or animal body) (Merki 141), and whereas it is irrelevant whether an orgasm was reached by the person or animal involved, would undoubtedly be punishable.

Apart from zoophilia itself, all actions related to it, such as the training and attuning of animals to perform the respective act, the prostitution or the placing, relinquishing and making available of animals for sexual purposes is to be prohibited. Also to be outlawed are all actions involving animal pornography, whereas not only the manufacturing and distribution, but also, as is the case in the Swiss legislation, the acquisition and ownership of the respective products (Schwaibold/Meng 1064), in order to prevent those zoophilic depictions or demonstrations having a motivating effect with the consumer, which would increase his or her willingness to imitate such action (Schwaibold/Meng 1064). Against the background of the established close connection between violent assaults on animals and such assaults on human beings (Hunold 39; Illi 18) and the possibility of a lasting damage to the sexual development of

children and adolescents, the attention should especially focused on the containment of the vast amount of zoophilic material on the Internet.

In conclusion it can be said that zoophilia is an extremely complex and interdisciplinary issue, which is not only subject to a whole array of esthetical, historical, ethical and religious taboos, but also pertains to various scientific fields, such as psychology, sociology, humanities and veterinary medicine. But, above all, it remains a problem of animal welfare. In recognizing animals as our sentient fellow creatures then we should comply with their demand to be afforded the same respect for life, dignity, physical integrity, which can only be effectively achieved by the law. The general model for ethical animal welfare has substantially changed since the time of the abolition of the general national bans on zoophilia, so that the reintroduction of these laws is not only conceivable, but rather is to be postulated consistently. Only by doing so can this issue, which is traditionally clouded by a certain "fog of repulsion, outrage and sensation" (Merki 182) be effectively conceived and the exploitation of animals for sexual purposes can be brought to an end, whereby ultimately, the awareness for a relationship between mankind and animal based on actual partnership and not on exploitation, would be intensified.

Acknowledgements

The authors wish to thank Martina Leuthold, Lena Hildermann, Oliver Goetschel and Susan Platt-Läubli for their valuable assistance with the research as well as the proofreading of article.

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