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A Promulgation of Social Rights for Animals



In Switzerland, it is illegal to keep certain social animals, such as guinea-pigs, rats, gerbils and mice, on their own (without legal justification)^[1]. Many might find this surprising, (eccentric even!) but despite this law being passed in Switzerland over a decade ago (2008), the discussion over affording social rights to animals in law has thus far seemingly failed to pervade modern discourse. So, is it time, or even long overdue, that the social rights of animals are enshrined in law?

The Swiss 'Animal Welfare Ordinance (AWO)' provides legal rights for animals of gregarious (social) species to be allowed adequate social contact with others of their own species^[2]. This law ensures gregarious animals do not have their social needs neglected, in line with the constitutionally enshrined idea of the dignity of living beings^{[3][4]}. Whilst "social animal rights" can be considered a broad term, the AWO goes even further for some animals; it specifies for rabbits, for example, that young animals shall not be kept individually for their first eight weeks^[5]. Other animals, which are not necessarily given the label 'gregarious', are also afforded certain social rights; owners of dogs and cats are obligated to keep their pets in sufficient daily contact with humans and, as far as possible, with other members of their own species^[6]. The law is specific and sensitive to the needs of exact species', specifying in annexes exactly how many animals should live together and what should be made available to them for a species-appropriate existence (e.g. hiding places, nailing places, bathing places or burrowing material).

For those who have never heard of the phenomenon of animal social rights, these laws could be seen as potentially onerous for pet owners, and they raise four common arguments. First, it is argued that such requirements would put people off getting pets, potentially limiting the exposure of children to animals and animal welfare at a young age. Secondly, these critics say that encouraging the keeping of multiple social animals together should be good standard practice to be advised by pet traders, but to be legally enforced would be a step too far. Thirdly, those opposed to these rights cite issues of enforcement. Under-resourced enforcement acts as a barrier to ensuring animal welfare laws are being adequately implemented even in the worst cases of animal abuse; is it impractical to believe that social animal rights could be properly policed? And finally, these critics allude to the inconsistent definitions of the exact numbers needed for the animal's social needs to have be met. The RSPCA, for example, states that guinea-pigs need to be in groups of five to ten^[7], whilst the aforementioned Swiss law only requires two. Does this mean that animal welfare is still being inadequately handled by the AWO?

These four arguments, crucially, are flawed, and misunderstanding such a monumental step forward in the development for animal rights is at the detriment of progress; progress for animals, and progress for our species' understanding of animal rights.

The flaw of the critics' first argument (that of the potential of reducing pet ownership) is emblematic of an outdated, speciesist viewpoint. The purpose of the Swiss law is unequivocal: those who cannot keep the animals in pairs should not keep them at all. There is no 'right' to keep pets, especially not if their welfare cannot be guaranteed. Animals should not be seen as toys for children, or anyone else for that matter! Assuming that a fall in animal ownership is troubling exemplifies a worrying societal ingrained mantra that is incompatible with the full attainment of animal's rights: that animals are nothing more than property, and we (as humans) are under no responsibility to provide adequate standards for those animals. Laws like the AWO challenge this dated belief, in an attempt to foster an attitude that grants dignity and high welfare for animals. Even if this were not the case, it is frankly difficult to locate any evidence that there has even been a negative impact on pet-ownership at all. Despite this lack of evidence, if there were a drop in animal ownership, it is likely that those who would no longer choose to own pets would be those who would not take the laws regarding the need for animal companionship seriously, thereby alienating those who have acquired pets without the wherewithal to provide proper pet protection. A population better educated on the needs of animals will certainly not detract from encouraging citizens to expose their children to animals and the importance of animal welfare; indeed, it would likely make the population far better informed and ensure that the animals kept are better cared for than those in other countries without such provisions.

Regarding the second argument then, that pet-sellers issuing best practice guidance would solve this issue and uphold adequate social animal rights. Best-practice for pet sellers as opposed to legally enforceable rights by no means protects the rights of animals or fosters a sense of responsibility towards animals. After all, it is ultimately no more than a mere recommendation to pet owners. Advice from pet sellers can be (like in all walks of life) ignored without consequence, as there is no way of ensuring anyone follows this best practice. Compared to a statute, which can be enforced against those who would neglect their animals, best practice guidelines seem, at best, half-hearted in their protection of animals, and at worst, deliberately obstructive. Whilst Swiss pet-sellers do continue to provide information to explicitly set out the expectations of pet-owners on purchase, a regulated, consistent framework would be far better for ensuring that these social standards are met.

Which leads onto the third common argument, that of a lack of enforcement. This law does not stand on its own, and should be analysed with context; the Swiss government implemented this law along with pet keeping classes as part of a wider social initiative to improve the standard of pet keeping, through better explaining pets' needs. These standards for animal socialisation are clearly prescribed in the legislation. As such, the mixture of legal duties and education programmes acts as a definitive standard by which the government can be held accountable to. Even if certain elements of this training, such as the provisions for dogs, are scrapped (as occurred in 2016), the law can provide pressure on governments to look into new and better ways of ensuring these legal standards, with failure to do so exemplifying the ineffectiveness of the government to enforce its own laws. On top of this normative aspect, furthermore, a lack of state enforcement does not prevent private prosecution of individuals who flaunt the law. In the UK, for example, charities lead the way in prosecuting animal rights offences. If the law is there, and injustice is done, someone can prosecute. Turning a law that enshrines social rights of animals into guidelines simply does not have the same effect.

And finally, looking at the issue of inconsistent definitions of the "correct amount" of animals to be kept together, this seems defeated by common sense when considering the alternative. Even if the figures are not congruent between the Swiss AWO and the RSPCA, this should not prevent anyone from providing the animals with a social partner at all. After all, there is no consistency in stating that gregarious animals need at least *a* partner, so ensuring that they are provided with at least one more partner is at least a step in the right direction. It needs to be recognised that this is a developing area of law, and good law, by its very nature, must be successively reviewed to adequately follow the emerging scientific findings in this area. A minimum standard must be legislated for, and then progressed.

For now, it is up to animal lawyers to not lose sight of these progressive laws which could mean so much for the welfare of animals. Eleven years have passed already since this law was introduced in Switzerland, and with animal rights issues so high on the political agenda, it seems like a better time than ever to build momentum for legally-backed animal social rights. Funding enforcement can be dealt with eventually; for now, the law needs to provide the bedrock from where these rights can progress and be defended by any who can.

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Swiss legislation on the keeping of animals in groups – Animals that must be kept at least in pairs

(based on the Animal Protection Ordinance of Switzerland)

Provided by Tier im Recht (TIR)

The following list does not include animals in which socialisation attempts have failed or in which individual keeping is indicated for medical or epidemiological reasons.

Mammals

- Alpaca (except stallions from sexual maturity)
- Chinchilla
- Degu
- Equidae up to the age of 30 months or until the beginning of regular use
- Young domestic rabbits up to the age of eight weeks
- Calves aged from two weeks to four months if more than one calf is available on the holding and excluding those calves kept individually in huts with permanent access to an outdoor enclosure
- Lama (except stallions from sexual maturity)
- Mouse
- Guinea pig
- Mongolian gerbil
- Rat
- Pigs (except sows during suckling and mating periods and boars from puberty)
- Yak
- Goats up to the age of four months, if there is more than one kid on the holding

Birds

- Large parrots (macaws and cockatoos)
- Birds up to the size of grey parrots (large parakeets and parrots)
- Birds up to the size of parakeets (medium-sized parakeets)
- Birds up to the size of Agapornis (canaries, finches, small parakeets, Agapornis)

Fish

- The Ordinance does not list individual species; however, aquarium fish must have their species-appropriate requirements observed. This means schooling fish, such as barbels, tetra, guppies and goldfish should never be kept individually.

^[1] „Die Tiere sind in Gruppen von mindestens 2 Tieren zu halten.“ *Author's translation:* [these] animals must be kept in groups of 2, minimum; (Wegweiser Tierschutzgesetz, *Author's translation:* a guide to the Animal Protection Act, accessible from chrome-extension://oemmnqcbldboiebfnlqddacbfmadadm/http://www.tierschutz.com/publikationen/rechtsberatung/infothek/wegweiser_tschg.pdf)

^[2] Animal Welfare Ordinance, Article 13, accessible from <https://www.admin.ch/opc/de/classified-compilation/20080796/index.html> (auf Deutsch), [chrome-extension://oemmnqcbldboiebfnlqddacbfmadadm/https://www.blv.admin.ch/dam/blv/en/dokumente/tiere/rechts-und-vollzugsgrundlagen/animal-welfare-ordinance-tschg.pdf.download.pdf/Animal_Welfare_Ordinance_\(TSchV\)_position_as_at_14.2011.pdf](chrome-extension://oemmnqcbldboiebfnlqddacbfmadadm/https://www.blv.admin.ch/dam/blv/en/dokumente/tiere/rechts-und-vollzugsgrundlagen/animal-welfare-ordinance-tschg.pdf.download.pdf/Animal_Welfare_Ordinance_(TSchV)_position_as_at_14.2011.pdf) (in English)

^[3] Article 120(2), Constitution of Switzerland, accessible <chrome-extension://oemmnqcbldboiebfnlqddacbfmadadm/https://www.admin.ch/opc/de/classified-compilation/19995395/20180923000/101.pdf> (auf Deutsch), <https://www.admin.ch/opc/en/classified-compilation/19995395/index.html> (in English)

^[4] This is considerable debate over this very term in the constitution. Michel, M & E. S. Kayasseh (2011) 'The Legal Situation of Animals in Switzerland: Two Steps Forward, One Step Back – Many Steps to Go', *Journal of Animal Law Vol. VII* (Michigan) has a very good discussion of this point.

^[5] Animal Welfare Ordinance, Article 64

^[6] Animal Welfare Ordinance, Article 801 (cats) and Article 70 (dogs)

^[7] <https://www.rspca.org.uk/adviceandwelfare/pets/rodents/guineapigs>

^[8] https://www.swissinfo.ch/eng/pet-ownership_no-more-obligatory-courses-for-dog-owners/42459536

^[9] Michel, M & E. S. Kayasseh (2011) 'The Legal Situation of Animals in Switzerland: Two Steps Forward, One Step Back – Many Steps to Go', *Journal of Animal Law Vol. VII* (Michigan), p. 13

^[10] <https://www.bbc.co.uk/news/blogs-news-from-elsewhere-37418371>