The introduction of the animal’s dignity as a concern in animal welfare legislation in Switzerland is unique worldwide. Naturally, this measure has raised hopes and fears in those concerned with animal welfare and animal use. For the past several years, a lively debate has focused on the question of whether the addition is merely a declaration of intent or an explicit demand with, possibly, a profound impact on everyday practice. What the implications may be in the latter case is not clear. In the area of research, it has yet to be seen how this concept may be incorporated feasibly, for example, into the harm–benefit analysis, which is the prerequisite for the approval of an animal experiment. It is foreseeable, therefore, that this addition might have direct implications on research. Unfortunately, in the legislative text, there are some inconsistencies in wording, at least in the German version, that complicate interpretation. This article provides a short overview of some aspects of the controversy, which is far from settled at this time. The commentary will be restricted to the situation of experimental animals in Switzerland.

1. Introduction

When discussing the introduction of “dignity” into the Swiss Animal Welfare Legislation, it has to be stated that the concept is not entirely new; it had been incorporated into the Federal Constitution in 1992 as the dignity of creatures in a different context: genetic manipulation. As the Swiss Academy of Medical Sciences SAMS stated in their 1997 position paper [1], both the term “creature’s dignity” and “animal’s dignity” had, to this point, remained indistinct, and the meaning had not been defined. Basically, the introduction of this term was intended to protect living things against excessive changes of their genome (from this derives the French translation “intégrité”). Also, the development of the concept of “animal integrity” in the Netherlands was directly linked to the ethical and legal questions arising with the developments in genotechnology, which describes objective and non-pathocentric aspects of human actions that are not captured in previous rulings.

The dignity of the animal is part of the Swiss Animal Welfare Legislation since September 2008. Goetschel has called this expansion unique [2]. Apart from the classical constraints (pain, fear, damage, etc.), additional concerns such as humiliation, excessive instrumentalization, and major interference with appearance or capabilities are now included. This constitutes a departure from the “classical” animal welfare legislation with its explicitly pathocentric approach. What is revolutionary is that it is now possible to impose a burden on the animal (e.g., by changing its appearance, such as dying a poodle pink), even if the animal itself does not perceive it as such.

One can argue that the pathocentric approach has led to an overstatement of suffering, neglecting other areas in which animals may experience harm (indirectly). For example, the ridiculing of an individual animal influences our view (and that of others, e.g., young children) on this particular animal and possibly also the future attitude toward its entire species. This may well lead to neglect or derogatory, maybe even cruel treatment of the same or another animal of the same species.

In Switzerland, as in a number of countries, the approval of an animal experiment is based on a so-called harm–benefit analysis. This analysis serves to weigh the possible damage inflicted on the animal in the course of an experiment against the possible gain in scientific knowledge or human benefit. The outcome of this analysis is the basis for the decision on whether to approve of an experiment. In this process, two things have to be weighed against each other that basically do not allow this measure: the expected benefit of an experiment is hypothetical and cannot be quantified; the expected harm can be quantified (which is attempted in the categorization into severity degrees), but animal distress and scientific benefit belong in different categories – they cannot be directly compared. Still, it is the practicable approach to assess whether an animal experiment is justifiable.
So, with the introduction of “non-burden-burdens” [3], Switzerland faces the issue of harmonizing these with the existing severity degrees, categories that are profoundly pathocentric. At the same time, cantonal commissions in charge of performing the harm–benefit analysis require a comprehensible concept that is useful for reaching a balanced and legally waterproof decision. The discussion regarding what to do with the animal’s dignity in everyday life spans all areas of animal use and remains far from settled. For space reasons, this article restricts itself to research and will focus on only few aspects of a clearly diverse and sometimes divisive issue.

2. The dignity of the animal

In Article 3 of the Swiss Animal Welfare Act, the term is defined as follows:

*a. dignity*: Inherent worth of the animal that has to be taken into account when handling it. If any stress imposed on the animal cannot be justified by overriding interests, this constitutes a disregard for the animal’s dignity. Stress is deemed to be present in particular if pain, suffering or harm is inflicted on the animal, if it is exposed to anxiety or humiliation, if there is major interference with its appearance or its abilities or if it is excessively instrumentalised.

And Article 4.2 specifies:

No one may inflict pain, suffering or harm on an animal, induce anxiety in an animal or disregard its dignity in any other way without justification.¹

Rippe asks whether, possibly, in this definition, the term “dignity,” which is subject to interpretation, is being explained by another one, “inherent worth” [4]. Still, inherent worth implies a value that is independent of the value the animal has with regard to usefulness, economic, or practical worth, and it is not diminished by age, sickness, injury, etc. In the same vein, Sitter-Liver stated in 1995 that intrinsic worth is independent of the value animals have or might have for us – it is indispensable [5].

From early on, there have been worries that with assigning a fundamentally human property such as dignity to animals, the value of the human dignity is being devaluated, leading to an inflation of the term. According to Rippe [4], however, there need be no such concerns. As human dignity was originally deduced from the ability to have duties, to act responsibly, and from the uniqueness, self-control, and rationality of the human being, it is therefore an absolute value that cannot be subject to weighing or be diminished by overriding interests. In contrast, the law clearly states that the animal’s dignity can be disregarded if there is justification. Therefore, it may be subjected to a harm–benefit analysis in the course of the authorization of an experiment; it constitutes a relative value, which distinguishes it from human dignity. Regina Binder rightly states, the harm–benefit analysis is mandatory in Austria, Germany, and several other countries, and it has been so in Swiss legislation even prior to 2008 – it does not require dignity [3].

3. The animal experimentation ordinance and inconsistencies in wording

In 2010, in response to the changes in the Welfare Act, the Animal Experimentation Ordinance was passed. In Articles 24 and 25, the severity degrees with regard to procedures (24) and genetic modification (25) are described. With regard to dignity, Article 26 (Constraints to be considered for assessing the acceptability of an experiment) adds:

To assess the acceptability of an experiment, consideration shall be given... also to further constraints imposed on the animals through debasement, through radical intervention in their appearance or their capabilities or through excessive instrumentalization.

The placing of the actions that harm an animal’s dignity straight behind the “severity degree” articles might suggest that the constraints mentioned in it are intended to be included into the harm–benefit analysis. This is not the consensus, however. In its 2010 position paper, the SAMS argues that this cannot be the case [8].

In this line of thought, the animal’s dignity is being disregarded if a harm–benefit analysis weighing its interests is not performed, or if the outcome had been that the procedure cannot be justified and the experiment is done nevertheless. The regard for the dignity of the animal does not depend on single actions but constitutes a general demand for ethically responsible treatment, including a harm–benefit analysis. Therefore, the constraints from Article 26 are not part of the severity degree and are not weighed against the expected scientific benefit. At the same time, it is pointed out that the text is inconsistent, for example, with regard to the terms “disregard” and “violate.”

As Regina Binder rightly states, the harm–benefit analysis is mandatory in Austria, Germany, and several other countries, and it has been so in Swiss legislation even prior to 2008 – it does not require dignity [3].

Binder questions the value of introducing a “moral concept” such as dignity if this does not coincide with changes in practice. If the introduction of the animal’s dignity is to be understood as a mandate by the lawmakers, it must lead to fundamental changes in everyday practice and must open new areas of protection that have not been covered by previous legislation, if the term is to be useful.

In a direct response to the statement of SAMS, Kunzmann dismisses the notion that the dignity of the animal is met by the performance of harm–benefit analysis [9] and, at the same time, offers a practical solution to reconcile the positions. In his argument, dignity is both a reason for the performance of harm–benefit analysis, and at the same time, an object of it. The terms are not contradictory but complementary.

In this interpretation, “violation” of an animal’s dignity is subject to the harm–benefit analysis; it can be justified by overriding interests. It is therefore principally quantifiable and can be incorporated into severity degrees. In contrast, “disregard” is not justifiable; it is a yes/no decision, and disregard of an animal’s dignity is not tolerable. This resolves many, though unfortunately not all, disparities; for example, then Article 4 (2) Animal Welfare Act must say: “or violate its dignity without justification.”

The question remains to be answered: What exactly makes an interest an overriding interest? This is nowhere specifically stated, which is consistent with the law providing general rules and leaving the specific decisions to the responsible authorities.

4. The ruling of the Swiss Federal Court in 2009

First experiences certainly exist. One year after the change in the Animal Welfare Act, dignity played an important role in the ruling of

¹ English is not an official language of the Swiss Confederation. This translation can be found on the website of the Swiss Federal Veterinary Office: http://www.bveta.admin.ch/themen/tierschutz/index.html?lang=en
the Swiss Federal Court with regard to primate experiments in Zurich. Although the date of decision was in 2009, the judges had decided to apply the former legislation, since the proceedings had taken several years and the issues in question had taken place before 2008. In short, and to the surprise (and dismay) of many, the judges declared the experiments as not justifiable. An important part of the justification was indeed the special dignity of the primate, which derives from its sensory and evolutionary proximity to humans. The judges found that the interests of these animals, in this particular case, outweigh the possible benefits of research.

Ever since this ruling, emotions have been running high among researchers as well as among animal welfare proponents. It is not true, however, that primate experiments are now forbidden in Switzerland. The Court placed emphasis on the fact that its decision applies to this individual case only. Therefore, there is no need to overstate the importance of this ruling, but it certainly is safe to say that the rationale of the Federal Court has provided a binding point of reference for future harm–benefit analyses.

5. Implications and possible practical issues

- Major interference with appearance or capabilities of an animal (with the idea of being able to maintain its species-specific properties and behaviors) as actions that have to be justified by overriding interests can have an impact on innumerable research projects.
- Humiliation takes place when the animal is being treated like an item, for example, for personal amusement, without regard to its own interests (there is an overlap to excessive instrumentalization). An analogy to human dignity is notable; humiliation of an individual is forbidden even if the concerned person does not perceive it as such.
- Excessive instrumentalization takes place if, in the use of the animal, no regard is paid to its own needs and interests or if they are seen as irrelevant.

The departure from pathocentrism implies new ways of handling dead animals as well; certainly, we feel that dead animals, and especially animals we had to kill for our own purposes, deserve respectful treatment and are not to be handled as toys or garbage.

To get a general idea of the complexity of this issue, two examples are provided:

- robo-rat (rrobat) is a remotely guided rat with electrical probes implanted into the brain [10]. This “steering” of the rat certainly constitutes an interference with the animal’s capabilities. But it is not automatically a disregard if there are overriding interests justifying it. What would be such an overriding interest? Military purposes, like spying out the enemy – certainly not. Scientific purposes would have to be weighed with all other relevant factors on a case-by-case basis. Rats searching for victims of earthquakes? Conceivable, if this would be a measurable improvement over the traditional methods.
- Touching on the topic of xenotransplantation, Bertschinger [11] states that the animal is disregarded on all levels, with unfavorable consequences in three main areas:

  genetic integrity: introduction of (relatively large amounts) of heterogenous genes in order to improve tolerance in the recipient, with possible consequences for well-being of the donor animal

  housing conditions: strict isolation

  and the preclinical development phase with test transplantations from one animal species to another with possible massive adverse effects in the recipient

As a consequence, in the field of xenotransplantation, the animal is being totally instrumentalized for a procedure whose future benefits are not completely understood.

Much has been said about the adequacy of the analogy conclusion (extrapolating one’s own, human experience to another being) when judging an animal’s possible (physical or psychological) distress. According to Schmidt, this is not practicable with violations of dignity. Since animals are not aware of their own dignity, something that the SAMS also stresses in its 1997 paper, they, unlike us, cannot feel a disregard or violation of it. Therefore, in this case, not even with the analogy approach is possible, and all that the human observer is left with are his or her own and very personal criteria on what would constitute such disregard [7]. In contrast, Krepper states that, indeed, respect for the animal’s dignity demands from us not only scientific objectivity and logic but a deep personal commitment and empathy when judging the animal’s existential interests. He is advocating an emotional, albeit reasonable approach to the concept, its contents and consequences [12].

So how could the dignity of the animal, understood as a mandate by legislators, be brought to life in everyday practice? For Krepper, the dignity of the animal creates a respectful distance towards the other living being, providing it with certain inviolability. He concludes that the concept demands strict and effective animal protection legislation, as well as the development and implementation of alternative methods that render in vivo experiments dispensable, providing humanity with knowledge, benefit as well as animal protection [12].

So, can experiments of the highest severity degree be justified at all before this new background? How about the painless killing of animals – certainly the most radical interference with an animal’s capabilities that can be imagined? There are currently many questions. Regina Binder correctly states a discrepancy between the demands that can potentially be deduced from the term dignity, and the actual status quo [3], but then the introduction has been relatively recent, and the possible implications have yet to be fully understood. The above notes can give only an idea of what has to be discussed and what has to be decided. The question is justified, though, whether this demand made by legislation, as outlined in this article, can be met at all.

6. Conclusions

Irrespective of contradicting views and many open questions, the introduction of the dignity of animals imposes moral obligations that exceed the infliction of pain, fear, suffering harm, etc. and that broaden the spectrum to non-pathogenic “burdens.” And although the exact terminology may not be to everyone’s satisfaction, there is a societal consensus that these terms aim to express.

The situation in Switzerland is unprecedented and unique, and as we have seen, a lot might be at stake. The departure from the pathocentric approach may open a new field of animal protection, which goes beyond not harming but actually influences our viewpoint toward regarding animals with more consideration and respect and shield them from debasement and excessive instrumentalization. One can effortlessly imagine, though, what profound consequences for everyday life a thorough and consequential implementation this might have. On the other hand, it can be safely assumed that it was the explicit intention of legislators to open a field in our dealings with animals that go beyond the former spectrum. The Swiss face an enormous challenge, and that is to maintain a reasonable and practicable use of animals while, at the same time, ensuring that the term does not become simply a beautiful but idle word in their law.
Acknowledgment

The author would like to thank Carol Howard, ALTEX Edition Editorial Office USA at Johns Hopkins University Baltimore, for the critical reading of this manuscript.

References


