

Deconstructing Thinghood = Constructing Personhood?

Insights from the Swiss Legal Dereification of Animals

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I would like to extend my gratitude to all the people who helped me write this article by correcting my language, sharing their comments, or encouraging me. I would particularly like to thank, in chronological order, Prof. André Kuhn, Laure-Ednie Dieudonné, Isabella Raile, Yves Paychère, Aléna Rubbia, Festus Nzeyimana, the Ars Iuris Team, and the peer reviewers. This paper was presented at the 3rd Ars Iuris Legal Potentials Conference.

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I. Introduction

As interest in and concern for the environment grow, one old idea reemerges: granting (certain aspects of) legal personhood to non-human natural elements.¹ Although this may appear new within the contemporary Western legal landscape, historical and cultural evidence indicates otherwise. In certain traditions, predominantly Indigenous, natural entities are conceived as possessing intrinsic status and significance.² Linked to Western views on law, this led to natural elements receiving standing, rights, or personhood. The Māori, for example, have recognised legal personhood to, e.g. *Te Urewera* (a forest, the historical homeland of *Tūhoe*)³

¹ The reemergence of the idea is generally attributed to Stone, 'Should Trees Have Standing? Towards Legal Rights for Natural Objects' (1972) 45 *SCLR* 450. See a few examples: Boyd, 'Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution?' (2018) 32 (4) *NR&E* 13; Douglas and Meeker, 'Nature's Constitutional Rights' (1973) 258 (1) *NAR* 11; Kersten, 'Who Needs Rights of Nature?' (2017) 6 *RCC P* 9; Nakazora, 'Environmental Law With Non-Human Features in India: Giving Legal Personhood to the Ganges' (2023) 43 (2) *SAR* 172; Quaicoe, 'The Post-Anthropocene Ubuntu: Reconceptualizing Legal Personhood for Rivers, Forests, and Sacred Sites in African Jurisprudence' (2025) 1 (2) *IJHMEELS* 153 (157 ff); Shivshankar, 'The Personhood of Nature' (*law and other things, a blog about India's laws, legal system, its courts, and its constitution*, 5 April 2017) <<https://lawandotherthings.com/the-personhood-of-nature/>> accessed 12 January 2026.

² 'Indigenous Views On Nature: A Cultural Perspective' (*Native Tribes Blog*, 4 August 2025) <<https://nativetribes.blog/blog/indigenous-views-on-nature-a>> accessed 12 January 2026; Andersson, Cothran, and Kekki, 'Traditional Indigenous Knowledge and Nature Protection: Collaboration and Changing Paradigms', in Andersson, Cothran and Kekki (eds.), *Bridging Cultural Concepts of Nature: Indigenous People and Protected Spaces of Nature* (Helsinki, 2021) 1 (7 ff); Carbaugh and Grimshaw, 'Blackfeet Discourses about Dwelling-in-Place: Our Homeland, a National Park', in Andersson, Cothran and Kekki (eds.), *Bridging Cultural Concepts of Nature: Indigenous People and Protected Spaces of Nature* (Helsinki, 2021) 203 (203 ff); Krenak, 'Why Indigenous Peoples are critical to the Rights of Nature' (*Human Rights in Context*, 9 August 2022) <<https://www.humanrightsincontext.be/post/why-indigenous-peoples-are-critical-to-the-rights-of-nature>> accessed 12 January 2026.

³ § 11 of the New Zealander Te Urewera Act 2014, from 27 July 2014, as amended 5 April 2025; all New Zealand law can be accessed via <https://www.legislation.govt.nz/>, <https://www.legislation.govt.nz/>

and whales⁴, while simultaneously becoming their legal guardians.⁵ In some European continental states, criminal and ecclesiastical courts judged animals as defendants, illustrating conceptions of legal personhood that diverge from modern assumptions.⁶ Many legal systems distinguish between things and persons, recognising only the latter as subjects of rights. Consequently, to exist as an actor in the eyes of the law, one must be a legal person. The argument is that considering natural elements as legal persons will enable regulations to be created and enforced by taking the natural elements' own interests into account.⁷ This approach would lead to better protection of the environment, a widely recognised need.⁸

The debate about granting legal personhood to the environment ('Rights of Nature') is often linked to an approach that focuses on giving rights to *some elements* of the environment. Both ideas share similarities as part of a wider conversation about personhood and environmental protection. These similarities will be referred to in

⁴ The He Whakaputanga Moana, Whale Protection and Legal Personhood Declaration (Declaration for the Ocean) 2024; the declaration can be accessed via <https://www.whaledclaration.com/declaration>. See for more information: Kauffman, Haas, Putzer, Bajpai, Leonard, Macpherson, Martin, Pelizzon and Sheehan, 'He Whakaputanga Moana (Whale Protection and Legal Personhood Declaration)' (*Eco Jurisprudence Monitor*, 2025) <<https://ecojurisprudence.org/initiatives/he-whakaputanga-moana-declaration-for-the-ocean-treaty/>> accessed 12 January 2026.

⁵ This view is both seen as progress for environment and Indigenous rights but is also criticised as it forces Indigenous People to conform to the law. Law is often imposed and arrived upon from outside indigenous practices, posing questions linked to neocolonialism. See, e.g.: Coombes, 'Personifying Indigenous Rights in Nature? Treaty Settlement and Co Management in Te Urewera', in Andersson, Cothran and Kekki (eds.), *Bridging Cultural Concepts of Nature: Indigenous People and Protected Spaces of Nature* (Helsinki, 2021) 29 (in particular 35 ff and 38 ff); Evans, 'Is 'legal personhood' a tool or a distraction for Māori relationships with nature?' (*MONGABAY*, 8 July 2024) <<https://news.mongabay.com/2024/07/as-maori-heal-through-nature-is-legal-personhood-a-tool-or-a-distraction/>> accessed 14 January 2026.

⁶ Chêne, *Juger les vers: Exorcismes et procès d'animaux dans le diocèse de Lausanne (XVe-XVIe s.)* (Lausanne, 1995); Keith, *Dans le jardin de la nature, La mutation des sensibilités en Angleterre à l'époque moderne (1500-1800)* (Paris, 1985) 121 ff; Radomme, 'Des animaux et des hommes: Les procès d'animaux au Moyen Âge et la conception occidentale de l'animalité', in Dossche (ed.), *Le droit des animaux: Perspective d'avenir* (Brussels, 2019) 17 (23 ff).

⁷ Mills, 'Environmental personhood: what is it and why should nature be given legal status?' (*World Economic Forum*, 13 February 2025) <<https://www.weforum.org/stories/2025/02/environmental-personhood/>> accessed 12 January 2026; Mührel, *Rights of Nature in Liberal Legal Systems and International Law: Beyond Legal Anthropocentrism* (Cham, 2024) in particular 12, 253 and 289; Kahui, 'Granting legal 'personhood' to nature is a growing movement – can it stem biodiversity loss?' (*The Conversation*, 25 April 2024) <<https://theconversation.com/granting-legal-personhood-to-nature-is-a-growing-movement-can-it-stem-biodiversity-loss-227336>> accessed 12 January 2026.

⁸ Mührel, *Rights of Nature* 288 ff.

order to draw comparisons. However, this paper specifically focuses on animals' right and more precisely on their legal status.

While the issue of legal personhood is well-documented and sometimes sparks intense debate, few studies analyse the process of granting legal personhood. Often relayed as background information, the lawmaking process is very important to consider, as it provides information on the reasoning behind the existence of the law and its (intended) objectives and consequences. It also explains the concrete interests at stake in the related discussion. Therefore, insights on concrete legislative processes offer realistic options to jurists and researchers who want to understand a legal situation or propose law modifications.

However, this first step is perhaps the most difficult. In this paper, the law is viewed as a dynamic process, constantly evolving at different speeds, whether it is written or not. Its application, as well as the values and arguments that influence its birth, death, and (re-)shaping are central to this perspective. This analysis draws on doctrinal and case studies, along with the broader context (legal *stricto sensu* or not) in which the law is created and applied. In doing so, this paper moves beyond a focus on written law, as understood in legal positivism. The aim is to explore how legal personhood is granted within a legal and democratic framework, regarding both the resistance and acceptance of such legal entities. This paper fills the gap by examining how democratic procedures themselves influence the creation of new legal subjects using the Swiss reform on animals' status as a case study. This paper focuses on the concrete lawmaking process. Using the example of the extension of legal personhood to animals in Switzerland, study highlights various factors and actors involved in the legislative process and emphasizes the importance of recognising and considering said factors and actors to bring about legal change. This research is crucial not only for doctrinal and theoretical discussions but also for future lawyers and legislators. Given the growing interest in the legal status of animals and natural entities, it provides valuable insights into the challenges and opportunities of extending legal subjectivity within contemporary legal systems.

To this end, the following will briefly expose the historical context and emergence of the idea of changing the legal status of animals in Switzerland (Chapter II.). The procedure of that reform, supported by historical and judicial materials, is then examined (Chapter III.). The reception of such a change in Switzerland (Chapter IV., A.) is subsequently compared with its reception in Austria and Germany (Chapter IV., B.). This is followed by a synthesis of the contemporary differences in how legal personhood is extended to non-human natural entities (Chapter IV., C.). A few lessons drawn from the Swiss case (Chapter V.) are then discussed. In the

conclusion some thoughts on the ecological and legal reconfiguration of subjectivity in the 21st century will be made (Chapter VI.).

II. Historical Background and Doctrinal Context

Firstly, the historical context and the legal framework in Switzerland before the amendment of the law will be outlined. It will be followed by an explanation on the legal system of *res* and *persona*, its origin, and its impact on animals. In addition, this section will provide a brief historical overview, including key moments and ideas that existed before the legal change that led to questions about the legal status of animals.

A. *Res* and *persona*: Legal Objects and Legal Persons in General

Like many other states, the Swiss legal system classifies three categories inherited from Roman law: legal persons (*personae*), legal things (*res*) and actions (*actiones*).⁹ The law recognises legal subjects (persons) who have rights and can bear obligations, and legal objects (things), on which the rights or obligations of legal persons depend.¹⁰

More specifically, legal objects are not usually considered to have their own interests and are therefore acknowledged through the perspective of a person. This then leads to an indirect protection, through the interests or rights of a legal person, or thanks to a responsibility or an obligation of a legal person (for example through a duty of care). Legal objects are often protected based on their supposed or actual utility for the legal person. This, especially in regard to environmental protection, raised criticism of anthropocentrism.¹¹ Following the example of Roman law, the current system further classifies legal objects into different categories based in particular on their ability to be moved as well as whether they are physical or not.¹²

⁹ Gaius, *Institutes* (Paris, 1950) para. I, 8; Forster, *Droit privé romain, perspectives contemporaines* (Basel, 2024) 65; Paturet, 'Sujet, objet, res et nature: un aperçu historique de l'évolution du concept de chose de l'Antiquité au droit contemporain' (2019) 32 (2) *IJSL* 485 (488); Thommen, *Introduction to Swiss Law* (Berlin, Bern 2018) 12.

¹⁰ Forster, *Droit privé romain* (65, 117 ff); Honsell and Fagnoli, *Römisches Recht*, 9th edn. (Bern, 2021) 28, 60; Paturet, (2019) 32 (2) *IJSL* 485 (488).

¹¹ Montes and Stilt, 'Naturalized Rights of Animals, Animalized Rights of Nature' (*SSRN*, 13 May 2024) <<http://dx.doi.org/10.2139/ssrn.4826699>> accessed 17 March 2026 (9 ff); Stucki, 'Emerging Animal Rights and Their Anthro-, Zoo- and Ecocentric Justifications' (*EJIL:Talk!*, 23 April 2023) <<https://www.ejiltalk.org/emerging-animal-rights-and-their-anthro-zoo-and-ecocentric-justifications/>> accessed 14 January 2026.

¹² Gaius, *Institutes* para. II. 12; Forster, *Droit privé romain* 117 ff; Honsell and Fagnoli, *Römisches Recht* 60.

Regarding the concept of personhood, it was first used to describe the masks that actors would wear and to recognise their characters (*persona*).¹³ This has later been derived to indicate the role and the qualities of human beings.¹⁴ It was only in the Renaissance that it acquired its more technical legal sense.¹⁵ The idea that personhood is linked to the capability to bear rights is quite recent.¹⁶ Nowadays, we consider personhood a legal fiction to address the holders of rights.¹⁷

While it was first exclusively linked to male citizens, the legal system we know today recognises all human beings and extends to some non-human entities. In national law, this refers to ‘natural’ or ‘physical’ persons, which are human beings, and ‘moral’ or ‘judicial’ persons, which are non-human legal entities, mainly enterprises or organisations.¹⁸ Such recognition was motivated by personal needs or practicality and transparency issues, such as the separation of personal assets from company assets and the need to prosecute crimes that were committed by companies, as shown by the legal regulations adopted in relation to their personhood.¹⁹ Recognition or expansion of legal status was possible through social rights movements, voting, and legal actions.²⁰ In line with this, many ecological movements also advocate for legal recognition of natural resources and elements.

¹³ See the entry for ‘persona, ae’ in Quicherat and Daveluy, *Dictionnaire latin-français* (Paris, 1857).

¹⁴ Kurki, *A Theory of Legal Personhood* (Oxford, 2019) 32.

¹⁵ Honsell and Fagnoli, *Römisches Recht* 28; Kurki, *A Theory of Legal Personhood* 35 ff.

¹⁶ Hermansson, ‘Structuring concepts of legal personhood’ (2023) 51 *Revus* (paras. 12 ff); Kurki, *A Theory of Legal Personhood* 38 ff.

¹⁷ Von Savigny, *System des heutigen Römischen Rechts*, Band II (Berlin, 1840) paras. 65, 66; von Ihering, *Der Geist des römischen Rechts*, Erster Band (Leipzig, 1852) 321; Buocz and Eisenberger, ‘Demystifying Legal Personhood for Non-Human Entities: A Kelsenian Approach’ (2023) 43 (1) *OJLS* 32 (36 ff); Montes Franceschini, ‘Traditional Conceptions of the Legal Person and Nonhuman Animals’ (2022) 12 (19) *Animals* 1 (9 ff).

¹⁸ The terms natural persons and moral persons are translations of the Swiss terminology (*persona fisica*/*persona naturala*/*personne physique*/*natürliche Person* and *persona giuridica*/*persona giuridica*/*personne morale*/*juristische Person*).

¹⁹ Hilti and Transparency Switzerland, *Corporate Criminal Liability: Incomplete Legislation, Inadequate Enforcement, Serious Lack of Transparency* (Bern, 2021) 10; Ruedin, ‘Droit des sociétés’ (*Dictionnaire historique de la Suisse, DHS*, 30 January 2006) <<https://hls-dhs-dss.ch/fr/articles/027305/2006-01-30/>> accessed 12 January 2026.

²⁰ See for example with women rights: The last place in Switzerland where women obtained the right to vote did not do so through a voluntary vote, but through a court ruling: Judgment from the Swiss federal court (ATF) *Theresa Rohner and others v. Canton of Appenzell Inner Rhoden*, 27 November

B. Animals and the Legal Object Status

Animals were previously considered legal objects. This categorisation originates not only from Roman law but also from religious and philosophical traditions. Religion, particularly regarding Christianity and more precisely Catholicism, usually views life on Earth centred around humans, therefore regarding the world as a resource for humankind.²¹ Western philosophy often marginalised non-human animals as mere objects and tools due to their supposed inability to think, notably through René Descartes' idea of an "animal machine" and the *cogito, ergo sum*.^{22 23}

During the 19th century, numerous animal protection movements emerged, starting in England and then spreading across Europe.²⁴ Unfortunately, although improving animal welfare is a cause for celebration, it is important to remember that such movements have regularly benefited from, and sometimes even contributed to, xenophobia, racism and, in particular, antisemitism.²⁵ More specifically, regarding Switzerland, animal welfare became a federal duty in 1973 by the insertion of the ancient article 25^{bis} of the previous Swiss Federal Constitution of 1874 (previous and repealed version).^{26 27} This rapidly led to the adoption of the Swiss Animal Welfare

1990, ATF 116 Ia 359; all Swiss Supreme Court's decisions can be accessed at <https://www.bger.ch/fr/home.html>.

²¹ Strunz, *Die Rechtstellung des Tieres insbesondere im Zivilprozess* (Zürich, 2002) 79.

²² Translated meaning: "I think, therefore I am".

²³ Strunz, *Die Rechtstellung des Tieres* (80). Counterexamples are numerous but to only quote one: Singer, *La Libération animale* (Paris, 1975).

²⁴ Krauthammer, *Das Schächtverbot in der Schweiz 1854-2000: Die Schächtfrage zwischen Tierschutz, Politik und Fremdenfeindlichkeit* (Zürich, 2000) 26; Traïni, *The Animal Rights Struggle: An Essay in Historical Sociology* (Amsterdam, 2016) 11.

²⁵ See more: Brahier and Hürlimann, 'Article 80 Cst.', in Martenet and Dubey (eds.), *Commentaire romand: Constitution fédérale* (Basel, 2021) para. 2; Krauthammer, *Das Schächtverbot*.

²⁶ A version of this text is accessed via https://www.fedlex.admin.ch/eli/cc/1/1_1_1/fr. Currently article 80 of the Swiss Federal Constitution, 18 April 1999, as amended 3 March 2024, RS 101 (Cst.); all current Swiss federal legislation can be accessed via <https://www.fedlex.admin.ch/fr/>.

²⁷ Brahier and Hürlimann, 'Article 80 Cst.', para. 1; Schärmeli and Griffel, 'Artikel 80 BV', in Waldmann, Belser and Epiney (eds.), *Basler Kommentar: Bundesverfassung*, 2nd edn. (Basel, 2025) para. 1.

Act of 1978 (previous and repealed version).²⁸ It originally followed a pathocentric approach, focusing on protection against cruel and inhumane treatments.²⁹

A major milestone was achieved in Switzerland with the recognition of the dignity³⁰ of ‘Creatures’. It was first installed in 1980, as outlined in the Constitution of Canton³¹ Aargau³², and then at the federal level in 1992³³. Today, it is still the only State to have done so. The dignity of Creatures was adopted for non-human gene technology, but is not limited to that domain.³⁴ Written in imprecise words, it is made to cover a vast panorama of activities and living beings, evolving with both biological and ethical concerns.³⁵ The Federal Ethics Committee on Non-human Biotechnology (ECNH) is responsible for concretising the notion.³⁶

Dignity refers to the intrinsic worth that is given to all living beings, regardless of anthropocentric interests.³⁷ This principle bans the consideration of creatures as mere means of human action and aims to ensure that the living being in question is able to perform the functions and display the abilities that members of its species would normally exhibit (notably including growth, reproduction, movement and social

²⁸ A version of this text is available via https://www.fedlex.admin.ch/eli/cc/1981/562_562_562/fr; Schärmeli and Griffel, ‘Artikel 80 BV’, para. 3.

²⁹ Michel, *Rechtsgemeinschaft mit Tieren: Eine Spurensuche* (Wiesbaden, 2024) (276, 299); Schärmeli and Griffel, ‘Artikel 80 BV’, para. 6.

³⁰ While the French version has changed since then to ‘integrity of living organisms’, the other language did not. So, it is considered to have no special impact on its interpretation, especially given that even the commission's documents in French still use the term ‘dignity of living beings/creatures’.

³¹ ‘Canton’ is the name of the federated states of Switzerland.

³² § 14 of the Aargauer Constitution from 25 June 1980, as amended 30 June 2024, SAR 110.000; all legislation from Canton Aargau is accessible via https://gesetzessammlungen.ag.ch/app/de/systematic/texts_of_law.

³³ Federal Decree on the Popular Initiative Against Genetic Manipulation, 21 June 1991, Federal Gazette FF 1991 II 1433; Federal Decree on the Vote From the 17th May 1992, 13 August 1992, Federal Gazette FF 1992 V 443. Current article 120 Cst.

³⁴ Schärmeli and Griffel, ‘Artikel 80 BV’, para. 6.

³⁵ Boillet, ‘Article 120 Cst.’, in Martenet and Dubey (eds.), *Commentaire romand: Constitution fédérale* (Basel, 2021) para. 18; Waldmann, ‘Artikel 120 BV’, in Waldmann, Belser and Epiney (eds.), *Basler Kommentar: Bundesverfassung*, 2nd edn. (Basel, 2025) para. 17.

³⁶ Boillet, ‘Article 120 Cst.’, para. 19.

³⁷ Boillet, ‘Article 120 Cst.’, para. 18.

behaviour).³⁸ Contrary to human dignity, the creature's one is not absolute, as it must only be *taken into account*.³⁹ In other words, one must consider the implications of one's actions on the living beings' well-being, capability to live a normal life according to its species and its own interests.⁴⁰ This requires a proportionality test: the infringement must be legally justified, necessary to reach a public interest, adequate to fulfil such interest, and the other public interest should outweigh the creature's dignity.⁴¹ Therefore, a measure also violates the creature's dignity, when a less damaging measure is feasible while offering the same results.⁴²

While the Constitution affirms an intrinsic value for all creatures (animals, plants, and other organisms)⁴³, in practice this applies especially to vertebrate animals.⁴⁴ Indeed, after the adoption of the constitutional principle, the Swiss Animal Welfare Act was reformed accordingly in 2005.⁴⁵ It now stands as a general principle for the SAWA (article 1), helping to concretize the notion (article 3).⁴⁶ More specifically, regarding animals, the dignity principle goes beyond the previous pathocentric protection (the protection against harm) to include biocentric aspects (with regards to their inherent worth).⁴⁷ Art. 3 lit. a SAWA states:

³⁸ Boillet, 'Article 120 Cst.', para. 19 with the references cited; Brahier and Hürlimann, 'Article 80 Cst.', para. 24; Waldmann, 'Artikel 120 BV', para. 17.

³⁹ Schärmeli and Griffel, 'Artikel 80 BV', para. 6; Waldmann, 'Artikel 120 BV', para. 17; Errass, 'Artikel 80 BV' in Ehrenzeller, Egli, Hettich, Hongler, Schindler, Schmid and Schweizer (eds.), *St. Galler Kommentar: Die Schweizerische Bundesverfassung*, 4th edn. (Zürich, 2023) para. 17.

⁴⁰ Waldmann, 'Artikel 120 BV', para. 17; Brahier and Hürlimann, 'Article 80 Cst.', para. 24.

⁴¹ Schärmeli and Griffel, 'Artikel 80 BV', para. 13; Waldmann, 'Artikel 120 BV', para. 17.

⁴² Boillet, 'Article 120 Cst.', para. 19; Errass and Schweizer, 'Artikel 120 BV', in Ehrenzeller, Egli, Hettich, Hongler, Schindler, Schmid and Schweizer (eds.), *St. Galler Kommentar: Die Schweizerische Bundesverfassung*, 4th edn. (Zürich, 2023) para. 21; Kurki, 'What is Animal Dignity in Law?' (2024) *LEOH* 9 (16); Waldmann, 'Artikel 120 BV', para. 17.

⁴³ Boillet, 'Article 120 Cst.', para. 13, 17; Waldmann, 'Artikel 120 BV', para. 11, 13.

⁴⁴ Errass and Schweizer, 'Artikel 120 BV', para. 21; Waldmann, 'Artikel 120 BV', para. 17.

⁴⁵ While the enforcement of the SAWA happened after the changed status, in this paper, it is decided to keep the explanation in this paragraph for both pragmatic reasons of readability and because both new regulations were discussed at some point at a similar time, so the chronology is blurrier. Therefore, both rules influence each other's creation.

⁴⁶ Swiss Animal Welfare Act, 16 December 2005, as amended 1 September 2023, RS 455 (SAWA); Schärmeli and Griffel, 'Artikel 80 BV', para. 8; Kurki, (2024) *LEOH* 9 (16).

⁴⁷ Errass, 'Artikel 80 BV', para. 14.

In this Act: *dignity* means the inherent worth of the animal that must be respected when dealing with it. If any strain imposed on the animal cannot be justified by overriding interests, this constitutes a disregard for the animal's dignity. Strain 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.⁴⁸

The new regulation follows the dogmatic theory of objective individual interests' protection.⁴⁹ This means that animal's individual and personal interests qualify them as legal objects that are worthy of protection with consideration for themselves. This still does not grant animals any subjective rights or personhood.⁵⁰

While the movement for better legal status for animals has had widespread popular approval and received some satisfaction, the new demands for specific animals or other non-human natural entities have not elicited the same enthusiasm. In fact, all requests in this direction have been disregarded in Switzerland.⁵¹ In the meantime, other States are recognising more different legal subjects.⁵² To understand why the construction of new legal persons is either easy or, on the contrary, difficult, the next section will outline the history of the Swiss reform on animal status.

⁴⁸ Art. 3 lit. a Swiss Animal Welfare Act, 16 December 2005, as amended 1 September 2023, RS 455 (SAWA).

⁴⁹ Künzli, *Stellung des Tieres im Strafrecht, im Strafprozessrecht und in der Kriminologie* (Bern, 2021) 23; Michel, 'Moving Away from Thinghood in Law: Animals as a New Legal Category' (2023) *LEOH* 29 (30, 33); Michel, *Rechtsgemeinschaft mit Tieren* 276.

⁵⁰ Brahier and Hürlimann, 'Article 80 Cst.', para. 59; Michel, *Rechtsgemeinschaft mit Tieren* 276 ff, 288. On the dissonance of recognising dignity but not rights, see: Errass, 'Artikel 80 BV', paras. 20 ff; Schärmeli and Griffel, 'Artikel 80 BV', para. 43.

⁵¹ For example, the initiative Grundrechte für Primaten in the Canton of Basel was refused 'Grundrechte für Primaten' (*Ja Grundrechte für Primaten*) <<https://www.primaten.ch/de/initiative/>> accessed 8 October 2025.

⁵² One example can be found in Ecuador's recognition of *Pachamama*, but the discussion about legal status also concerns non-natural entities such as AI, robots, etc.

III. The Swiss Reform on the Legal Status of Animals

A. Fertile Grounds: Change in Neighbouring Germanic Countries and Swiss Cantons

The legal change of animals' status in Europe begins in Austria. In 1988, Austria changed its civil code by introducing an article that reads as follows: 'Animals are not objects; they are protected by special laws. The regulations applicable to objects shall only apply to animals insofar as there are no deviating regulations.'⁵³ In 1990, Germany also amended its laws regarding the legal status of animals with a very similar provision.⁵⁴

With the objective individual interest protection theory, the constitutional principle of dignity, and the changes from neighbouring states, one could easily question the animal's status as a legal thing. Could a legal thing still be considered a legal object when it is supposed to have an inherent worth that is protected? All these elements formed a fertile ground for discussions on potential legal personhood or at least dereification of non-human animals.

B. The First Two Parliamentary Initiatives: Loeb/Sandoz Project

Seeing this and the brand-new provision on animals' dignity, two parliamentary initiatives were brought to the forefront. The first one was brought forth in August 1992 by François Loeb, a representative of the 'Swiss Radical Democratic Party'⁵⁵ of

⁵³ § 285a of the Austrian Civil Code, as amended by BGBl. Nr. 179/1988 (ABGB); all Austrian federal law can be accessed via <https://www.ris.bka.gv.at/Bund>. The translation is by the author; see original: 'Tiere sind keine Sachen; sie werden durch besondere Gesetze geschützt. Die für Sachen geltenden Vorschriften sind auf Tiere nur insoweit anzuwenden, als keine abweichenden Regelungen bestehen.'

⁵⁴ § 90a of the German Civil Code, 18 August 1896, as amended by the article 1 of the law from 29 March 2026 BGBl. 2026 I Nr. 83 (BGB); all federal laws are accessible via <https://www.gesetze-im-internet.de/>. See original: '§ 90a Tiere: Tiere sind keine Sachen. Sie werden durch besondere Gesetze geschützt. Auf sie sind die für Sachen geltenden Vorschriften entsprechend anzuwenden, soweit nicht etwas anderes bestimmt ist.'

⁵⁵ In French 'Parti radical-démocratique suisse', German 'Freisinnig-Demokratische Partei der Schweiz', Italian 'Partito liberale-radical svizzero' and Romansh 'Partida liberaldemocrata svizra'. It is an ancient right-wing party, that advocated for political liberalism in Switzerland: individual freedoms and liberal values in the economic system. To see more: Moser-Léchoy, 'Freisinnig-Demokratische Partei (FDP)' (*Dictionnaire historique de la Suisse (DHS)*, 24 January 2022) <<https://hls-dhs-dss.ch/de/articles/017378/2022-01-24/>> accessed 11 March 2026. It has merged in 2009 with the 'Swiss Liberal party' (translated from 'Liberale Partei der Schweiz', 'Parti libéral suisse', 'Partida liberal-conservativa svizra' and 'Partito liberale svizzero') which was a right-wing party that focused on liberal policies especially in regards to economic issues and education, standing close to Protestantism ideology to create the 'Swiss liberal-radical party' (from French 'Les Libéraux-Radicaux (le PLR)', German 'Freisinnig-Demokratische Partei (die FDP, Die Liberalen)', Italian 'Partito liberale-radical

the Council of States (the chamber of the parliament that represents the Cantons). He wished to create a new legal category for animals as defined by the standing law and to change multiple legal provisions to take this new status into account (e.g. the placement of animal in case of separation, compensation in case of damages to an animal, etc.).⁵⁶ The second, brought forth in December 1993 by Suzette Sandoz, a representative of the ‘Swiss Liberal Party’⁵⁷ in the Council of States, requested that special regulations be established to recognise the special status of living beings when deemed necessary.⁵⁸ This initiative was more restrictive than the first one. Alongside those initiatives, multiple demands in various forms arose from the people and different organisations to support the project.

Both propositions were combined in one project, and for the rest of the procedure.⁵⁹ An intermediary category between legal things and legal persons for animals was overall approved: ‘For the initiator, it is not about humanising animals, but rather creating a logical, legal intermediate category for animals between objects and humans.’⁶⁰ ⁶¹ It was not explained what exactly comes from such an intermediate category, in an idea to leave as much room as possible for useful interpretation.⁶² In

svizzero (PLR. I Liberali Radicali)’, Romansh ‘Partida liberaldemocrata svizra (PLD. Ils Liberals)’, a right-wing party that focuses political liberalism (notably with regards to individual responsibility and entrepreneurship). See more: Bouquet, ‘Parti liberal (PL)’ (*Dictionnaire historique de la Suisse (DHS)*, 23 December 2010) <<https://hls-dhs-dss.ch/fr/articles/017386/2010-12-23/>> accessed 12 March 2026.

⁵⁶ Decision to Proceed on the Parliamentary Initiative Loeb François, National Council, Official Bulletin BO 1993 N 2511. All chronology and documents relative to the parliamentary initiative 92.437, *L’animal, être vivant*, Loeb François, are accessible via <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=19920437>.

⁵⁷ See *supra* footnote 55.

⁵⁸ All chronology and documents of the parliamentary initiative 93.459, *Animaux vertébrés. Dispositions particulières*, Sandoz Suzette, are accessible via <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=19930459>.

⁵⁹ Decision to Proceed on the Parliamentary Initiative Sandoz Suzette, National Council, Official Bulletin BO 1994 N 2448 (2448).

⁶⁰ German original: ‘Dem Initianten geht es nicht um eine Vermenschlichung des Tieres, sondern um die Schaffung einer logischen rechtlichen Zwischenkategorie für das Tier zwischen Sache und Mensch.’

⁶¹ Decision to Proceed on the Parliamentary Initiative Loeb François, National Council, Official Bulletin BO 1993 N 2511 (2511 ff). While the commission in charge was in majority against following up with this initiative (8 vs 6 votes BO 1993 N 2511 (2512)), the vote of the Chamber was following the minority of the commission with 78 in favour and 44 against (BO 1993 N 2511 (2513)).

⁶² Decision to Proceed on the Parliamentary Initiative Loeb François, National Council, Official Bulletin BO 1993 N 2511 (2513).

the reports, arguments were presented regarding foreign law and its societal impact. While the effects of the regulation were heavily criticised, its symbolic announcement was still viewed as commendable, especially in relation to Austria and Germany which had already implemented this change. Swiss constitutional and federal provisions on animals also provided better protection than before, especially with the granting of dignity to animals, which was not, and still is not, compatible with their mere legal object status. The then-current legal status stood against the opinion of the people, including that of judges, who seemed very uncomfortable handling animal cases.⁶³ To illustrate the latter, parliamentarians raised the case where a brutal stop in traffic was made because of an animal crossing.⁶⁴ The judgment considered the sudden urgent stop acceptable, even if it put the traffic at risk, because the perception of society towards animals has evolved.⁶⁵ The Federal Court concluded that lower court's ruling, which punished the driver for not running over the animals, violated the principle of ethical animal welfare that governs federal animal provisions.⁶⁶

Surprisingly, one of the commissions in charge disagreed with the main idea and asked to decline the project.⁶⁷ It stated that legal changes were unable to make people's behaviour change, that the differences between the cities and the countryside were too significant, that Germanic romanticism had no place in a Roman strict law, and that it would be too costly.⁶⁸

Nonetheless, the project proceeded as planned, and after receiving further feedback from experts, it became a concrete list of legal provisions that was accepted and supported by the vast majority. The project included, in particular, a general basis saying that animals are not things; however, in the absence of specific rules, the provisions applicable to legal objects remain valid for animals. It also included rules relating to lost animals, an interpretation of testamentary provisions drafted 'on behalf

⁶³ Decision to Proceed on the Parliamentary Initiative Loeb François, National Council, Official Bulletin BO 1993 N 2511 (2511 f).

⁶⁴ Judgment from the Swiss federal court (ATF) 2 August 1989, ATF 115 IV 248.

⁶⁵ Judgment from the Swiss federal court (ATF) 2 August 1989, ATF 115 IV 248 (para. 5. b).

⁶⁶ Judgment from the Swiss federal court (ATF) 2 August 1989, ATF 115 IV 248 (para. 5. c): 'For these reasons, the court of first instance violated federal law with its opinion that emergency braking should not be initiated for the welfare of animals, be they mice or foxes, which leads to the contested decision being overturned.' (translation is by the author).

⁶⁷ Decision to Proceed on the Parliamentary Initiative Loeb François, National Council, Official Bulletin BO 1993 N 2511 (2512 f).

⁶⁸ Decision to Proceed on the Parliamentary Initiative Loeb François, National Council, Official Bulletin BO 1993 N 2511 (2512).

of an animal' and damages in the event of veterinary expenses.⁶⁹ Nevertheless, there were two reserves: one regarding compensation in the event of injury or death of an animal, and the second regarding the classification as undistrainable assets for domestic animals kept for non-commercial purposes (this latter will not be accepted in this project).

Both the commission and the Federal Council (the Swiss government) gave interpretation guidelines.⁷⁰ The commission announced that the disposition about the status change was essentially declaratory, meaning it did not create a new legal category, but recognised animals as living creatures capable of perception and sensation.⁷¹ The Federal Council agreed on the declaratory effect and simultaneously wrote that animals' legal status changed and that they were a special kind of legal object.⁷² At the same time, press communications stated that animals were not regarded as things.⁷³

Although the terminology was somewhat unclear, the project remained highly acclaimed. However, in December 1999, Caspar Baader, a member of the 'Swiss People's Party' (or 'Democratic Union of the Centre')⁷⁴, suddenly requested a motion to dismiss. He argued that such a hybrid status would create legal insecurity and an irreconcilable distinction within animal categories between domesticated and

⁶⁹ Opinion of the Federal Council on Parliamentary Initiatives Loeb François and Sandoz Suzette, 20 September 1999, Federal Gazette FF 1999 8880 (8882 ff).

⁷⁰ Opinion of the Federal Council on Parliamentary Initiatives Loeb François and Sandoz Suzette, 20 September 1999, Federal Gazette FF 1999 8880 (8880 ff).

⁷¹ Joint Report on Federal Initiatives Loeb and Sandoz, and Federal Decree proposal, Legal Affairs Committee of the National Council (LAC-N), 18 May 1999, Federal Gazette FF 1999 8118 (8123).

⁷² Opinion of the Federal Council on Parliamentary Initiatives Loeb François and Sandoz Suzette, 20 September 1999, Federal Gazette FF 1999 8880 (8880).

⁷³ Federal Departement of Justice and Police FDJP, 'Le Conseil fédéral n'assimile pas non plus les animaux à des choses' (*Admin.ch*, 20 September 1999) <<https://www.bj.admin.ch/bj/fr/home/aktuell/nm.msg-id-21325.html>> accessed 14 January 2026.

⁷⁴ Translated from French 'Union Démocratique du Centre (UDC)', German 'Schweizerische Volkspartei (SVP)', Italian 'Unione Democratica di Centro (UDC)' and Romansh 'Partida Populara Svizra (PPS)', it is a Swiss far-right party represented in the federal Assembly. It traditionally represented farmers and crafts people's interests as a centre-right party. Since the 90s, it has shifted to a more conservative populist party. See more: Skenderovic, 'Schweizerische Volkspartei (SVP)' (*Dictionnaire historique de la Suisse (DHS)*, 20 March 2017) <<https://hls-dhs-dss.ch/articles/017389/2017-03-20/>> accessed 12 March 2026.

livestock animals.⁷⁵ Although such remarks had already been mentioned, the motion passed by a margin of 15 votes. The chapter seemed closed.

However, it was not the end of the debate. Indeed, another parliamentarian requested a revote based on the following reasons: seven years of intense work, the mobilisation of numerous experts, the extensive research dedicated to the subject, and the fact that the legislative procedure was not yet complete.⁷⁶ Therefore, these questions could be debated later on in the process without having to discard the entire project. In any event, this second vote was refused with an even slighter margin of 6 votes, putting a stop to the Loeb/Sandoz project.

C. Third Time's the Charm: Dick Marty's Parliamentary Initiative

Three days later, as a response, another parliamentary initiative was introduced. Dick Marty, a representative of the Council of States from the Swiss Radical Democratic Party⁷⁷, proposed a fully redacted project: the same one that was previously dismissed, also including the two previously rejected articles (compensation and non-seizability).⁷⁸ The goal was to change the perception of animals as things by creating a distinct category for them.

At the beginning of 1990, two popular initiatives were submitted on the same subject. These initiatives advanced demands exceeding those contained in earlier parliamentary proposals, notably by seeking constitutional recognition.⁷⁹ Additionally, multiple other popular initiatives⁸⁰ were reportedly forthcoming.

Considering the situation, the commission in charge of Dick Marty's proposal strongly demanded that the debate was to be reopened with his version. It called the

⁷⁵ Proposition to Dismiss from Caspar Baader, National Council, Official Bulletin BO 1999 N 2489.

⁷⁶ Points of Order to Revote from Marc Frédéric Suter, National Council, Official Bulletin BO 1999 N 2538.

⁷⁷ See *supra* footnote 55.

⁷⁸ All chronology and documents of the parliamentary initiative 99.467, *Les animaux dans l'ordre juridique suisse*, Marty Dick, are accessible via <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=19990467>.

⁷⁹ Declaration of Validity, Popular Initiative 01.028 'Les animaux ne sont pas des choses!', Federal Gazette FF 2001 2; Declaration of Validity, Popular initiative 01.028 'pour un meilleur statut juridique des animaux (Initiative pour les animaux)', Federal Gazette FF 2000 4636.

⁸⁰ A federal popular initiative is an instrument of direct democracy that allows Swiss citizens to change the Constitution.

voting on Loeb/Sandoz's a 'work accident'.⁸¹ The commission wanted to have control over the subject and the way it was dealt with.⁸² An intense debate ensued over the potential repercussions of accepting such demands. Indeed, they feared that agreeing to revisit an issue they had previously closed would send the message that the people could use democratic means as leverage.⁸³ The parliamentarians agreed to reopen the discussion, hoping that Dick Marty's proposal would put an end to the subject by satisfying all sides.⁸⁴

The process began all over again. The project was accepted by a large majority. It received some criticism, including from those who advocated addressing the legal status of animals in specific regulations, rather than in the civil code.⁸⁵ Regarding the status, the debates lied on the question of a new legal category: some were in favour of a precise separation, while some were completely opposed to a new hybrid category.⁸⁶

The project was approved. In response, all other initiators agreed to withdraw their own proposition.⁸⁷ They agreed that animals are not legal persons, they do not have rights or obligations, but they are distinct from legal things and different from

⁸¹ Report on the parliamentary initiative from Marty Dick, Legal Affairs Committee of the Council of States (LAC-S), 18 May 2000 (4).

⁸² Report on the parliamentary initiative from Marty Dick, Legal Affairs Committee of the Council of States (LAC-S), 18 May 2000 (4).

⁸³ Report on the parliamentary initiative from Marty Dick, Legal Affairs Committee of the Council of States (LAC-S), 18 May 2000 (4).

⁸⁴ Decision to Proceed on the Parliamentary Initiative Dick Marty, Council of States, Official Bulletin BO 2000 E 529.

⁸⁴ Decision to Proceed on the Parliamentary Initiative Dick Marty, Council of States, Official Bulletin BO 2000 E 529 (531).

⁸⁴ Decision to Proceed on the Parliamentary Initiative Dick Marty, Council of States, Official Bulletin BO 2000 E 529 (532).

⁸⁵ Report on the Parliamentary Initiative Dick Marty, Legal Affairs Committee of the Council of States (LAC-S), 25 January 2002, Federal Gazette FF 2002 3885 (3885 ff).

⁸⁶ Report on the Parliamentary Initiative Dick Marty, Legal Affairs Committee of the Council of States (LAC-S), 25 January 2002, Federal Gazette FF 2002 3885 (3888).

⁸⁷ Withdrawal, Popular Initiative 'Les animaux ne sont pas des choses!', Federal Gazette FF 2002 6639.

⁸⁷ Withdrawal, Popular Initiative 'pour un meilleur statut juridique des animaux (Initiative pour les animaux)', Federal Gazette FF 2003 444.

humans. Finally, the entirety of the first project, including compensation and non-seizability, was accepted and has been in force since 2003.

IV. Analysis

A. Analysis of the Swiss Case

1. Legislative Process

As we have seen, the process of changing the status of animals has been long and difficult. Starting with the introduction of the concept of the dignity of creatures into the Constitution in 1992, the debate progressed through three parliamentary initiatives, multiple popular initiatives, petitions, and other measures until 2002. It was necessary to call on various experts and consult with relevant groups in order to gather their opinions at the national level. As in all debates, criticism was voiced, but it was discussed while keeping the same objective in mind. However, the project continued to receive praise and support from the vast majority until 1999.

The sudden influx of critical questions changed the opinion of the majority. That is how fragile and easy it can be to change the course of history sometimes. While the critiques are relevant, they came surprisingly late in the process; they did not initiate a new round of discussion or re-examination. On the contrary, they completely halted the process, even though it was already far advanced; it had been underway for more than seven years, and a complete draft of a legal reform proposal already existed.

Since then, a rift became apparent. Positions became more polarised than before, making it difficult to move forward in discussions. It was visible through the numerous (re-)votes, the short time between discussions, the questioning of previously validated points (people even called the voting a ‘work accident’⁸⁸), the numeral proposals on the subject, etc.

2. Actors and Parties

i. Animal Welfare from Right-Wing to Left-Wing Issue

Historically, parliamentary initiatives concerning animal welfare in Switzerland have often been introduced or supported by right-wing parties. The same is true for our case study. On the contrary, popular initiatives tend to originate from associations and civil society groups aligned with left-wing ideologies. This ideological divide

⁸⁸ Points of Order to Revote from Marc Frédéric Suter, National Council, Official Bulletin of the Federal Assembly BO 1999 N 2539.

reflected broader societal attitudes towards animal protection, which were once closely linked to professional proximity, particularly among farmers and those who worked directly with animals.

Over time, however, the discourse on animal welfare has undergone a significant transformation. What was once a pragmatic concern rooted in agricultural practices has become a moral and political issue, now embraced by both elites and the middle classes.⁸⁹ The democratisation of pet ownership has played a central role in this evolution, expanding the emotional and ethical dimensions of animal care beyond rural contexts to urban and socially progressive settings.⁹⁰

This shift has also changed perceptions of farmers. While they were traditionally seen as guardians of animal welfare, the industrialisation of agriculture has led to widespread criticism of modern farming practices, which are now often perceived as mechanised and inhumane. Ironically, much of this criticism comes from people who are geographically and professionally distant from agricultural life, but often benefiting from it, raising questions about the legitimacy and authority of their moral stance.⁹¹

Nevertheless, this tension highlights a broader societal awareness: the redefinition of animal welfare as a public concern that is no longer limited to professional expertise, but is shaped by evolving ethical standards, social class dynamics, and political mobilisation. The shift from professional management to civic engagement marks a profound change in the way animal laws are conceptualised and contested within Swiss society.

ii. The New Vote and Its Democratic (II-)Legitimation

Regarding the new vote, those who oppose revising the ballot argue that the result represents the legitimate outcome of a democratic process. They maintain that any attempt to hold a new vote or reexamine the issue would undermine democratic principles and erode both the authority of the Parliament and public confidence in its decisions. They question the qualification as a ‘voting error’, suggesting instead that the result reflects a collective consciousness and should be accepted as such. Furthermore, they are concerned about setting a precedent that could encourage

⁸⁹ See Traïni, *Animal Rights Struggle*.

⁹⁰ Traïni, *Animal Rights Struggle* (82).

⁹¹ Meijboom and Stafleu, ‘Farming ethics in practice: from freedom to professional moral autonomy for farmers’ (2016) 33 (2) *AHV* 403.

citizens to use popular initiatives as a means of challenging parliamentary decisions whenever disagreement arises.

Those who spoke in favour of a new vote described the situation as a procedural incident, citing factors such as the unfamiliarity of newly elected parliamentarians with the voting system, as well as notable absences and illnesses, none of which were reported as problems in official reports on the day of the vote.⁹²

Furthermore, the result itself lacks decisive clarity, with a narrow margin of only 15 votes to 6. Some strongly oppose ignoring an issue that has mobilised considerable public engagement and institutional efforts, and which enjoys broad popular support. Parliamentary documents and media coverage emphasise that reform is essential to reflect public sentiment and address widespread confusion surrounding a law that no longer corresponds to lived realities.

On many points, both sides have valid arguments. On the one hand, public unease and disagreement are evident, but multiparty debates are an integral part of the democratic framework. On the other hand, one mechanism by which citizens exert influence over their representatives is to vote on legislative issues at the end of the legislative process and, when they deem it insufficient, to initiate proposals themselves. This system acts as a counterbalance to mitigate the fact that the people no longer participate directly in discussions but only intervene at the final stage.

When used strategically rather than reactively, popular initiatives can serve as political leverage. The implicit message is clear: 'If you do not take care of the issue yourself, we will, on our own terms and on our own conditions.' Legal associations and parliamentary actors are well aware of this possibility, which partly explains the numerous initiatives that have been submitted. Although they are often presented as civic engagement, the ability of these initiatives to influence legislation makes them a deliberate legislative strategy.

A central concern among opponents of the reform was the perceived threat to the status of human beings if animals were granted greater recognition. Scholars observed that this concern echoes historical patterns of dehumanisation, particularly of marginalised groups during periods of oppression.⁹³ Comparing humans to animals

⁹² Points of Order to Revote from Marc Frédéric Suter, National Council, Official Bulletin BO 1999 N 2538 (2538 ff); Report on the parliamentary initiative from Marty Dick, Legal Affairs Committee of the Council of States (LAC-S), 18 May 2000 (4).

⁹³ Bunyak, 'Chapter 2 Inferiority by Association: Animals, Migrants, and Chicana', in Khazaal and Almiron (eds.), *Like an Animal: Critical Animal Studies Approaches to Borders, Displacement, and Othering* (Leiden, 2021) 76 (77 ff); Deckha, 'Animalization and dehumanization concerns: Another

has historically served to demonise and demean them; when individuals are no longer perceived as fully human, empathy and concern for their treatment tend to erode. It is important to note that the reform was not intended to put animals on an equal footing with humans. Rather, it sought to strengthen the legal and ethical recognition of animals without compromising human dignity. This tension raises a deeper philosophical question: if humans are not fundamentally different from animals, what then defines our humanity?

iii. The Swiss Landscape: A Cultural Patchwork

It is also worth noting the unique cultural and linguistic composition of Switzerland, which influences political orientations. The *Romandie*, the French-speaking region, tends to align itself with French ideological trends, which are more left-wing and socially progressive, while the Swiss-German region, which is more influenced by Germany, leans toward liberal and conservative values. This division is often visible in voting patterns referred to as the ‘Röstigraben’, with western Cantons voting ‘green’ and eastern Cantons voting ‘red’. Historically, animal welfare movements originated in German-speaking regions, making their support for related initiatives in the past unsurprising. However, this dynamic has completely shifted: today, German-speaking Switzerland increasingly votes for moderation or refuses initiatives, while *Romandie* votes more in favour of environmental issues.⁹⁴

3. Results

In terms of results, the intended objective was to remove the animals from the legal object category. This goal could be said to be only partially achieved. Indeed, it is neither a legal person nor in a third, completely assumed category, but rather a somewhat uncomfortable, juridically ambiguous in-between category.⁹⁵

psychological barrier to animal law reform’ (2023) 2 *PHAIR* 1 (1 ff); Peters, *Animals in International Law* (Leiden, 2021) 474 ff.

⁹⁴ For example, regarding the Swiss initiative of 22 September 2024 on biodiversity: ‘Meanwhile the divisions between voters are following typical patterns, gfs.bern writes: support for the initiative comes mainly from the left, urban areas, French-speaking Switzerland and women. Opponents are mainly men and people in rural areas.’ Mavris, ‘Swiss votes on September 22: biodiversity and pension ballots still wide open’ (*SWI, Swissinfo.ch*, 16 August 2024) <<https://www.swissinfo.ch/eng/swiss-politics/september-22-poll-biodiversity-and-pension-votes-still-wide-open/86896816>> accessed 14 January 2026; see another example: Golder, Mousson, Pagani, Rey and Pepe, ‘2. SRG-Trendumfrage zur Abstimmung vom 9. Februar 2025: Vor der Schlussmobilisierung: Umweltverantwortungsinitiative – Mehrheit dagegen bei Nein-Trend’ (*gfs.bern*, 29 January 2025) <https://cockpit.gfsbern.ch/de/cockpit/trend_w2_09022025-2/> accessed 15 January 2026.

⁹⁵ Michel, *Rechtsgemeinschaft mit Tieren* 348 ff.

From this process, we already see considerable confusion in terminology, sometimes even leading to opposite positions by the same entity. Nonetheless, the general idea is agreed upon: animals should not be treated as legal things, but nobody wants them to be treated as legal persons either. Numerous people are involved in this process: the Swiss parliament (comprising two chambers and a total of 246 counselors), multiple commissions, the individuals who initiate the proposals, the press (excluding the parliamentary press), experts, and others. Sometimes, we would even find the same people in different categories. As Cicero said, *Quot homines, tot sententia*,⁹⁶ but in such democratic representation, a unanimous agreement would be the easiest way to be able to assess the desired effects clearly. While the law states what animals are not, it stays silent on what they are, leaving great confusion about its effect.⁹⁷ To be sure, it has a symbolic impact. The media celebrated it, and the people did not ask for a referendum or any new initiatives. So, it seems to suggest that people are willing to consider that the status of animals has changed, as they were asking.⁹⁸ Because courts rarely address general subjects like these, focusing instead on specific provisions raised by cases, we also have very few judgments on the matter. Indeed, the legal reform has a significant symbolic impact, but a limited, convenient effect. Nonetheless, animal welfare doctrine views the change as a slight breach in the dichotomic *res/persona*, allowing a space to think about the system differently and/or create something new.⁹⁹

However, when considered in conjunction with the rest of the legal system, this change did have an impact. As we have previously mentioned, the Constitution recognises dignity not only in humankind, but also in the ‘Creatures’.¹⁰⁰ Linking the

⁹⁶ Translated meaning: ‘As many men, so many minds’. Cicero, *De finibus bonorum et malorum* (*The Latin Library*) <<https://www.thelatinlibrary.com/cicero/fin1.shtml>> accessed 24 April 2026 (Book I, para.15) echoing Terentius, *Phormio* (*The Latin Library*) <<https://www.thelatinlibrary.com/ter.phormio.html>> accessed 24 April 2026 (Act II, verse 454).

⁹⁷ To see a comparison between negative and positive definitions of animals’ status: Michel, (2023) *LEOH* 29 (36 ff); Michel, *Rechtsgemeinschaft mit Tieren* 338 ff; Peters, *Animals* 426 f.

⁹⁸ See for example, in the context of scientific working with animals: Louis-Maerten, Geneviève, Seaward, and Elger, “We Recognise the Value of Animal Experimentation, but we Recognise the Value of Animals as well: Qualitative Insights on the Conflicting Experiences of Researchers on the Implementation of the 3Rs in Switzerland” (2025) *LEOH* 162 (171); Stucki, *Grundrechte für Tiere* (Baden-Baden, 2016) 87 f.

⁹⁹ Michel, (2023) *LEOH* 29 (31, and 41f); Michel, *Rechtsgemeinschaft mit Tieren* 351 ff with quoted references; Peters, *Animals* 428.

¹⁰⁰ Art. 120, paragraph 2, second sentence Cst. In German: ‘Er trägt dabei der Würde der Kreatur sowie der Sicherheit von Mensch, Tier und Umwelt Rechnung und schützt die genetische Vielfalt der Tier- und Pflanzenarten.’ In English: ‘In doing so, it shall take account of the dignity of living beings

respect of animals' dignity to their changed status, whatever it is, allows the law — not only in its wording but also in its application — to take into account the interests of animals for themselves.

B. Comparative Perspectives

This section offers a brief comparative analysis of the reception of the legal modification of animals' status in two neighbouring Germanic states. As all three States have adopted a highly similar regulation stating that animals are not things, but that, unless otherwise specified, provisions governing things continue to apply to animals. It is therefore relevant to examine how the provision on the dereification of animals was received in Austria and Germany, as well as its legal consequences.

We have seen that the article itself does not say much, but its application can compensate for this. And so, when analysed in conjunction with other interests and/or rights, jurists and courts have looked at the law as a principle of interpretation to respect animals' needs. This interpretation has been highlighted in Austrian civil law analysis, saying that it is the only change and advantage that the law has produced.¹⁰¹

Indeed, Austria and Germany amended their civil code with such a regulation. After that change, the criticism was very intense. Many said that the law only conveniently tells what animals *are not* ('things'), but does not say a word about what they *are*. Even without being a legal thing, they are still treated as such, unless a specialised regulation says otherwise. This seems to delude the responsibility of the change in status by reporting the problem in other legal domains. The law itself also reveals a lack of change, as animals are still addressed in the civil code chapter linked to legal things. This leaves critics to conclude that it is in vain, as a law constructed without concrete application measures is merely performative. Such changes mainly have a symbolic and educational impact.¹⁰² Some critics stated that the only purely legal change that was brought about was that it is a means of interpretation (*favor animalis*) is.¹⁰³

as well as the safety of human beings, animals and the environment, and shall protect the genetic diversity of animal and plant species.'

¹⁰¹ Stabentheimer, 'Art. 285a', in Kerschner, Vonkilch and Fenyves (eds.), *Kommentar zum ABGB: Klang Kommentar: §§ 285-352*, 3rd edn. (Wien, 2011) paras. 2, 5.

¹⁰² Obergfell, 'Tiere als Mitgeschöpfe im Zivilrecht' (2016) 7 (3) *RW* 388 (392 ff); Stabentheimer, 'Art. 285a', paras. 1 ff; Zoppel, '§ 285a ABGB', in Schwimann and Kodek (eds.), *ABGB: Praxiskommentar*, 5th edn. (Vienna, 2025) paras. 1 ff.

¹⁰³ Stabentheimer, 'Art. 285a', paras. 2, 5; Zoppel, '§ 285a ABGB', paras. 2 and references.

However, it is also possible that the critics are less vehement, as Switzerland has a heavier legislative process and, even with a smaller population, may have to compromise more due to not only its diversity but also its democratic functioning (as a (semi-)direct democracy). Therefore, the result is a compromise: the law states animals are not things anymore, as some wanted; animals still follow the same regulations as things, as some others wanted; and it is still possible to offer more special treatment if needed, as some others wanted. The process required massive amounts of energy, but birthed only a few mice.

In summary, there are similarities as the main article is almost the same, and it is criticised for having mainly a symbolic impact. While Austrian scholars say it serves as a means of interpretation, in Switzerland the focus is on the principle of dignity, as the development of animals' provisions are more based on the well implemented principle than its non-thing status. Importantly, the process is very different, as Switzerland has semi-direct democratic tools and many actors participating.

C. *Excursus*: Comparison to the Rights of Nature Debate

As we have seen, Austria, Germany and Switzerland's reform was less of a construction of legal personhood than it was a dereification of animal's status. Surprisingly, the legal dereification (even partial) of animals did not lead to an automatic legal personification, even while following *tertium non datur* principle¹⁰⁴. This led to an ambiguous situation that makes some consider the change as substantial (*sui generis*) or symbolic. Therefore, a brief look at other States that have witnessed legal things receive personhood status seems interesting for our analysis.¹⁰⁵

Indeed, it seems the animal rights' movement paved the way for other non-human natural entities discussion to come up in Switzerland. That comes from an understanding of two types of proximity. First, animals are very present in the daily lives of many and domesticated animals are becoming increasingly present.¹⁰⁶ Second,

¹⁰⁴ The principle of excluded middle.

¹⁰⁵ See more on the link between the animal rights and rights of nature: Bernet Kempers, 'If Rivers Have Rights, Do Fish Have Rights Too? Examining the Relationship Between Rights of Nature and Animal Rights' (2026) *LEOH* 4 (14 ff); Peters, *Animals* 463 ff; Todorović, 'Towards Legal Protection of Animal Interests: Nature-Based or Sentience-Based Approach to Animal Rights' (2026) *LEOH* 23 (28).

¹⁰⁶ For cats in Switzerland: Identitas, 'Détentrices et détenteurs de chats' (*identitas*, 5 January 2026) <<https://tierstatistik.identitas.ch/fr/cats-keepers.html>> accessed 16 January 2026; Statista Research Department, 'Number of cats in Switzerland 2010-2023' (*Statista*, 25 November 2025) <<https://www.statista.com/statistics/516035/cat-population-europe-switzerland/>> accessed 16 January 2026. For dogs: Identitas, 'Détentrices et détenteurs de chiens' (*identitas*, 5 January 2026)

animals are likely the non-human entities that resemble us the most, leading to greater empathy and care from us towards them. This is also illustrated by the discomfort we face when testing on large apes. The closer we consider it to look like us, the blurrier the line.

So, after such movements, European countries discussed giving rights or personal rights to a more precise category of ‘things’ rather than to an undetermined group. A bottom-up approach was adopted. That can be seen in many local organisations claiming rights for specific rivers, lakes, or other bodies of water. Many of them are also not limited to national territory but instead refer to the considered topic as a whole, regardless of states’ borders. Some examples include the case of *L’Appel du Rhône*, which asks for legal recognition of the river Rhône, which flows through two States (Switzerland and France) (not recognised), or the *Mar Menor* Laguna that lies in the Southeast of Spain (recognised as a legal entity), etc. This approach has also been seen in other continents, even prior to the European movements, i.e. the Magpie River in Canada, New Zealand’s *Te Urewera* (a forest), and many other natural elements. However, this does not seem to be the case in Latin America, which recognises nature as an ensemble, as seen in the Constitution of Ecuador, which references *Pachamama*.¹⁰⁷

We could explain the diminishing of top-down approaches with the lessons learned from the difficulty of breaking through the established vision of the fundamental principles of the legal system. Indeed, the Roman dichotomic heritage seems akin to a mathematical axiomatic principle; this attachment makes it harder to separate from or breach the Roman tradition. There is also a general motion towards more bottom-up energy in environmental legislation. This can also be observed at the international level; following the failure of carbon taxes, international environmental law tends to create a more flexible framework to encourage and support local on-the-ground actions.

We can link the bottom-up approach to the greater presence of indigenous peoples and their history, which has led them to view nature and the environment in a

<<https://tierstatistik.identitas.ch/fr/dogs-keepers.html>> accessed 16 January 2026; Statista Research Department, ‘Number of dogs in Switzerland 2010-2023’ (*Statista*, 25 November 2025) <<https://www.statista.com/statistics/515567/dog-population-europe-switzerland/>> accessed 16 January 2026.

¹⁰⁷ Darpö, *Can Nature Get It Right? A Study on Rights of Nature in European Context* (European Union, 2021) 20; Todorović, (2026) *LEOH* 23 (27).

distinctly different way.¹⁰⁸ The recognition of the legal personhood of natural elements is often credited to the hard work and struggles of indigenous peoples. Indeed, where natural personhood happens, it is often through their initiatives. Not only does this better reflect their vision of nature but also echoes their fight to have their rights respected, e.g. to exist on their soil, to access ancestral ritual and religious sites, to maintain their culture, to have means of survival. This also shows through the fact that they are frequently designated as the legal representatives of these elements. The work of indigenous peoples is so widely recognised that States, non-indigenous associations/groups, and other entities now collaborate with them or call upon their knowledge. The impact of indigenous peoples on the recognition of the legal status of nature is not limited to this approach, as demonstrated by their implication in the Ecuadoran constitution.¹⁰⁹ They are recognised as the primary protectors of nature's interests, both legally as well as outside of the legal context.

V. Discussion: What Does the Swiss Example Show?

Among the States that discussed the question of animals' status within a dichotomic distinction (*res* vs *persona*), Switzerland might have been the one with the most accessible and consistent data. By using that example, we can draw several lessons from the process with regards to the construction of new legal subjects (or deconstructing old legal objects (dereification)), the limits of symbolic recognition, and the connections between democracy and the formation of law.

A. About the Societal and Legal Process

While legal personhood is a central legal concept, it is not limited to law. The law changes with time and effort, and it only partially reflects what society was or what it thought at the time. Therefore, failing to consider the context in which the law develops is a significant mistake. One should pay attention to time and place when making such a proposition; otherwise, it risks being lost amid broader discourse. In our case, the reform was proposed immediately after the introduction of dignity in

¹⁰⁸ Buocz and Eisenberger, (2023) 43 (1) *OJLS* 32 (33, 38 ff); Langenheim, 'Gardiens de la planète: les leçons autochtones pour se reconnecter avec la nature' (*National Geographic*, 19 January 2024) <<https://www.nationalgeographic.fr/environnement/contenu-sponsorise-gardiens-de-la-planete-les-lecons-autochtones-pour-se-reconnecter-avec-la-nature>> accessed 9 October 2025; UNCC, 'Indigenous Peoples: Leaders in Climate Action' (UNCC, 8 August 2024) <<https://unfccc.int/news/indigenous-peoples-leaders-in-climate-action>> accessed 9 October 2025.

¹⁰⁹ Tanasescu, 'The rights of nature in Ecuador: the making of an idea' (2013) 70 (6) *IJES* 846 (847).

the constitution, and the subsequent Austrian and German law changes created a favourable window of opportunity.

Debates on personhood are never taken lightly and should not be treated as such. This subject lies at the core of the legal system as it governs the attribution of legal subjectivity and, consequently, access to rights. Entities excluded from this attribution either exist as means or objects within the legal order or remain entirely unacknowledged by the law.

The weight of the context and the gravity of the subject explain why debates on personhood are intense and constantly evolving, while achieving consensual change is fragile.

Emotions are a primary legal motor.¹¹⁰ We have seen that the fear of humans being equated to animals played a significant role in the failure of the initial proposals and the final undermining result. Knowing the history is also an essential component.¹¹¹ In our case, numerous people feared that human rights would regress if other non-human entities were to be made into legal persons. They feared the comparison or closeness that could arise from an improvement in animals' status, thereby diminishing the distinction between natural persons and legal persons. In the European context, this dread might be linked to the salient memory of the Nazi regime's propaganda to try to "justify" its genocidal treatment of targeted minorities and to remove any hesitation or discomfort in implementing their decisions. This kind of traumatic memory is quite widespread, as such examples exist in numerous other cultures or countries, but also in our collective transnational memories (e.g. genocidal discourse in Rwanda, Palestine, and elsewhere alongside lynching discourse in the USA, current xenophobic rhetoric, and so on).¹¹² Therefore, collective memory and imagination are never to be disregarded when enacting a new legal proposition.

To summarise, personhood is a central concept that is not confined to the legal sphere and therefore requires particular attention to the context in which it is

¹¹⁰ For the role of emotions in legal processes see e.g. de Faria Silvestre, 'Emotions and Sentiments in Judicial Deliberation' (2020) 33 (1) *IJSL* 121 (125 ff); Maroney, 'Law and Emotion: A Proposed Taxonomy of an Emerging Field' (2006) 30 (2) *LHB* 119 (131 ff); Sellers, 'Derecho, Razón y Emoción' (2019) 18 (2) *RFUI* 235 (249, 251 f).

¹¹¹ See more: Hirsch, 'Collective Memory and International Law' (2014) 3 (7) *ESIL* 49 (50 ff); Savelsberg and King, 'Law and Collective Memory' (2007) 3 *ARLSS* 189.

¹¹² For the link between animalisation and dehumanisation, see e.g.: Bunyak, 'Animals, Migrants, and Chicana', 76 (77 ff); Crary, 'Dehumanization and the Question of Animals', in Kronfeldner (ed.), *The Routledge Handbook of Dehumanization* (London, 2021) 14; Deckha, (2023) 2 *PHAIR* 1.

advanced. Because it also concretely affects society, it carries an emotional component that should not be disregarded in legal discussion. Accordingly, the legal strength of a proposal alone is insufficient; it must be supported by a broader assessment extending beyond strictly legal considerations.

B. About Democracy and Law

Democratic systems are built on principles, especially power separation and checks and balances.¹¹³ So, while the distinction between law and politics is sacrosanct, it is also crucial to remember that politicians are the ones making the law in most places. Therefore, legal strategies are obviously necessary, but so are political ones.

The proposition should develop a clear legal plan. That should include the choice of precise legal wording or wording that leaves a margin of appreciation and interpretation for future application. This decision should also consider the rest of the legal system and its potential interaction to maximise satisfying results. As we have seen, the reform was relatively small in principle but could be enhanced through common interpretation with other legal principles.

However, any proposal must also consider the prevailing political climate. It is not only favourable to know potential allies who might support your cause, but also to prepare for the criticisms that may arise. Although this remark touches on a sensitive topic, it reflects one of the cognitive dissonances inherent in our democracies. While it is often considered that the law is purely separated from the political sphere, the practice of the legislative power cannot disregard political interests. Not only because the parliamentarians are both representatives of the legislative pillar and affiliated with a political party, but also because the political climate dictates to a certain extent the success rate of legislative propositions.

Democracies give the people different amounts of decisive power. The involvement of society is a crucial indicator of the importance and necessity of addressing the issue.

It can be used as a starting motor. The law often needs to catch up with society, as it is primarily created in response to a change or the evolution of a situation, rather than as an avant-garde or preventive measure. Therefore, testing the waters and observing social concerns is essential. As a reflection of society, the law also showcases the social values of the people to whom it applies. Therefore, it is no surprise to see people using the law as a platform to negotiate their new ideals and shape their own values.

¹¹³ Based on Montesquieu's idea: Montesquieu, *De l'esprit des lois* (Geneva, 1748) Book XI. Chap. IV.

Secondly, although it is less frequently used due to the fear of rupturing faith in the system, it is also a means of pressure. Democratic systems typically provide various opportunities for individuals to participate in the legislative process, whether through voting or with (semi-)direct democracy tools. By using such means, it also helps parliaments understand how important it is to proceed with a project, whether the chosen direction is satisfactory, if the project is interesting enough, and so on. We have seen through the Swiss case that when doubts were rising in parliament, many petitions, signatures, or popular initiatives were initiated to express support or opinion on the matter. Nevertheless, these types of strategies should not be used rashly but with knowledge, to avoid creating a rupture between the elected representatives and the population.

Lastly, if the result depends on the population, their opinion should obviously be looked at in advance. Otherwise, there is a chance that a whole project may be created but fail due to the democratic validation process (i.e. voting or a referendum), or through the population's refusal to comply with or apply the new norms. This tends to have a higher importance in States with (semi-)direct democracy. It is hereby mainly applicable to the Swiss case as our direct democracy structure is a particularity.

C. About Symbolic Recognition

Depending on the objectives and/or results, granting legal personhood to non-humans can be either symbolic or concrete. Stating that the concern is now not an object anymore without other changes in regulation only offers symbolic recognition. Like guidelines or preambles, it opens a new paradigm and creates a place for change. Such recognition is necessary in redirecting people's views and concentrating efforts on the protection of the new legal subject. But symbolic recognition alone is not sufficient to guarantee protection. Indeed, to be effective and go further than just symbolism, it must be followed by concrete measures, such as granting specific rights and access to justice in the event of infringement. Institutional follow-up is necessary to ensure the existence of the legal subject and to assess the impact of the changed legal status on its protection. If not, there is a risk of leaving the regulation as a purely performative law, a window dressing without real effect. Such a situation is not only disappointing from a legal standpoint but also unsatisfying on a democratic level. It then risks backlash from both jurists and the public which could then undermine faith in institutions.

Furthermore, the terminology used in such debates often creates confusion. The term 'person' is used both to refer to individuals and humans in general, and as a legal term to designate subjects of the law. This closeness results in numerous

misconceptions and misinterpretations that often associate legal personhood with human persons.¹¹⁴ This confusion, as we have seen, exacerbates the sensible debate, creating an illusion of the humanisation of other legal persons and, in parallel, accentuating the fear of a *dehumanisation* of natural persons.

Fortunately, the law operates as a coherent system. Therefore, choosing between precise wording and leaving a margin of interpretation can be appreciated through systematic legal analysis. As demonstrated, the “major reform” alone did not bring about substantial transformation. Instead, it was the broader legal framework – its mechanisms of operation and interpretation – that produced the awaited change. Although this shift was not a revolution, it nonetheless introduced a significant evolution in perspective. In many areas concerning rights of nature, the first step may not be conducive to dramatic changes; however, even a modest initial step can serve as a valuable point of entry.

VI. Conclusion

While legal knowledge is fundamental to navigating the legal system, information on the law-making process is equally important.

In Switzerland, animals were moved from their legal status of things to a new intermediate category, allowing discussions on dereification and legal personhood of non-human entities to flourish further. Through this example, an analysis of the way legal personhood for non-human entities can be constructed, contested, and negotiated within a democratic legal framework has been drawn. This example illustrates that groups participating in the process have power. It further highlights the importance of acknowledging and responding to different emotions. It also demonstrates the importance of context, both legal and *largo sensu*, for achieving effective results. Indeed, even an underwhelming regulation can be a fertile ground for change, and symbolic declarations can be more than performative. Ultimately, it highlights the significance of utilising and implementing strategies within the constitutional framework.

Nevertheless, many questions remain open. With such criticism of a surface-level reform from their neighbours, why did Switzerland follow through with the same articles on animals’ legal status? Is it compatible with democratic principles to present a measure as a substantive change when, in practice, it produces no or only little legal

¹¹⁴ See Collins’ Dictionary, ‘Person’ <<https://www.collinsdictionary.com/dictionary/english/person>> accessed 18 January 2026; Bertrand-Mirkovic, *La notion de personne* (Aix-en-Provence, 2003) 17 ff, 857 ff; Bioy, ‘L’usage du concept de « personne » en droit’, (2012) 5 (26) *RRJ CMJ* 2171 (2173 ff).

effects, particularly if the electorate voted on the assumption that such a change would occur? Is the constitutional principle of animal's dignity compatible with the legal treatment of a thing?

The paper then broadens the discussion with general lessons regarding the granting of legal personhood to natural non-human entities. While the law is a malleable material, the conviction in the righteousness of some concepts makes changes or breaches difficult to create. When headed towards such revolutions, clarity and concrete measures in law should be prioritised. Another possibility is to keep the existing concept but adopt general provisions to make space for new interpretation and more favourable, specific legal measures. Nonetheless, precise terminology should be established, especially in sensitive and fundamental domains, to avoid adverse and powerful reactions that could lead to the swift demise of a project.

While global interest in the legal status of non-human entities is increasing, it is also leading to a shifting perspective on the matter. Indeed, it appears that general recognition, which would then be fostered through specific regulations, is less sought-after. On the contrary, many recognition processes follow a bottom-up approach, focusing on the attribution of legal personhood to specific non-human entities.

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