

EurSafe News

VOLUME 21 NO. 1 FEBRUARY 2019

Dear EurSafe members,



It is my pleasure to send you the spring issue of the EurSafe Newsletter 2019. Due to a growing demand for knowledge concerning the different animal welfare laws within Europe, I have decided to focus this issue on recent developments on the status of animals in current laws within Europe, with a special emphasis on Switzerland and Germany.

Our first contributor, Dr. iur Michelle Richner, works as a legal employee at the Foundation for the Animal in the Law (*Stiftung für das Tier im Recht*), based in Zurich, Switzerland. Her focus lies on a very recent historical development: in Austria, Germany and Switzerland, animals have been freed from their status as things (in legal terms). Due to the changing values and habits of Western societies, animals have been reclassified into a new category: that of *non-things*. Centering on the legal situation of Switzerland, she informs us of the background of this new status and fleshes out the practical consequences that will follow.

Although I am not a law scholar – and therefore risk many shortcomings – I use the new legal denomination of animals as non-things in the second contribution as a starting point. It can be seen as bursting a dam for other legal concepts, which I would like to outline. Animal law scholars in Germany and later Switzerland introduced the term ‘animal person’ (Germ. ‘*tierliche Person*’) into the academic debate. Defining sentient beings as



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animal persons means, in practical terms, that they would be bearers of subjective legal rights and therefore can be represented in court. Besides its potential compatibility with current legal regulations, the concept of the animal person is at present only of theoretical nature.

Not like the topic of our review: within the cantonal popular initiative *Fundamental rights for primates*, the citizens of Switzerland's canton Basel will be able to vote whether non-human primates should be granted the fundamental rights of mental and physical integrity. This initiative has to be seen within a larger, global context of calling for fundamental rights to ensure a better legal protection of primates. Picking up on the current state of this issue in the USA, Dr. Judith Benz-Schwarzburg reviews the recently published book *Chimpanzee Rights: The Philosophers' Brief*, where thirteen internationally renowned philosophers dismantle the legal arguments used to defend that chimpanzees can't be persons in a legal sense.

With this issue we hope to continue the tradition of presenting up-to-date information on the wide variety of topics that are relevant for the EurSafe community. If you want to contribute to the EurSafe Newsletter, don't hesitate to contact one of the members of the editorial board. The focus of the summer issue will be 'Water and agricultural ethics', edited by Simon Meisch.

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Animals are not things

Michelle Richner



Only ten years ago, animals were legally regarded as things in Switzerland, and thus as impersonal, physical objects subject to the power of disposition of their owner. However, given the changing values and habits of our society, this was increasingly

perceived as unacceptable, which is why, in 2003, it was decided to free animals from their status as mere things. Animals have since been reclassified and given a separate legal category, which has affected various legal fields.

Initial situation

For an even longer time than Austrian and German law, the Swiss Civil Code made a distinction between legal persons, i.e. the holders of rights and duties, and legal objects, i.e. entities in respect of which legal persons may hold rights and duties. The Swiss Civil Code reserves this legal subjectivity to natural and juristic persons according to article 11 paragraph 1 and article 53. Up until 16 years ago, animals were still considered legal objects in consistence with Roman legal tradition and were therefore subject to property law provisions.

The human-animal relationship, however, has changed considerably over the years so that nowadays there is hardly any serious doubt that animals are not mere things but are sentient living beings capable of suffering. After the Swiss Supreme Court had already recognized animals as living and sentient beings in 1989, the legal system followed suit and freed animals from their status as things on April 1, 2003. After many years of preliminary work, a number of legal provisions have come into force aimed at improving the legal status of animals and taking into account the altered sense of justice. With this, a more than two-thousand-year-old categorization and strict distinction between persons and things has been overcome in Switzerland. Instead, there is now a tripartite division, in which animals form a separate category with their own civil position.



Legal basis

Article 641a of the Civil Code expressly states that animals are not things and grants them a separate status that applies to all living animals, thereby extending far beyond the scope of the Swiss Animal Welfare Act, which only protects vertebrates with very few exceptions (article 2 paragraph 1 of the Animal Welfare Act). However, this additional category does not confer any actual enforceable rights on animals. The expression ‘animal rights’ is an ethical and philosophical concept rather than a legally exact term. Therefore, the property law provisions continue to apply to animals unless specific provisions exist (article 641a paragraph 2 of the Civil Code).

Specific legislative amendments

The legal recognition of animals as autonomous living beings is not only of great symbolic importance, but has also entailed specific legislative amendments in various legal fields:

One important change, for example, concerns debt enforcement. Before 2003, creditors had the option of having a debtor’s animal seized or sold (i.e. auctioned) to cover their claims even if the animals were of no substantial material value. However, due to the reclassification of animals, the legal situation has changed: Domestic animals are exempt from execution, meaning they may not be seized (article 92 paragraph 1 nr. 4 of the Debt Enforcement and Bankruptcy Act). This takes into account the strong emotional bond between the debtor and his companion animals and the fact that the latter are usually considered family members.

Furthermore, the Swiss Code of Obligations was amended to include a sentimental value for animals (article 43 paragraph 1bis of the Code of Obligations). In the event of damage, the animal keeper has a claim for compensation of the sentimental value of their animal. Although the

loss of an animal can never truly be compensated for, the animal owner can cover at least part of his or her non-material damage. The law does not determine the amount due and leaves it to the discretion of the court to specify a sum according to the specific circumstances of each individual case. The material value of the animal is irrelevant here because an animal acquired for little money (for example, a dog adopted from a shelter) can have great emotional significance for its owner. There is no established court practice concerning sentimental value yet. However, in cases of very close human-animal relationships, claims for sentimental damage can easily reach thousands and even tens of thousands of Swiss francs. Also, in tort law, claims for medical costs can be made even if they exceed the animal’s monetary value (article 42 paragraph 3 of the Code of Obligations).

The allocation of pets in the event of the dissolution of joint ownership, for example in the event of a separation of spouses or partners, was also newly regulated in 2003 (article 651a of the Civil Code). If a companion animal belongs to both partners and they cannot agree on who is to keep it, the judge allocates the animal to the party that can provide better living conditions, thereby deciding from an animal welfare perspective and placing the focus on the animal’s well-being. When allocating the animal, the first priority is to ensure that the future owner is equipped to take care of the animal in terms of time, organization, and costs. If the court cannot persuade the parties to reach an amicable solution in favor of the animal, it will conduct a personal interview in order to obtain a precise picture of who is better suited to provide for the animal.

Significant changes have also been made to the law regarding finder’s rights and responsibilities: Under certain circumstances, the ownership of an animal passes from the original owner to the finder two months after it was found - not after five years as was previously the case (article 722 paragraph 1bis of the Civil Code). In addition, special notification offices have been

created for lost and found animals and finders are obligated under threat of penalty to report a lost animal.

A provision has been included in inheritance law according to which a gift to an animal in a will or in an agreement of succession is an explicit obligation placed upon the heirs or legatees to take appropriate care of the animal (article 482 paragraph 4 of the Civil Code). According to article 482 paragraph 1 of the Civil Code, anyone with an interest in the proceedings (for example, an animal welfare organization) can sue for compliance with the obligation. Also, the testator has an option to establish a foundation according to article 493 of the Civil Code, which can, for example, be combined with the

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obligation to ensure the life-long maintenance of the animal using the foundation assets or with a more general obligation to fund certain animal welfare projects.

Limited scope to companion animals

The fact that animals are no longer things applies to all animals. It must be borne in mind, however, that most of the amendments made to individual laws on the basis of this principle only apply to animals which, according to the wording of the law, are 'kept in the domestic sphere and not for commercial purposes'. The domestic sphere is understood as the entirety of options for the housing of animals within the owner's spatial sphere of influence. The domestic sphere is therefore not limited to the owner's household or yard but can also encompass a barn or stable that is located outside the residential estate.

Due to the limitation of the scope of the new provisions to animals that are not kept for commercial purposes almost all legislative amendments only impact companion animals, i.e. animals that are primarily kept out of interest in the animal or for the pleasure of their company. Animals kept for commercial purposes, such as farm and laboratory animals, are exempt from most of these new regulations. Drawing a line between these two categories can prove difficult in certain cases, for example, when a dog is occasionally used for breeding or displayed at animal shows, thus generating profit for its owner. Ultimately, the decisive factor is whether the owner's non-material interests in the animal outweigh their commercial interest and vice versa.

Lack of legal adaptations

In many legal fields, however, everything has remained the same despite the reclassification of animals under civil law. For instance, where no specific regulations for animals have been enacted, the provisions governing property (article 641a paragraph 2 of the Civil Code), such as those found in sales or labor law, still apply.

In fact, the Criminal Code now contains a provision specifying that criminal provisions relating to property continue to apply to offenses against animals. As a result, animals can be stolen or 'damaged' (article 110 paragraph 3bis of the Criminal Code).

Animals have no legal capacity

Although animals no longer count as things, they have no rights of their own. Despite official recognition as sentient beings, they remain without legally enforceable rights and obligations. Despite the fact that for years legal and ethical efforts have been made to grant animals legal personhood and there is repeated use of the colloquial term 'animal rights', legally speaking, animals remain assets that can be owned or possessed by humans. The latter are, however, bound by the Animal Welfare Act and other mandatory regulations that acknowledge that animals have demands and interests, for example, in animal-friendly husbandry, care and treatment or in being protected in their well-being and dignity and against unjustified pain, suffering, harm and fear.

Anyone who violates the provisions of the Animal Welfare Act is liable to prosecution and, depending on the severity of the offense, may face a prison sentence, a monetary penalty or a fine.

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The Animal Person

Samuel Camenzind



The law scholar Steven Wise describes the current legal situation of animals by use of a metaphor of a massive wall that has separated one species – human beings – from all other animals for the last four thousand years (Wise 2014: 4). This separation dates

back to the technical distinction, in the Roman law, between (legal) persons and (legal) things. To stand on the side of persons means to be a legal subject and therefore to be bearer of subjective rights. To stand on the side of animals, plants and objects means to be a legal object, which can be protected by legal regulation, but can't be a bearer of juridical, subjective rights.

Non-things treated as things

As mentioned in the previous contribution by Richner, the wall and its strict dualism between persons and things started to crumble with the introduction of the third category of animals as non-things in the Austrian law (1988), German law (1990), and Swiss law (2003). But still animals don't have the status of legal subjects and have to remain on the other side. This means that they are neither bearers of fundamental rights, such as a right to life, individual liberty, or bodily integrity, nor can they hold property or be represented in court. This is first of all surprising, because according to the Swiss animal protection act (Art. 3, lit a) animals are beings with an inherent worth and therefore have a dignity that has to be respected. In addition, the German animal protection act speaks of animals as fellow creatures (Art. 1). Still, animals are not granted any subjective rights, they are only protected by laws comparable to protect an old building by monumental protection.

From a philosophical point of view, this is unexpected, because since Joel Feinberg's prominent essay *The Rights of Animals and Unborn Generations* (1974) it is widely acknowledged that, at least in the case of all sentient



animals, they *can be* right bearers. So the question that is at stake is: *should we* grant animals subjective rights? Surprisingly, this isn't a central question in German jurisprudence (Raspé 2013: 15; Stucki 2016: 27).

The animal person in theory and practice

Nevertheless, the fact that animals are nominally not things anymore, but can still be treated as things if no special regulation exists (Stucki 2016: 90), is unsatisfying for some legal scholars. In the quest for solutions, without giving up the strong legal protection of human beings and without subsuming human and animals under the same legal category (that of natural persons), two dissertations were published. The category of 'animal person' (Germ. *'tierliche Person'*) has been innovatively introduced by Caroline Raspé's work *Die tierliche Person* (2013) for the German law and by Saskia Stucki in her *Grundrechte für Tiere* (2016)

for the Swiss law. According to this category, animals are legal subjects and therefore bearer of juridical, subjective rights (see table below).

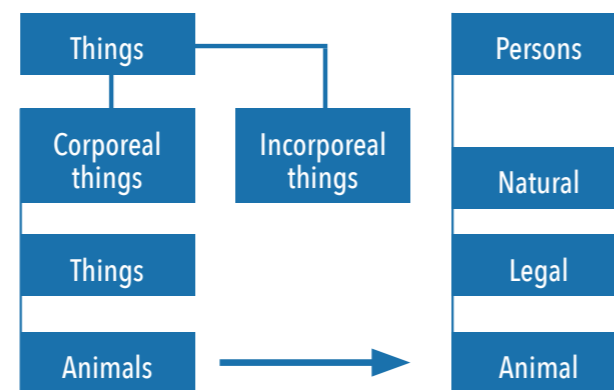


Table: Mod. from Raspé (2013): 306.

What are the concrete effects of this new category? Once animals are recognized as legal subjects, three points must be specified.

First of all, it has to be determined, which rights animals should be granted. Obviously, rights that are already part of current animal welfare protection acts, like the right to life or the prohibition of pain, suffering, harm or anxiety, should be maintained. But one important addition would be the fundamental right to legal personality. This means that animals could be represented in court by a legal representative like an animal lawyer or animal party.

Secondly, the two authors give different answers to the question of whether an animal person can still be the property of a human being. Based on pragmatic considerations, Raspé (2013: 316–318) suggests that we should maintain the property status of animals. She gets support from David Favre, who claims that from a legal point of view (at least with respect to American law), it is possible that an animal can be a bearer of rights and still remain property of someone. According to Favre, this category should be called 'living property' (Favre 2012). Stucki (2016: 367) argues, in contrast, that a right to legal personality would necessarily imply the repeal of the property status of animals. Interestingly, a third way can already be found in Immanuel Kant's *Doctrine of Right*.

The solution may be not to see property as a mere relation of domination ('complete property'), but also as relation of allocation, which implies certain duties of care. This was how Kant saw the relation between parents and children: 'For when we speak of the rights of parents to children as part of their household, we are referring not merely to the children's duty to return when they have run away but to the parent's being justified in taking control of them and impounding them as things (like domestic animals that have gone astray)' (Kant 1797, AA VI: 282). Nevertheless, the reference to Kant is not completely satisfying, because the question remains whether, contrary to children, members of the category 'animal person' can still be bought, sold and lent, and additionally to this, whether they can still be captured, harmed and killed.

This brings us to the third and final question: it must be clarified how much the rights of the animal person weighs in relation to other rights. Without a large support from the general public and officials, the recognition of subjective rights and stronger protection of animals remains an (utopian) idea. This doesn't have to be understood only negatively, because the animal person is still an idea that bears potential for social change concerning the situation of animals.

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Chimpanzee Rights

The Philosophers' Brief

Kristin Andrews

Review by Judith Benz-Schwarzburg

For *Chimpanzee Rights. The Philosophers' Brief* no less than thirteen internationally well-known scholars with very different backgrounds (from bioethics to philosophy of mind, from philosophy of science to political philosophy) assembled to make a point. This in itself is outstanding. Their original task was to provide philosophical insights to the question whether animals can be regarded as persons in form of an *amicus curiae* brief which had been submitted to the New York Court of Appeals in February 2018. The book constitutes an expanded version of this brief.

In December 2013 the Nonhuman Rights Project (NhRP) had filed a petition for the common law writ of habeas corpus in the New York State Supreme Court on behalf of Tommy, a chimpanzee living alone in a cage in a shed in rural New York. Soon thereafter, they had filed a second such petition on behalf of Kiko, another chimpanzee housed alone in Niagra Falls. The NhRP wants to achieve retirement in an ape sanctuary for Kiko and Tommy and the *habeus corpus* petition is their choice of legal strategy. It's the kind of legal strategy that can free slaves – and actually has done so in U.S. history. Under current U.S. law, an entity can either be a person or a thing. A *habeus corpus* writ can only be issued on behalf of a person, meaning that she has rights that confinement violates.

What we face here is a theoretical argument from animal rights philosophy put to the practical test in courthouses – a most interesting play to observe despite the fact that no judge has been willing to rule in favor of the chimps' personhood and freedom, so far. The thirteen philosophers of the book stand united in two assumptions: 'the conviction that the current conditions in

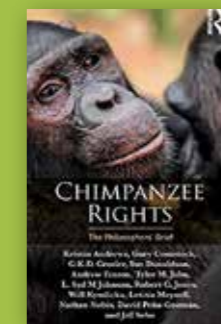
which Kiko and Tommy are held captive constitute an outrageous injustice' and the 'belief that the discipline of philosophy has a vital role to play in debates about defining personhood and determining who should be counted as persons' (p. 3). Indeed their considerate and careful examination of the main arguments used by the judges to dismiss the petitions reveal that the concepts of 'personhood' and 'person' are often used in an inconsistent and incoherent way (p. 116). The philosophers analyze three distinct notions of personhood which were employed in the rulings (the *species membership conception*, the *social contract conception*, and the *community membership conception*) (p. 9). Lastly, they review the NhRP's *capacity conception* of personhood which refers to the animals' complex social and cognitive capacities.

Each of these arguments is examined and discussed in detail, providing the latest insights from philosophical and biological debates. Thereby, the authors take care not to downplay the challenges of the personhood concept. They for example provide preliminary reflections from critical race and disability scholars on the intersection of different social justice struggles right from the outset (pp. 5-8). And they clearly state that they aim 'to broaden the concept of personhood to include chimpanzees without excluding other humans and other persons'. They 'reject any construction of personhood that fails the test' (p. 8). Also, they critically explore an alternative strategy to animal personhood that is the introduction of a third category between persons and things, the category of sentient beings (pp. 104-107).

Still, they arrive at clear conclusions: species membership arbitrarily privileges *Homo sapiens* and is 'inconsistent with contemporary evolutionary biology' (pp. 102-103). The social contract conception does not help either, because 'the real function of the social contract is to create and define citizenship' – thereby it presupposes from the outset that 'to be a contractor, one must be a person first' (p. 103). Finally, in both versions of the community membership conception (one links personhood to social recognition, the other

situates beings in webs of interpersonal relationships) chimps can be considered as members of the relevant communities (p. 103). Last but not least, the authors defend the capacities approach favored by the NhRP because chimpanzees possess morally and legally relevant capacities, such as autonomy (pp. 103-104). Their specific focus in this most interesting chapter is on autonomy as a sufficient condition for personhood within a cluster concept of persons (pp. 80-84).

The authors clearly stick to their expertise: their main angle is conceptual and logical problems with the courts' rulings to reveal flawed reasoning and invalid arguments. In best philosophical manner they conclude that 'the reasons provided by the courts are either inadequate, or they actually support the personhood of Kiko and Tommy' (p. 101). But luckily philosophers are not immune to the emotional side of the NhRP's mission. Thus, the book also shows how turning to these charismatic animals can actually shape one's perception of the human animal relationship as much as it can shape one's way to do philosophy.



Chimpanzee Rights: The Philosophers' Brief by Kristin Andrews

London; New York: Routledge.

ISBN-13: 978-1138618664

Hardcover: € 85,-

Paperback: € 19,-

Kindle: € 12,-

EurSafe executive committee

Many of you have been working on the abstracts and papers for EurSafe 2019 congress during the last weeks. Also for the EurSafe board the next conference is an important point on the agenda. Together with the team in Tampere (Finland) we are looking forward to the next conference on *Sustainable governance and management of food systems: ethical perspectives* (19-21 September 2019).

On 5 March the Executive Committee will have its board meeting. We try to discuss and meet as much as possible via Skype or phone, but at least once a year we plan a meeting to meet each other in person. This year we will meet in Utrecht. On the agenda will be the organization and planning of the next congresses, finances, and communication strategy. We also will inform you later this Spring on the (postponed) initiative of a members survey that we aim to start in order make EurSafe an (even) more attractive society.

If you have any questions or ideas, please do not hesitate to contact the board!

Best regards,

Franck Meijboom

On behalf of the Executive Board, 18 February 2019

Special Issue 'Animal Ethics: Questioning the Orthodoxy'

Dear Colleagues,

It has become commonplace to refer to the success of animal ethics and the animal turn in philosophy. Since Singer and Regan published their ground-breaking works more than forty years ago, animal ethics has become an institutionalised field of research.

This is mirrored in the appearance of entire journals, book series, text books, BA, MA and PhD programmes, conferences, research institutes, etc. devoted to it. To use a metaphor, animal ethics is no longer a toddler, but a teenager, full of energy, beginning to question its heritage and its future. This Special Issue aims to channel this rebellious spirit in order to help lay down the foundations for a prosperous adulthood. Therefore, we invite submissions that call into question the orthodoxy in animal ethics.

In particular, we aim to collect a series of papers that question:

- Classical premises: papers that address key terms and claims that were previously taken for granted, such as speciesism, the dichotomy moral agents/patients, the inherent disvalue of animal pain and suffering, the is/ought gap, etc.
- Classical theories and methodologies: papers that bring innovations into animal ethics by applying methodologies that until recently were often neglected, such as phenomenology, pragmatism, feminism, interdisciplinary and empirically-informed approaches, etc.
- Classical topics: papers that pick up topics that were ignored or under-treated in the canonical texts, such as human interventions in nature, the predator-prey problem, companion animals, cognitive enhancement and disenchantment of animals, representation of animals, duties towards invertebrates, meaning in the lives of animals, etc.

We welcome submissions addressing these and further relevant topics. With this Special Issue, we aim to deliver an overview of new solutions to canonical problems and new problems that were previously unseen. We expect to map out new directions in the field of animal ethics and contribute to clarifying the self-understanding of the discipline. Please kindly note that for submissions to this special issue there is a word limit of 8,000 words (references not included). The deadline for manuscript submissions is 30 September 2019.

Prof. Herwig Grimm and Dr. Susana Monsó

Guest Editors

[Online information](#)

MARCH 1

Canadian Animal Policy Symposium

Vancouver, USA

[website](#)

MARCH 21-23

Living with Animals/Living with Horses

Eastern Kentucky University, USA

[website](#)

MARCH 21-23

Animal/Language: An Interdisciplinary Conference

Texas Tech University, Lubbock, TX, USA

[website](#)

APRIL 26-27

Emotion

British Animal Studies Network Meeting

Glasgow, Scotland

[website](#)

APRIL 26-27

Maritime Animals: Telling Stories of Animals at sea

Greenwich, London, UK

[website](#)

APRIL 29-30

Animals remains

Biennial Conference of The University of Sheffield Animal Studies Research Centre (ShARC)

Humanities Research Institute, The University of Sheffield, UK

[website](#)

MAY 1

Animals and the Home

London, UK

[website](#)

MAY 22-24

Rethinking revolution: Nonhuman animals, antispeciesism and power

6th Conference of the European Association for Critical Animal Studies (EACAS)

Universitat Pompeu Fabra, Barcelona, Spain

[website](#)

JUNE 26-29

Finding Home in the 'Wilderness'

Association for the Study of Food and Society and the
Agriculture, Food, and Human Values Society Conference
Anchorage, Alaska, USA

[website](#)

JUNE 30- JULY 3

Decolonizing Animals

Australasian Animal Studies Association (AASA) 2019
Conference

Ōtautahi , New Zealand

[website](#)

JULY 1-4

Animals in the Public Eye: Interactions and Perceptions of Animals

The International Society for Anthrozoology (ISAZ) 2019
Conference

Orlando, USA

[website](#)

JULY 10-13

International Society for Environmental Ethics (ISEE)

The 16th annual summer meeting

H.J. Andrews Experimental Forest Research Station, Cascade
Mountains east of Eugene, Oregon, USA

[website](#)

JULY 10-19

Animal Rights and Animal Politics in Asia

11th International Convention of Asia Scholars (ICAS 11)

University of Leiden, the Netherlands

[website](#)

JULY 16-19

Animal Rights and Animal Politics in Asia

11th International Convention of Asia Scholars (ICAS 11)

University of Leiden, the Netherlands

JULY 21-27

Animal Welfare, Veterinary Ethics, Law and Communication Skills

VetNEST Summer School Vienna, Austria

[website](#)

SEPTEMBER 18-21

Sustainable governance and management of food systems: Ethical perspectives

EurSafe Conference 2019

Tampere, Finland

[website](#)

OCTOBER 24-25

Ninth International Conference on Food Studies

Kaohsiung, Taiwan

[website](#)

Publications

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