Swiss law protects not only the well-being but also the dignity of animals. Since 1992, animal dignity protection has been a constitutional principle in Switzerland, and a main purpose of the national Animal Welfare Act since 2008. The animal dignity concept is still unique in the world and represents a biocentric expansion of Swiss law granting animals a moral value, irrespective of their sentience. This signifies protection for an animal’s inherent worth, including ethical aspects that are not necessarily associated with any physical and physiological injury, such as protection from humiliation, ex-
cessive instrumentalization, and substantial interference with an animal’s appearance and abilities. Therefore, consideration of an animal’s dignity goes far beyond its pathocentric protection from pain, suffering, harm, and anxiety. This represents a milestone for animal law in general and has received much attention all over the world. Against the background of the animal dignity concept, the Swiss legislature passed a number of reforms and amendments. However, in contrast to human dignity, animal dignity is only given a relative value in Swiss law, meaning that violations of animal dignity usually can be balanced and legally justified by prevailing human interests. As a result, various highly questionable uses of animals are considered legitimate and not subject to legal scrutiny in Switzerland, and many of the essential questions are not being asked. Consequently, the far-reaching conceptual reorganization of Swiss animal law has not yet led to a fundamental change in the human-animal relationship in practice. This Article first discusses in detail the concept of animal dignity protection, its systematic embedding within Swiss animal law, and its legal implications to date. Subsequently, the Article analyzes multiple everyday ways of engaging with animals in Switzerland that are consistent with dignity protection. Highlighting a number of deficits both in the implementation and enforcement of the concept, this Article finally suggests various improvements that demand more consistency and courage in legislation, enforcement, and jurisdiction, as well as a general increase in awareness for animal dignity and its protection both in society and legal institutions.

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I. INTRODUCTION

In 1992, Switzerland amended its Federal Constitution by adding a provision requiring the legislature to pass laws on the use of reproductive and genetic material from animals, plants, and other organisms, and in doing so, to take into account the “dignity of living beings.” Swiss protection for the dignity of living beings, including animal dignity, is unique in the world at a constitutional level. Subsequent to that constitutional provision, in 2008, Switzerland enshrined protection for animal dignity in the national Animal Welfare Act (AWA).

For animal welfare, this is a milestone. The Swiss dignity protection concept is based on the conviction that animals exist—and have to be protected by law—for their own sake, not primarily for human interests. Under Swiss law, humans must respect animals’ species-specific characteristics, needs, and behaviors, and the inherent worth of animals is protected beyond physical and physiological stresses. In addition to the prevention of the pathocentric stress elements of pain, suffering, harm, and anxiety, Swiss animal law includes a biocentric

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1 Bundesverfassung [BV] [Constitution] Apr. 18, 1999, art. 120, para. 2 (Switz.).
3 Tierschutzgesetz [TSchG] [Animal Welfare Act (AWA)] Dec. 16, 2005, SR 455, art. 1 (Switz.).
4 Id. art. 3 (Switz.).
component that grants animals a moral value irrespective of their sentience.  

However, despite this far-reaching conceptual reorganization of Swiss animal law, no essential change in the human-animal relationship has been observed in practice. To the contrary, in many areas animals still are exploited in ways that are hardly consistent with respect for their dignity. In order to provide true legal protection for animals’ dignity, numerous forms of everyday animal use must be fundamentally questioned.

This Article explains the Swiss legal concept of animal dignity and its systematic embedding within Swiss animal law. The Article then analyzes various everyday ways of engaging with animals for their compatibility with the principle of dignity protection. In a critical conclusion, this Article finally demonstrates the deficits in the implementation and enforcement of the animal-dignity concept and suggests various improvements.

II. BACKGROUND ON SWITZERLAND AND THE SWISS LEGAL SYSTEM

Switzerland—also called the Swiss Confederation—is a federal state with a permanent resident population of approximately 8.325 million (2016), consisting of twenty-six partially sovereign member states known as ‘cantons.’ Situated in the heart of Europe, Switzerland is bordered by Germany to the north, Austria and the Principality of Liechtenstein to the east, Italy to the south, and France to the west. Consisting of more than 41,000 square kilometers (about 16,000 square miles), the country is roughly the same size as Denmark (without Greenland and the Faroe Islands) or the Netherlands, but two hundred times smaller than the entire United States and six times smaller than the U.S. state of Oregon. Although surrounded by member states of the European Union (EU), Switzerland does not belong to the EU. Accordingly, EU law does not apply within Switzerland.

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7 Nevertheless, Switzerland is a politically, economically, and culturally very close neighbor to the twenty-eight-nation EU. Over 1 million EU citizens live in Switzerland, and more than 280,000 commuters (almost 150,000 of them from France) cross the border at least once a week. On the other hand, almost 450,000 Swiss citizens live abroad (about 195,000 in France). Fed. Dept. of Foreign Affairs, Schweiz–EU in Zahlen: Handel, Bevölkerung, Verkehr 19, 22 (2015). Relations between the EU and Switzerland are characterized in particular by strong economic ties. A series of bilateral treaties provide the framework for the close relationship to the EU, whereby Switzerland has adopted various provisions of EU law in order to participate in the EU’s single market.
Of note, Switzerland’s legal system, like those of most European countries, is based on the civil law tradition.\textsuperscript{8} As such, it largely depends on codified statutory law that is applied and interpreted by the courts in individual cases, in contrast to countries whose law is based on the common law tradition, such as the U.S. and Great Britain, where judicial cases (case law) are of primary importance.\textsuperscript{9} Civil law systems differ from common law systems in various ways, such as the substantive content of the law, the operative procedures of the law, legal terminology, the manner in which authoritative sources of law are identified, the institutional framework within which the law is applied, and the education and structure of legal professions.\textsuperscript{10} In short, in civil law, courts and other judging bodies apply statutory law, which means the legal principles embodied in codes (such as the Swiss Civil Code),\textsuperscript{11} statutes (such as the Swiss Animal Welfare Act),\textsuperscript{12} and ordinances (such as the Swiss Animal Welfare Ordinance),\textsuperscript{13} rather than turning to case precedent. Statutory law is designed to cover all eventualities and basically has precedence over custom and judicial decisions. Consequently, courts in civil law systems have a more limited role of applying the law to the case at hand, and their decisions do not have the same binding character as in common law systems and can be overruled. Further, doctrine (the writings of legal scholars who draft and interpret statutory law in books and articles), although not a formal source of law, carries immense authority in civil law jurisdictions and has a much greater influence on the development and interpretation of law than the writings of legal scholars in common law systems.\textsuperscript{14}

\section*{III. ANIMAL LAW IN SWITZERLAND}

\subsection*{A. Constitutional Status of Animal Welfare}

For more than forty years, animal welfare has been a recognized and constitutionally protected national objective in Switzerland.\textsuperscript{15}

\begin{itemize}
\item \textsuperscript{9} See generally John Henry Merryman & Rogelio Pérez–Perdomo, The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America (3d ed. 2007) (describing the civil law system employed by Switzerland, as opposed to the common law tradition of the U.S.).
\item \textsuperscript{10} See generally Konrad Zweigert & Hein Kötz, Introduction to Comparative Law, 74–84 (3d ed. 1998) (outlining comprehensive comparisons between civil law and common law systems).
\item \textsuperscript{11} Schweizerisches Zivilgesetzbuch [ZBG] [Civil Code] Dec. 10, 1907, SR 210 (Switz.).
\item \textsuperscript{12} AWA, Dec. 16, 2005, SR 455 (Switz.).
\item \textsuperscript{13} Tierschutzverordnung [TSchV] [Animal Welfare Ordinance (AWO)] Apr. 23, 2008, SR 455.1 (Switz.).
\item \textsuperscript{14} Merryman & Pérez–Perdomo, supra note 9, at 80–81.
\item \textsuperscript{15} National objectives are those constitutional norms that set up the principles and guidelines for state actions. See Tanja Gehrig, Struktur und Instrumente im Tier- schutzrecht 49 (1999) (providing further references).
\end{itemize}
However, certain limited aspects of animal protection have been enshrined for much longer; in 1893, Swiss people and the cantons\(^\text{16}\) voted in favor of a constitutional ban on any method of slaughter in which livestock was not stunned before exsanguination, contradicting the recommendation of the Federal Council and Federal Parliament.\(^\text{17}\) Amending the corresponding article to the Federal Constitution,\(^\text{18}\) Switzerland became the first country in the world to impose a duty to anesthetize animals prior to slaughter, thus prohibiting religious slaughter.\(^\text{19}\) That provision, despite being a subject of constant dispute, was valid for nearly eighty years.\(^\text{20}\)

In 1973, animal welfare in general was elevated to a separate constitutionally protected interest in Switzerland.\(^\text{21}\) That year, an overwhelming majority of the Swiss people and all cantons voted for a revision of the slaughter article amending the former Federal Constitution to include a general animal welfare clause.\(^\text{22}\) In so doing, Switzerland was the first European country to include animal welfare as a

\(^{16}\) An amendment of the Swiss Federal Constitution normally requires a majority of the votes of both the Swiss people and the cantons. Bundesverfassung [BV][Constitution] Apr. 18, 1999, SR 101, arts. 140, 142 (Switz.).

\(^{17}\) See generally Dany Rothchild, Das Schachtverbot der Schweizerischen Bundesverfassung (1955); Pascal Krauthammer, Das Schachtverbot in der Schweiz 1854–2000—Die Schachtfrage zwischen Tierschutz, Politik und Fremdenfeindlichkeit, 52 et seq. (2000). [Editors Note: Due to the author’s preference, and the foreign-language nature of many of the sources, the editors have decided to retain the use of “et seq.” throughout this Article.]

\(^{18}\) Bundesverfassung [BV] [Constitution] May 29, 1874, SR 101, art. 25bis (Switz.) (effective from May 29, 1874 to December 31, 1999).

\(^{19}\) Gieri Bolliger, Michelle Richner & Andreas Ruttimann, Schweizer Tierschutzstrafrecht in Thorie und Praxis 33 (2011). The underlying motion was the first popular initiative (i.e., a request submitted by a minimum of 100,000 voters to undertake a complete revision of the Federal Constitution, or to adopt, repeal, or amend a provision of the Constitution) in Swiss history that successfully amended the Federal Constitution. See Krauthammer, supra note 17, at 85’et seq. Notably, along with animal welfare concerns, anti-Semitic tendencies clearly contributed the support for the initiative. See Antoine F. Goetschel, Kommentar zum Eidgenossischen Tierschutzgesetz 150 (1986); Krauthammer, supra note 17, at 60 et seq. For the problematic topic of religious slaughter, see Gieri Bolliger, Europäisches Tierschutzrecht—Tierschutzbestimmungen des Europarats und der Europäischen Union (mit einer ergänzenden Darstellung des schweizerischen Rechts) 288 et seq. (2000) (providing further references).


\(^{21}\) See Antoine F. Goetschel, Tierschutz und Grundrechte 37 (1989).

\(^{22}\) For the history of the new Article 25bis of the former Federal Constitution that goes back to 1963, see Andreas Steiger & Rainer J. Schweizer, Kommentar zu Art. 80 BV, in Die schweizerische Bundesverfassung 1412 et seq. (Bernhard Ehrenzeller et al. eds., 2d ed. 2008); Christoph Errass, Kommentar zu Art. 80 BV, in Die schweizerische Bundesverfassung 1614 (Bernhard Ehrenzeller et al. eds., 3d ed. 2014); Bolliger, Richner & Ruttimann, supra note 19, at 34 et seq. (providing further references).
singular issue within its constitution. The new provision declared substantive legislation on the entire subject of animal welfare to be exclusively a federal matter. Consequently, the federal government was granted extensive power to regulate animal welfare in all its breadth and depth. Indeed, under the constitutional amendment of 1973, the Swiss legislature is not only authorized to promulgate laws protecting animals but mandated to do so. Specifically, the animal welfare clause directs the legislature to take all necessary steps to ensure animal welfare as a federal task and provides the basis for national, uniform regulation of Swiss animal welfare law. Concurrently, the duty to anesthetize animals before slaughter was deleted from the constitutional article since this was now supposed to be regulated on a statutory level.

Twenty-seven years later, within the context of a complete constitutional revision, the animal welfare clause was replaced by article 80 of the current Federal Constitution that came into effect in 2000. However, the provision underwent only stylistic changes, remaining

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23 As of this writing, animal welfare has only rarely been fundamentally acknowledged in national constitutions. Only about fifty countries in the world mention animals at a constitutional level. Most of those constitutions reference animals in a primarily anthropocentric way (see infra note 317), focusing on human interests but not on protection for the animals themselves. For instance, most of the constitutions that acknowledge animals identify them only as mere agricultural objects, private property, or part of the environment in terms of species conservation. In contrast, some constitutional provisions protect individual animals’ interests, but the latter type of provision exists only in a few countries, such as India, Brazil, Germany, Luxembourg, Slovenia, and Egypt, as well as in the fundamental treaties of the European Union.

24 Bundesverfassung [BV] [Constitution] May 29, 1874, SR 101, art. 25bis (Switz.).

25 Margot Michel & Eveline Schneider Kayasseh, The Legal Situation of Animals in Switzerland: Two Steps Forward, One Step Back—Many Steps to Go, 7 J. ANIMAL L. 1, 11 (2011). Before 1981, due to the lack of competence of the national legislature, the cantons were responsible for regulating animal welfare issues. See Steiger & Schweizer, supra note 22, at 1412; Bolliger, Richner & Ruttimann, supra note 19, at 35.

26 See Gehrig, supra note 15, at 43 et seq. (providing further references). In doing so, however, the national legislature is authorized to legislate regarding only the welfare of the animals themselves, but not regarding the protection of humans from animals. See infra note 53. See generally Bolliger, Richner & Ruttimann, supra note 19, at 35 et seq.

27 See Gieri Bolliger, Obligatory Stunning Prior to Cut: Example Switzerland, in Tierschutz bei der Religiösen Schlachtung/Animal Welfare at Religious Slaughter 225 (Johannes Caspar & Jörg Luy eds., 2010). However, until the AWA entered into force in 1981 (see infra p. 9), religious slaughter still remained prohibited on the constitutional level due to Article 12 of the transitional provisions of the then Federal Constitution. Bolliger, Richner & Ruttimann, supra note 19, at 36.

28 Bundesverfassung [BV] [Constitution] Apr. 18, 1999, SR 101, art. 80 (Switz.). The new Swiss Constitution was adopted by popular vote and replaced its predecessor, intending to bring the former constitution up to date without substantive changes. The Federal Constitution is retrievable in English on the official website of the Swiss Confederation at http://www.admin.ch/opc/en/classified-compilation/19995395/index.html [https://perma.cc/C987-BT4L]. Note, however, that the English version is not an official document and therefore it has no binding effect.
substantially the same. As with the old one, the new animal welfare clause does not prohibit any particular activity, but rather requires the legislature to enact an animal welfare law applicable to the entire country. Notably, the constitutional animal welfare clause applies to all animals, regardless of zoological classifications.

In 1973, by establishing animal protection at the highest legal level, Switzerland made a seminal decision: Animal welfare is an autonomous constitutional principle recognized as both a public interest and a national objective equal to other national objectives, such as spatial planning, social policy, nature and heritage protection, environmental and water protection, and forest conservation. Further, due to this status, animal welfare has the same constitutional stance as fundamental rights of humans. Thus, animal welfare goals can

29 See Steiger & Schweizer, supra note 22, at 1413; Errass, supra note 22, at 1614. Article 80 of the Federal Constitution reads as follows:

1. The Confederation shall legislate on the protection of animals.
2. It shall in particular regulate:
   a. the keeping and care of animals;
   b. experiments on animals and procedures carried out on living animals;
   c. the use of animals;
   d. import of animals and animal products;
   e. the trade in animals and the transport of animals;
   f. the killing of animals.
3. The enforcement of the regulations is the responsibility of the cantons, except where the law reserves this to the Confederation.

BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, art. 80 (Switz.).

30 Id.
31 Steiger & Schweizer, supra note 22, at 1416; Errass, supra note 22, at 1617.
32 ANTOINE F. GOETSCHEL & GIERI BOLLIGER, DAS TIER IM RECHT—99 FACETTEN DER MENSCHE–TIER-BEZIEHUNG VON A BIS Z 199 (2003); BOLLIGER, RICHPER & RUTTMANN, supra note 19, at 36. The phrase constitutional principle is not clearly defined in Swiss law. According to doctrine, it includes fundamental values such as rule of law, welfare state, federalism, and democracy. See generally ULRICH HAFELIN, WALTER HALLER & HELEN KELLER, SCHWEIZERISCHES BUNDESTAATSRECHT 51 et seq. (8th ed. 2012).
33 Public interest is a vague legal term in Switzerland. It includes everything that the state must provide in order to fulfill its duties. See HAFELIN, HALLER & KELLER, supra note 32, at 102 et seq.
34 GOETSCHEL, supra note 21, at 37; BOLLIGER, RICHPER & RUTTMANN, supra note 19, at 36; Errass, supra note 22, at 1618; Andreas Kley & Martin Sigrist, Güterabwägung bei Tierversuchen—Intentionen des Gesetzgebers und erste Anwendungen, in GÜTERABWÄGUNG BEI DER BEWILLIGUNG VON TIERVERSUCHEN 36 (Hans Sigg & Gerd Folkers eds., 2011); Federal Council, Botschaft zur Revision des Tierschutzgesetzes, 661 (2002). Due to its equal status, animal welfare is also to be included in the implementation of other national objectives. Thomas Fleiner-Gerster, Kommentar zu Art. 25bis BV, in KOMMENTAR ZUR BUNDESVERFASSUNG DER SCHWEIZERISCHEN EIDGENOSSISCHEN VOM 29. MAI 1874, 6 (Jean-François Aubert et al. eds., 1989). In the case of conflicts with other constitutional interests, a balancing test is required in each individual case. GEBHARD, supra note 15, at 49.
35 See Peter Krepper, Tierwürde im Recht—am Beispiel von Tierversuchen, 3 AKTUELLE JURISTISCHE PRAKTI 305 (2010) (discussing criminal punishment for violating animal dignity); Errass, supra note 22, at 1618; Bundesgericht [BGer] [Federal Supreme Court] Oct. 7, 2009 135 ENTSCHEIDUNGEN DES SCHWEIZERISCHEN BUNDESGER-
restrict fundamental rights of humans that also are expressly guaranteed by the Federal Constitution. Animal welfare concerns are justified as being security-motivated and legally anchored barriers for fundamental rights as long as those concerns are balanced and perceived as proportionate, in the public interest, and of great importance. Conflicts between human interests and animal welfare interests are conceivable within the realms of the right to personal freedom, freedom of religion and conscience, freedom of expression and information, academic freedom, the guarantee of ownership, and economic freedom. Therefore, beyond its symbolic intent as an official acknowledgement at the highest level of law that human treatment of animals must have limitations, the Swiss constitutional animal welfare clause has far-reaching practical significance.


As a consequence of the constitutional mandate to adopt animal welfare regulations, the Swiss Parliament decreed the first national Animal Welfare Act (AWA) in 1981. Together with the Animal Welfare Ordinance (AWO), passed by the Federal Council, the AWA

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36 See Bundesverfassung [BV] [Constitution] Apr. 18, 1999, SR 101, art. 36 (Switz.) (restricting limitations on fundamental rights to specific instances); Steiger & Schweizer, supra note 22, at 1417. See infra note 251.

37 Bundesverfassung [BV] [Constitution] Apr. 18, 1999, SR 101, art. 10 (Switz.).

38 Id. art. 15.

39 Id. art. 16.

40 Id. art. 20.

41 Id. art. 26.

42 Id. art. 27; see Goetschel & Bolliger, supra note 32, at 199; Bolliger, Richner & Rüttimann, supra note 20, at 37 (providing further references). See generally Goetschel, supra note 19, at 2 et seq.

43 It may require considerable revaluation of existing human-animal relationships, since animal welfare becomes both a constitutionally protected interest and a national objective that, as matter of principle, is accorded the same status as other national objectives. Further, animal welfare legislation can require that human rights in owning and managing animals are balanced with, or trumped by, animals’ own interests in fundamental aspects of their well-being. Consequently, it leads to a kind of “equality of weapons,” in which the privileges of science and research, religion, art, and the freedom to choose a profession no longer have absolute priority over animal well-being. Indeed, in any conflict between different constitutional rights, interests must be balanced. This means, for instance, that animal management must be adapted to the needs of animals and not depend solely on the economic interests of those who use animals. See generally Gieri Bolliger, Animal Welfare in Constitutions, in Constitutional and Legislative Aspects of Animal Welfare in Europe 12 et seq. (Four Paws ed. 2007).


45 AWO, AS 2985 (2008) (Switz.). The AWO came into force the same date as the AWA (July 1, 1981) and was effective likewise until August 31, 2008.

46 Whereas federal statutes (such as the AWA) are passed by the Swiss Parliament, federal ordinances are subordinated to statutes and enacted by the Federal Council.
forms the core of Swiss animal welfare law. Both the AWA and the AWO were completely reviewed in the early 2000s. The revised and current versions of both laws came into force in 2008.

The AWA is designed to provide a legal framework for animal protection. In around fifty typically brief articles, it governs individual responsibility in the general treatment of animals, as well as the most important issues in animal welfare (such as animal husbandry, breeding, experimentation, transport, and slaughter). Each major area of animal welfare is further addressed and governed by the much broader AWO, which includes more than two-hundred and twenty detailed articles and five comprehensive appendices.

Of note, Swiss animal welfare law covers all areas of the human use of animals, such as the handling of companion animals (pets), farmed animals, laboratory animals, wild animals, and animals used for sports, entertainment, and advertising, regardless of whether they are owned by a person or are useful or harmful to humans. Further, unlike U.S. law, Swiss animal welfare legislation does not contain general exclusions for entire categories of animals according to their designated use. Consequently, under Swiss law, farmed animals

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48 The AWA (Tierschutzgesetz) of Dec. 16, 2005 (SR 455) and the AWO (Tierschutzverordnung) of April 23, 2008 (SR 455.1) came into effect on September 1, 2008 and are retrievable (in German) on the official website of the Swiss Confederation: http://www.admin.ch/opc/de/classified-compilation/20022103/index.html [https://perma.cc/8NYR-SAA2] and http://www.admin.ch/opc/de/classified-compilation/20080796/index.html [https://perma.cc/CC5E-EKHR].
49 See GEHRIG, supra note 15, at 105 et seq.
50 Generally, the term animal refers to all living beings that do not belong to the zoological realm of plants, fungi, blue-green algae, or other microorganisms. See, e.g., RITA JELDEHAUSER, DAS TIER UNTER DEM SCHUTZ DES RECHTS—DIE TIERETHISCHEN GRUNDLAGEN EINES RECHTLICHEN SCHUTZMODELLS FÜR DAS TIERSCHTERZTECHTLE VERWALTUNGSGRADEN (2011). In legal terms, animals are also distinguished from humans that are not subjects of Swiss animal welfare legislation. BOLLIGER, RICHNER & RUUTIMANN, supra note 19, at 51. For the widely limited scope of application of Swiss animal welfare law on vertebrates, see infra p. 41.
51 AWA, AS 2965 (2008) (Switz.).
52 AWO, AS 2985 (2008) (Switz.).
53 Within this Article, the terms companion animals and pets will be used interchangeably. While the terms domestic animals and pets (both translated as Haustiere) are often colloquially used synonymously in German, Swiss animal welfare law differentiates between them. Pets are often a subcategory of domestic animals, namely those which a human keeps solely for emotional reasons in his immediate proximity, mostly in his own home. However, pets can also be wild animals (such as hamsters or budgerigars) since they are not considered domesticated. The crucial factor for the classification of a domestic or wild animal as a pet is that there is no economic goal being pursued with its keeping. BOLLIGER, RICHNER & RUUTIMANN, supra note 19, at 58. See generally GERI BOLLIGER, ANTOINE F. GOETSCHEL, MICHELLE RICHNER & ALEXANDRA SPRING, TIER IM RECHT TRANSPARENT (2008) (discussing the relationship between humans and companion animals).
54 For the legal definitions of the various animal categories in Swiss law, see AWO, AS 2985 (2008), art. 2, paras. 1–2 (Switz.).
55 BOLLIGER, RICHNER & RUUTIMANN, supra note 19, at 51.
and laboratory animals are basically protected like companion animals. For instance, an act of cruelty to a farmed animal or a laboratory animal must be prosecuted exactly the same as one to a pet or a wild animal.

C. Other Animal-Related Legislation

Swiss animal legislation is established primarily, but not exclusively, by the AWA and the AWO. In addition to those laws, a number of other ordinances clarify the AWO. Such ordinances are issued by the Federal Council, the Federal Department of Home Affairs (FDHA), and the Federal Food Safety and Veterinary Office (FSVO), which are responsible for animal welfare matters at a national level. Additionally, many other federal statutes contain provisions that directly

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56 See infra section V.F.4 et seq. Substantively, Swiss animal welfare law is exclusively regulated by national legislation. The cantons are responsible for enforcing animal welfare laws but are prohibited from issuing differing or additional substantive provisions regarding animal protection. Bolliger, Goetschel, Richner & Spring, supra note 53, at 14. By way of contrast, the issue of any substantive regulation for the protection of humans against animals, such as poisonous animals or dangerous dogs, is the exclusive responsibility of the cantons, as long as no animal welfare aspects are regulated at the same time. BGer Nov. 30, 2009, 2C.166/2009 (Switz.); Errass, supra note 22, at 1617; Andreas Ruttimann, Michelle Richner, Ursina Lüchinger & Nora Flückiger, Pferd im Recht transparent 19 (2015); Steiger & Schweizer, supra note 22, at 1416. Such legislative measures are solely the responsibility of the cantons. Regarding the protection against dangerous dogs, every canton has its own dog law that can differ significantly from the law of other cantons. See Bolliger, Richner & Ruttimann, supra note 19, at 93 et seq.; Stiftung für das Tier im Recht (TIR), Tier im Recht, http://www.tierimrecht.org/de/tierschutzrecht/schweiz/hunde-recht/index.php [https://perma.cc/Z56X-AMY2] (accessed Feb. 5, 2016) (providing all current cantonal provisions regarding animal protection). Bolliger, Goetschel, Richner & Spring, supra note 53, at 14. By way of contrast, the issue of any substantive regulation for the protection of humans against animals, such as poisonous animals or dangerous dogs, is the exclusive responsibility of the cantons, as long as no animal welfare aspects are regulated at the same time. BGer Nov. 30, 2009, 2C.166/2009 (Switz.); Errass, supra note 22, at 1617; Andreas Ruttimann, Michelle Richner, Ursina Lüchinger & Nora Flückiger, Pferd im Recht transparent 19 (2015); Steiger & Schweizer, supra note 22, at 1416. Such legislative measures are solely the responsibility of the cantons. Regarding the protection against dangerous dogs, every canton has its own dog law that can differ significantly from the law of other cantons. See Bolliger, Richner & Ruttimann, supra note 19, at 93 et seq.; Stiftung für das Tier im Recht (TIR), Tier im Recht, http://www.tierimrecht.org/de/tierschutzrecht/schweiz/hunde-recht/index.php [https://perma.cc/Z56X-AMY2] (accessed Feb. 5, 2016) (providing all current cantonal dog laws in the corresponding cantonal languages).

57 Originally, the FSVO, which until 2014 was called the Federal Veterinary Office (FVO), was a part of the Federal Department of Economic Affairs (FDEA) and was incorporated into the FDHA in 2013.

or indirectly enhance animal protection. These provisions are scattered throughout Swiss legislation and found in various parts of the Swiss Civil Code (for example, family law, law of succession, property law), the Swiss Code of Obligations, and the Swiss Criminal Code. Moreover, special federal laws, such as codes relating to epizootic diseases, hunting and fishing, gene technology, agriculture, food, debt enforcement and bankruptcy, and road traffic, include animal welfare provisions.

Further, since animal welfare is increasingly internationalized, like most areas of law, Switzerland has joined various international conventions on the protection of animals and animal species and has committed to their national implementation. Of primary significance are the treaties of the Council of Europe regarding the regulation of transport animals, farmed animals, animals for slaughter, laboratory animals, and pets. Switzerland has ratified all five Euro-

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59 Schweizerisches Zivilgesetzbuch [ZGB] [Civil Code] Dec. 10, 1907, SR 210 (Switz.).
60 Bundesgesetz betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (Funfter Teil: Obligationenrecht) [Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations)] Mar. 30, 1911, SR 220 (Switz.).
61 Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] Dec. 21, 1937, SR 311.0 (Switz.).
62 Michelle Richner, Heimtierhaltung aus tierschutzstrafrechtlicher Sicht 45 (2014). For general overviews of the various Swiss laws relating to animals, see Bolliger, Goetschel, Richner & Spring, supra note 53, at 3 et seq., and Goetschel & Bolliger, supra note 32, at 19 et seq.
63 See Goetschel & Bolliger, supra note 32, at 86 et seq.
64 Europäisches Übereinkommen über den Schutz von Tieren beim internationalen Transport (revidiert) [European Convention for the Protection of Animals During International Transport (Revised)] Nov. 6, 2003, SR 0.452 (Switz.) C.E.T.S. No. 193.
pean animal welfare conventions and adopted them into national law. In contrast, the various animal welfare decrees of the European Union do not apply in Switzerland since it is not a member of the EU. However, EU law may apply under certain exceptional circumstances, such as border crossing animal transports. Further, Switzerland has committed to partial adoption of EU law in terms of agreements related to agricultural trade.

IV. PROTECTION OF ANIMAL DIGNITY

In 1992, a second constitutional provision strongly enhanced the position of animal welfare in Switzerland. Article 120, paragraph 2 of the Federal Constitution obligates the Swiss Confederation under the title “Non-Human Gene Technology” to regulate the use of reproductive and genetic material derived from animals, plants, and other organisms, and to protect the genetic diversity of animal and plant species while taking into consideration the “dignity of living beings” (Würde der Kreatur).

A. Concept of Dignity Protection

With the constitutional clause protecting the dignity of living beings, which is in accord with the preamble of the Federal Constitution

69 See generally Bolliger, supra note 19, at 21 et seq.
70 For the animal welfare law of the EU, see generally Bolliger, supra note 19, at 33 et seq.
71 See generally Ruttimann, Richner, Luchinger & Flückiger, supra note 56, at 382 et seq.
72 See Abkommen zwischen der Schweizerischen Eidgenossenschaft und der Europäischen Gemeinschaft über den Handel mit landwirtschaftlichen Erzeugnissen [Agreement between the Swiss Confederation and the European Community on the Trade in Agricultural Products] Mar. 21, 1999, SR 0.916.026.81 (Switz.).
74 “The Confederation shall legislate on the use of reproductive and genetic material from animals, plants and other organisms. In doing so, it shall take account of the dignity of living beings as well as the safety of human beings, animals and the environment, and shall protect the genetic diversity of animal and plant species.” The new Article was approved by about three-quarters of the votes of the people and by all Swiss cantons except one. For the history of the provision see generally Heike Barancke, Die Würde der Kreatur? Die Idee der Würde im Horizont der Bioethik 17 et seq. (2002); Christoph Errass, Öffentliches Recht der Genteknologie im Ausserhumanbereich 21 et seq. (2006); Antoine F. Goetschel, Würde der Kreatur als Rechtsbegriff und rechtspolitische Postulate daraus, in Die Würde des Tieres 139 et seq. (Martin Liechti ed., 2002); Peter Krepper, Zur Würde der Kreatur in Genteknik und Recht: Tiersen zum genteknischen Umgang mit Tieren in der Schweiz unter Berücksichtigung des internationalen Rechtsumfelds 347 et seq. (1998); Dagmar Richter, Die Würde der Kreatur: Rechtsvergleichende Betrachtungen, in Zeitschrift für ausländisches öffentliches Recht und Völker (ZaoRV) 319 et seq. (2007); Rainer J. Schweizer & Christoph Errass, Kommentar zu Art. 120 BV, in Die schweizerische Bundesverfassung (Bernhard Ehrenzeller et al. eds., 3d ed.) 2145 et seq. (2014).
that emphasizes Switzerland’s responsibility towards creation,⁷⁵ protection for the dignity of non-human beings was introduced and guaranteed for the first—and by now, still only⁷⁶—time in the world by a national constitution.⁷⁷ However, the term dignity of living beings is not a new invention, but rather a pre-existing idea in the animal welfare movement.⁷⁸ It transfers the dignity concept, which has been developed for humans,⁷⁹ into a broader (non-human) sphere that applies to every living being, at least in certain respects, in the same way as it does to humans.⁸⁰ Hence, the dignity of living beings concept contradicts the traditional idea that only human beings have dignity. Under

⁷⁵ “The Swiss people and the cantons, mindful of their responsibility towards creation... adopt the following Constitution.” Bundesverfassung [BV] [Constitution] Apr. 18, 1999, SR 101, preamble (Switz.); Richter, supra note 74, at 320.

⁷⁶ In other constitutions, as well as in international conventions, the terms dignity of living beings or animal dignity are missing by now. See, however, the European Parliament’s 1994 Resolution on the Welfare and Status of Animals in the Community, where the European Parliament called on “broadcasting corporations and other radio and television organizations... not to broadcast in an uncritical manner events and scenes which violate the dignity of animals[,]” 1994 O.J. (C 44) 208.

⁷⁷ Already in 1980, the phrase dignity of living beings was included in the Constitution of the Swiss Canton of Aargau, which explicitly recognized the dignity of living beings as a good to be respected in teaching and research. See Verfassung des Kantons Aargau [Constitution of the Canton of Aargau] June 25, 1980, § 14 (Switz.) (“The scientific teaching, research and artistic activities are free. Teaching and research have to respect the dignity of living beings.”); KURT EICHENBERGER, DIE VERFASSUNG DES KANTONS AARGAU, TEXTAUSGABE UND KOMMENTAR, 88 (1986).

⁷⁸ The historic roots of the term dignity of living beings are mostly theological and trace back especially to the Danish philosopher and theologian, Lauritz Smith (1754–1794), and the Basel theologian, Karl Barth (1886–1968). See generally Heike Baranzke, Was ist die "Würde der Tiere!”, in DIE WÜRDE DES TIERES 255 et seq. (2002); Baranzke, supra note 74, at 223 et seq.; Richter, supra note 74, at 321 et seq.; Klaus Peter Rippe, Ethisch im Ausserhumanen Bereich 67 et seq. (2008).

⁷⁹ See infra p. 20 et seq. Basically, the concept of dignity refers to an evaluative or normative rating that is awarded primarily to humans, but also to other beings. Today’s use of the term traces back to the Latin opus Oration on the Dignity of Man (Oration de hominis dignitate, 1487) of the Italian philosopher Giovanni Pico della Mirandola (1463–1494) and later mainly, especially regarding the prohibition from instrumentalization, which derives from human dignity (see infra p. 19), to the work of the Prussian philosopher, Immanuel Kant (1724–1804). See, e.g., Rippe, supra note 78, at 235 et seq.; Christoph Errass, 20 Jahre Würde der Kreatur, in Zeitschrift des Bernischen Juristenvereins (ZBJV) 149, 201 (2013). For the influence of the Kantian thinking on animal welfare, see Christine M. Korsgaard, A Kantian Case for Animal Rights, in ANIMAL LAW: DEVELOPMENTS AND PERSPECTIVES IN THE 21ST CENTURY [Tier und Recht: Entwicklungen und Perspektiven im 21. Jahrhundert] 3 et seq. (Margot Michel et al. eds., 2012) [hereinafter Animal Law—Tier und Recht], which represents an interesting interpretation different from the common (rather animal unfriendly) Kantian exegesis.

Swiss law, at least to a certain degree, other living beings are regarded and valued as having a status formerly accorded only to humans.81

Even if certain specific implications of the concept are still the subject of controversy,82 under the Federal Constitution, dignity of living beings refers to inherent dignity, meaning that dignity is permanent.83 Due to their inherent dignity, non-human creatures must be

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81 See BGer Oct. 7, 2009, 135 BGE II 384 (Switz.); Michel & Schneider Kayasseh, supra note 25, at 10 et seq.
82 This can be seen, for example, in the fact that the term dignity is not uniformly employed in the different national language versions of the Federal Constitution. All four national languages of Switzerland are official languages (Bundesverfassung [BV] [Constitution] Apr. 18, 1999, SR 101, art. 70, para. 1 (Switz.)) and of equal importance. While the German, Italian, and Romansh versions use ‘dignity of living beings’ (Würde der Kreatur, dignità della creatura, dignidad de las criaturas, respectively), the French version literally speaks of the integrity of a living organism (intégrité des organismes vivants). Originally having the phrase dignité de la créature, which obviously corresponded to the other three languages, the French version surprisingly was changed when the Federal Constitution was completely revised in 1999 (see supra p. 8) by the Swiss translation bureau, not owing to a legislative decision. Michel & Schneider Kayasseh, supra note 25, at 4; Margot Michel, Law and Animals: An Introduction to Current European Animal Protection Legislation, in Animal Law: Reform or Revolution? 87, 103 (Anne Peters et al. eds., 2015). Subsequently, the Federal Ethics Committee on Non-Human Biotechnology (ECNH), see infra note 88, criticized that significant change declaring that the terms dignity and integrity do not signify the same thing, but rather have different implications. Not every harm to a living being’s integrity means an injury inflicted on that being’s dignity as well. Further, the term integrity is ambiguous, since it can refer to physical-biological, genetic, emotional, or metaphysical aspects. See ECNH, Stellungnahme zur französischen Version des Art. 120 BV (2000). Regardless, the French version of Article 120, paragraph 2 of the Federal Constitution was not changed back into its original form. See generally Richter, supra note 74, at 328 et seq.; Errass, supra note 79, at 192 et seq.; Klaus Peter Rippe, "Würde des Tieres" aus rechtssphilosophischer Sicht, in TIERETHIK 3, 9 et seq (2011). For a comprehensive comparison of the terms dignity and integrity, see Kirsten Schmidt, Würde oder Integrität—Verlangt die gentechnische Veränderung von Tieren neue tierethische Konzepte?, in AlTEX 25, 313 (2008) (exploring the concepts of dignity and integrity in the realm of animal ethics). From an ethical standpoint, the meaning of the term integrity is unclear. Nevertheless, under no circumstances is the term synonymous with dignity. However, a limited interpretation was not intended and can also be excluded against the background of the German, Italian, and Romansh version. Schweizer & Errass, supra note 74, at 2145. In keeping with the international discussion, the Federal Constitution protects an inherent dignity of living beings. See Federal Ethics Committee on Non-Human Biotechnology/Federal Committee on Animal Experiments, The Dignity of Animals 3 (2008) [hereinafter ECNH/FCAE] (noting that the Swiss Federal Constitution includes language expressly protecting the dignity of living beings). The official English translation of the Federal Constitution (that, however, has no legal force) compromises between the different versions, speaking of ‘dignity of living beings.’ For the colloquial use of the term dignity, see generally Christoph Ammann, Die Würde des Tiers—Begriffliche Erkundungen in ethischer Absicht, in Würde der Kreatur, supra note 80, at 1 et seq.
83 Errass, supra note 74, at 61; Errass, supra note 79, at 203; Schweizer & Errass, supra note 74, at 2150; Michel & Schneider Kayasseh, supra note 25, at 7. Basically, there are two types of dignity. The contingent dignity (with the three subcategories: aesthetic, social, and expressive dignity) is unevenly distributed in the different forms of life, since it is related to contingent characteristics dependent on cultural or individual consideration. In addition, it is a transient value that someone can acquire, lose, and
respected since they exist for their own sake and not for other purposes, and their dignity must be understood as a specific intrinsic value. Creatures with inherent dignity possess a good of their own, that can be benefited or harmed, as well as the ability to pursue individual objectives, and they can be considered ‘organic entities.’ Consideration for this intrinsic value of living beings requires from humans respect, prudence, care, and moderation in dealing with them.

B. Dignity of Living Beings Includes Animal Dignity

According to prevailing Swiss doctrine, the constitutional term *living beings* refers only to non-human beings. It definitely includes animals and plants, and possibly certain other organisms, such as reacquire in the course of life. In contrast, the inherent dignity is possessed equally by all living beings and not transitory. To the contingent dignity corresponds the respect of esteem, whereas to the inherent dignity corresponds the respect of moral consideration. For the entire issue, see generally Philipp Balzer, Klaus Peter Rippe & Peter Schüler, Menschenwürde vs. Würde der Kreatur 17 et seq. (2nd ed. 1999); Rippe, supra note 82, at 73; Errass, supra note 74, at 59 et seq.; Errass, supra note 79, at 202 et seq. (providing further references).

84 Schweizer & Errass, supra note 74, at 2150; Errass, supra note 79, at 203; Errass, supra note 74, at 60.

85 Errass, supra note 79, at 204 et seq.; Errass, supra note 22, at 1615; Schweizer & Errass, supra note 82, at 2151; Stucki, supra note 80, at 291. See generally Rippe, supra note 82, at 106 et seq. The term entity refers to individuals, which are composed of mind and matter. Andreas Brenner, Die Würde des Lebens, in Animal Law—Tier und Recht, supra note 79, at 55; Rippe, supra note 82, at 23.

86 Schweizer & Errass, supra note 74, at 2151 (providing further references). In a joint clarification between the FCAE and the ECNH, a national board made up of independent experts from various fields with the task of advising the Federal Council and the authorities on both legislation and enforcement of matters on non-human bioethics, stated unmistakably: “Against the concept that humans alone are entitled to dignity and protection, the discussion concerning the dignity of living beings stands as a corrective to the immoderate and arbitrary way in which humans treat the rest of Nature. Humans are required to show respect and restraint in the face of nature, due to their own interest in sustainable resources as well as by dint of the inherent value ascribed to a fellow living being. Living beings should be respected and protected for their own sake.” ECNH/FCAE, supra note 82, at 4.

87 See, e.g., Peter Saladin & Rainer J. Schweizer, Kommentar zu Art. 24novies Abs. 3 BV, in Kommentar zur Bundesverfassung der Schweizerischen Eidgenossenschaft, 62 (Jean-François Aubert et al. eds., 1995); Nils Stohner, Importrestriktionen aus Gründen des Tier- und Artenschutzes im Recht der WTO 100 (2006); Richter, supra note 74, at 330; Rippe, supra note 82, at 68; Samuel Camenzind, Auf zu neuen Ufern: Rechtsphilosophische Überlegungen zur übermässigen Instrumentalisierung im schweizerischen Tierschutzgesetz, in Animal Law—Tier und Recht, supra note 79, at 173, 183; Lorenz Engi, Die Würde des Gewordenen und die Unverfügbarkeit der Tiere, in Animal Law—Tier und Recht, supra note 79, at 77 [hereinafter Engi, in Animal Law]; Errass, supra note 79, at 200 (providing further references). Definitions of dignity were designed and implemented primarily with regard to animals. See the remarks regarding article 8 et seq., Bundesgesetz über die Gentechnik im Ausserhumabereich (Gentechnikgesetz) [GTG] Gene Technology Act, March 21, 2003 [hereinafter GTA], SR 814.91 (Switz.) and article 3 of the AWA infra p. 21 et seq. However, the Federal Constitution assumes that plants also possess dignity, and the
bacteria, algae, and mildew. Under the Federal Constitution, as with the animal welfare clause, the term animal has no presuppositions in a legal context, which means that all animals are included in the scope of dignity protection, independent of their zoological classification. However, while the dignity concept serves to protect individual living beings, most scholars argue that it includes neither entire species nor genus, nor whole habitats or biotopes.

Since its inclusion in 1992, the concept of the dignity of living beings has been a topic of passionate discussions. Addressing the new principle, philosophers, ethicists, and legal scholars initially mostly debated the questions of the meaning of the term dignity and which living beings the concept would include. While some academics still

dignity of plants must be considered as a constitutional principle, too. This means that humans may not deal arbitrarily with plants and that any random harm to plants is morally impermissible. Further, respect for the dignity of living beings is highly relevant when examining the patentability of transgenic animals and plants, in interpreting legislation on therapeutic products (such as regarding healing herbs), and in food law. See Errass, supra note 79, at 219; Schweizer & Errass, supra note 74, at 2151 (providing further references). Since this Article focuses on animals, it would go beyond its scope to also address the highly controversial debate about the dignity of plants. Instead, see ECNH, The Dignity of Living Beings with Regard to Plants: Moral Consideration of Plants for Their Own Sake, 1–21 (2008) (providing proposals for the concretization of the ‘plant dignity’ concept). See generally Andrea Arz de Falco & Denis Müller, Wert und Würde von “niederen” Tieren und Pflanzen 111 et seq. (2001); Sabine Odparlik, Und die Würde der Pflanze?, in Eine Würde für alle Lebewesen? 73 and seq. (Sabine Odparlik & Peter Kunzmann eds., 2007); Rippe, supra note 82, at 186 et seq.; Lorenz Engi, Was verbietet die Würde der Kreatur? Zu den praktischen Konsequenzen der Verfassungsnorm 93 et seq. (2015).

88 Errass, supra note 22, at 1615; Errass, supra note 79, at 200 et seq. (providing further references); Michel & Schneider Kayasseh, supra note 25, at 4; Camenzind, supra note 87, at 182 et seq.. According to article 5, paragraph 1 of the GTA, the term organism refers to “cellular or non-cellular biological entities capable of replication or of transferring genetic material. Mixtures, articles and products that contain such entities are also regarded as organisms.”

89 See supra p. 7.

90 ECNH/FCAE, supra note 82, at 6; Camenzind, supra note 87, at 184. This is contrary to the Swiss AWA, which largely applies only to vertebrates. See infra p. 41.

91 Schweizer & Errass, supra note 74, at 2151; FSVO, supra note 5, at 2. See generally Errass, supra note 74, at 61 et seq.; Errass, supra note 79, at 195 et seq., (including humans in the definition of “living beings”, which is contrary to prevailing Swiss doctrine). But see Ina Praktorius & Peter Saladin, Die Würde der Kreatur (Art. 24novies Abs. 3 BV), Schriftenreihe Umwelt, no. 260, 1996, at 107 et seq.; Andreas Steiger, Die Würde des Tieres aus veterinärmedizinisch-biologischer Sicht, in Tagungsband “Die Würde des Tieres” 5 (Evangelische Akademie Bad Boll ed., 2011) (arguing that also the extinction of an entire species disregards the dignity of living beings).

92 In doctrine, there was, especially in the beginning, a lively debate about the relation between human dignity and the dignity of living beings. Roughly speaking, two different lines of interpretation can mainly be distinguished: Some authors focus upon human dignity in order to define the dignity of living beings and therefore seek to apply integral parts of human dignity to that of living beings as well. Others emphasize the substantial difference between the two concepts and distinguish the normative content of human dignity from that of living beings. For overviews of the most important standpoints, see Peter Kunzmann, Die Würde des Tieres: zwischen Leerformel und Prinzip 13 et seq. (2007); Rippe, supra note 82, at 69 et seq.; Errass, supra note 79,
argue about whether animals (and other non-human beings) have dignity or not, the Swiss legislature takes it as given that they do. Dignity is neither granted to animals by humans nor constituted by law, but inherent. This is presupposed by the Federal Constitution, and the Federal Supreme Court has clearly stated that animals’ dignity is generally presumed.

Of particular note, as the general constitutional welfare clause, the clause concerning the dignity of living beings has a stance equal to that of fundamental rights. Further, the protection of animal dignity is recognized as a general constitutional principle in Switzerland, although the Federal Constitution explicitly mentions it only in the context of non-human gene technology. Accordingly, this principle, which is supposed to guide state action, claims validity not only regarding the handling of transgenic animals but also must be considered unconditionally, always, and everywhere, which means throughout the entire Swiss law system. It encompasses all legal aspects of the human–animal relationship, including legislation, application of the law, and judicial decisions.

190 et seq.; Margot Michel, Die Würde der Kreatur und die Würde des Tieres im schweizerischen Recht—Eine Standortbestimmung anlässlich der bundesgerichtlichen Rechtsprechung, in NATUR UND RECHT (NuR) 34, 105 et seq. (2012).

93 See Gieri Bolliger, Güterabwägung im Tierversuch aus rechtlicher Sicht, in Ge- sundheit und Tierschutz—Güterabwägung bei Tierversuchen 18 (Animalfree Research ed., 2008); Ernst, supra note 74, at 70 et seq.; Gerritsen, supra note 2, at 6.


95 See supra p. 7.

96 Praetorius & Saladin, supra note 91, at 89; Krepper, supra note 35, at 305; Stöhrer, supra note 87, at 106 (providing further references); Peter Krepper, Emotionale Aspekte der Tierwürde im schweizerischen Recht—am Beispiel von Tierversuchen, in PSYCHOLOGISCHE ASPEKTE ZUM TIER IM RECHT 27, 33 (Gieri Bolliger et al. eds., 2011).

97 Bundesverfassung [BV] [FEDERAL CONSTITUTION] Apr. 18, 1999, SR 101 art. 120, paras. 1–2 (Switz.).

98 Michel & Schneider Kayasseh, supra note 25, at 3.


100 See the decisions of the Federal Supreme Court 135 II 405; 135 II 384; Bolliger, supra note 93; Praetorius & Saladin, supra note 91, at 91; Goetschel, supra note 19, at 148; Saladin & Schweizer, supra note 87, at 66; Steiger & Schweizer, supra note 22, at 1414; Efrass, supra note 22, at 1616; Goetschel & Bolliger, supra note 32, at 240; Bolliger, supra note 93, at 20 et seq.; Bolliger, Richner & Rottmann, supra note 19, at 45; Krepper, supra note 35, at 364; Peter Krepper, Tierwürde und Rechtsstellung in der Schweiz, 10 AKTUELLE JURISTISCHE PRAXIS 1147 (1998); Peter Saladin, “Würde der Kreatur” als Rechtsbegriff, in Ökologische ETHIK UND RECHTSTHEORIE 369 (Julian Nida-Rümelin & Dietmar von der Pfordten eds., 2002); Antoine F. Goetschel & Gieri Bolliger, Tierethik und Tierschutzrecht—Plädoyer für eine Freundschaft, in TIER-RECHTE—EINE INTERDISZIPLINÄRE HERAUSFORDERUNG 182 (Interdisziplinäre Arbeitsgemeinschaft Tierethik ed., 2007); Rippe, supra note 82, at 10; Steiger, supra note 91, at 1; Engi, in ANIMAL LAW, supra note 87, at 77; Margot Michel, Tierschutzgesetzgebung im Rechtsvergleich: Konzepte und Entwicklungstendenzen, in ANIMAL LAW—TIER UND
C. Comparison with Human Dignity

Since the Federal Constitution does not specify the normative content of the dignity of living beings concept, this must be established by interpretation.\(^{101}\) Dogmatically, this principle is comparable to human dignity,\(^{102}\) which was incorporated simultaneously into the Federal Constitution in 1992.\(^{103}\) Since then, Swiss law explicitly guarantees human dignity in the form of a constitutional provision of its own.\(^{104}\) However, the concept of human dignity, unlike that of the dignity of living beings, had been unanimously accepted by doctrine and occasionally mentioned in case law prior to explicit constitutional recognition.\(^{105}\)

To substantiate the concept of the dignity of living beings, the idea of human dignity can be used as a reference value.\(^{106}\) The similarities are obvious: both human dignity and the dignity of living beings are based on a defense against arrogance of power, and both terms cannot be legally defined in all their details.\(^{107}\) Human dignity serves as a philosophical and normative foundation of, and a guiding principle for,
all fundamental rights and their implementation in Swiss law. The core of human dignity cannot be conclusively defined, let alone stated in terms of positive law. However, the crucial idea of human dignity is to fundamentally guarantee the treatment of humans as subjects and to prohibit their degradation to mere replaceable objects. Human dignity is a legally enforceable subjective right, which is unconditional, meaning it has no prerequisites except being a human, independent of individual capabilities. Every human is entitled to absolute and unrestricted dignity protection.

Human dignity does not have a market price, and unlike other fundamental rights, it rejects any infringement. Since the guarantee of

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108 Pleiner, Misic & Topperwien, supra note 101, at 215. Human dignity is used in particular to determine the core content of fundamental rights and guarantees, for example, that the banishment of the death penalty (Article 10, paragraph 1 of the Federal Constitution), the prohibition against torture and any other form of cruel, inhumane, or degrading treatment or punishment (Article 10, paragraph 3 of the Federal Constitution), the equality before the law (Article 8, paragraph 1 of the Federal Constitution), the protection against discrimination (Article 8, paragraph 2 of the Federal Constitution), or the right to assistance when in need (Article 12 of the Federal Constitution) shall not be limited by any other interests. See, e.g., Mastronardi, supra note 104, at 194; Michel & Schneider Kayasseh, supra note 26, at 6.

109 Pleiner, Misic & Topperwien, supra note 101, at 215. The question of what constitutes the exact content of human dignity must remain open in a liberal society. Its meaning lies precisely in the prohibition to decree a particular conception of man. See Mastronardi, supra note 104, at 196. Moreover, a detailed description of human dignity would also include the risk to fix the degree of protection to a certain degree, which would limit its possibility to further develop. Margot Michel, Instrumentalisierung und Würde der Kreatur—eine Annäherung an ein grundlegendes Verhältnis aus juristischer Sicht, in Würde der Kreatur, supra note 99, at 275.


111 The term subjective right is used in continental European legal tradition and refers to having a right that one can enforce oneself, as opposed to a right that is protected by law in an objective manner, but for which one does not have the ability to enforce this protection oneself. See Helge Dedek, From Norms to Facts: The Realization of Rights in Common and Civil Private Law, 56 McGill L.J. 77, 89 (2010) (comparing the discourse in common law proceedings and civil law proceedings).

112 Stohner, supra note 87, at 101; Michel & Schneider Kayasseh, supra note 25, at 5; Michel, supra note 109, at 264; Engl, in Animal Law, supra note 87, at 22. Human dignity is a universal human right to which every human is entitled, regardless of any abilities, accomplishments, or characteristics, such as whether he or she is a Swiss citizen or a foreigner. See Mastronardi, supra note 104, at 196.

113 See Ebrass, supra note 79, at 68 et seq.; Michel & Schneider Kayasseh, supra note 25, at 6 (providing further references); Michel, supra note 109, at 271.

114 Pleiner, Misic & Topperwien, supra note 101, at 215 (referring to the Kantian formula: “In the kingdom of ends everything has either a price or a dignity. What has a price can be replaced by something else as its equivalent; what on the other hand is above all price and therefore admits of no equivalent has a dignity.”) For discussion of
human dignity is congruent with its core content. Further, human dignity includes a prohibition on exclusive instrumentalization, regardless of any other interests. Humans therefore must never be used exclusively as a means for another's purpose but must always be recognized and treated as an end in and of themselves. Consequently, any limitations of human dignity are prohibited.

Admittedly, the dignity of living beings—and therefore also animal dignity—has neither exactly the same normative content nor precisely the same weight as human dignity. Animal dignity is a general constitutional principle, but, in contrast to human dignity, animal dignity is not an individual right; rather, it signifies only an obligation for humans to respect and protect animals. Nevertheless, both human dignity and animal dignity protect beings from exclusive instrumentalization for others' purposes and have a programmatic content that seeks to esteem and protect all living beings. The Federal Constitution explicitly states that the essence—the core content that cannot be limited under any circumstances—of fundamental rights is sacrosanct.

See supra note 81, highly differs from the one in Swiss animal welfare law, see Camenzind, supra note 87, at 189 et seq. See, e.g., Engi, in Animal Law, supra note 87, at 49; Lorenz Engi, Würde und Abwägung—Zur unterschiedlichen Interpretation von menschlicher und kreatürlicher Würde und einer möglichen Zusammenführung der Würdeverständnisse, in Würde der Kreatur, supra note 99, at 126 (providing further references) [hereinafter Engi, in Würde der Kreatur].

Mastronardi, supra note 104, at 200.

Michel, supra note 92, at 104; Michel, supra note 109, at 265; Engi, in Animal Law, supra note 87, at 79.

Michel & Schneider Kayasseh, supra note 25, at 5 (“Human dignity fundamentally guarantees the treatment of human beings as subjects and prohibits their degradation to mere objects.”). Thus, humans should never be used exclusively as a means to someone's end, such as the promotion of the common good, but must be recognized as an end in themselves (Michel, supra note 82, at 100 et seq.). See BGer Jan. 25, 2006, 132 BGE I 49 (Switz.) (discussing the idea of the ultimately incomprehensible being-as-such of an individual or of individuals and the recognition of every individual's uniqueness and otherness); see also Praetorius & Saladin, supra note 91, at 29; Michel, supra note 92, at 104 et seq. (providing further references).

See Michel, supra note 92, at 105 (noting that interventions into other fundamental rights, such as the right of personal liberty (Article 10, paragraph 2 of the Federal Constitution) can be lawful respecting the requirements of Article 36 of the Federal Constitution).

See supra p. 16.

See Praetorius & Saladin, supra note 91, at 86 et seq.; Errass, supra note 79, at 205; Mastronardi, supra note 104, at 191.

Mastronardi, supra note 104, at 190.

Fleiner, Misch & Topperwien, supra note 101, at 214; Stöhner, supra note 87, at 119.

See Bundesverfassung [BV] [Constitution] Apr. 18, 1999, SR 101, art. 36, para. 4 (Switz.).
contradictions, a term cannot have fundamentally different meanings within the same law. Thus, according to a systematic interpretation of the Federal Constitution, ‘human dignity’ and ‘dignity of living beings’ must share the same basic legal meaning and, at least in essence, provide the same level of protection for both humans and other living beings. This common core of dignity lies in the specific intrinsic value and the integrity of all living beings. No one who possesses dignity can be seen and treated as a mere object or as an item for the interests of others. The Federal Supreme Court followed this understanding regarding the dignity of living beings concept in 2009: “Even if it cannot and should not be equated with human dignity, it nevertheless requires that living beings, at least to a certain degree, be regarded and valued as being equal to humans.”

According to prevailing Swiss doctrine, one significant difference between the two concepts is that human dignity is inviolable, whereas the dignity of living beings may be violated in a legalized way in order to serve higher interests. With regard to animal dignity, different interests are weighed in a balancing test, and limitations of dignity must be proportional to the weight of competing interests. However, the two concepts cannot differ in any fundamental way. If the dignity of living beings is not granted an untouchable core content too, which does not allow any interference in its essential meaning and is therefore immune to a balancing of interests, it would have a completely different conceptual weight than that of human dignity. This imbalance would not only be highly hypocritical, but would also contradict the aforementioned Swiss legislative principle according to which a term must not have fundamentally different meanings within the same law. Hence, any essential discrepancy between human dignity and the dignity of living beings must be overcome, and the dignity of living beings must also protect a core area that may not be denied and

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125 See Engi, in Animal Law, supra note 87, at 58 et seq. (providing further references).
126 For the various elements of interpretation in Swiss law, see supra note 101.
127 See, e.g., Saladin & Schweizer, supra note 87, 63; Saladin, supra note 100, at 366 et seq.; Praetorius & Saladin, supra note 91, at 85; Stöhr, supra note 87, at 101; Errass, supra note 79, at 203; Errass, supra note 74, at 60 (providing further references); Leimbacher, supra note 99, at 91; Michel & Schneider Kayasseh, supra note 25, at 7; Engi, in Würde der Kreatur, supra note 115, at 128 et seq.; Stucki, supra note 80, at 290.
128 Saladin & Schweizer, supra note 87, at 63. See generally Engi, in Animal Law, supra note 87, at 51 et seq.
129 BGer Oct. 07, 2009, 135 BGE II 384 (Switz.); see BGer Oct. 07, 2009, 135 BGE II 405 (Switz.).
130 See Praetorius & Saladin, supra note 91, at 62, 91.
131 For the balancing procedure, see infra Section V.C (describing the proportionality test laid out in the AWA).
132 See Leimbacher, supra note 99 (arguing that if the constitution drafters did not intend to grant an untouchable core content to the dignity of living beings, a mere legal duty to respect living beings would have been sufficient).
133 See supra p. 22 (discussing this general legislative principle).
violated, regardless of other competing interests. Accordingly, there is a general upper stress limit that can be deduced from the constitutionally protected dignity of living beings. Regarding animals, this must signify, for example, that highly cruel treatments (such as brutal catching or killing methods), a complete denial of an animal’s essential natural needs, and severely stressful animal experiments are unconstitutional.

V. ANIMAL DIGNITY IN THE SWISS ANIMAL WELFARE ACT

As seen, the Federal Constitution obligates the Swiss legislature to regulate the protection of the dignity of living beings. Accordingly, in recent years there has been remarkable lawmaking at the statutory level to implement this constitutional mandate. The dignity of living beings concept first impacted Swiss legislation in 2004 by affecting the Federal Gene Technology Act (GTA), which regulates the use of genetically modified organisms (GMOs), including in closed-system production, field tests, and marketing. The GTA provides that the dignity of living beings may not be disregarded when modifying genetic material by gene technology, and it specifies what types of action are forbidden. Accordingly, the GTA assumes that genetically modifying an animal and manipulating an animal’s genetic material do not necessarily disregard that animal’s dignity. To determine whether there is disregard, a balancing test of interests is required. Since the GTA was enacted, the dignity of living beings has

134 See Stöhrer, supra note 87, at 129; Engi, in Würde der Kreatur, supra note 115, at 80; Michel, supra note 92, at 273 et seq.
136 See Stöhrer, supra note 87, at 126 et seq. For an upper stress limit for animal experiments, see infra p. 66.
137 Bundesversassung [BV] [Constitution] Apr. 18, 1999, SR 101, art. 120 para. 2 (Switz.).
138 See generally Errass, supra note 79, at 110 et seq.
139 See GTA, art. 8, para. 1 (Switz.).
140 In particular, a violation is deemed to have occurred if genetic modification substantially harms species-specific properties, functions, or habits, unless this is justified by overriding legitimate interests. See GTA, art. 8, para. 2 (Switz.) (listing these particular legitimate interests). For the corresponding balancing test under the AWA, see infra Section V.C (discussing the balancing test).
141 Moreover, the GTA establishes that genetically modified vertebrates may only be produced and put into circulation for purposes of research, therapy, or diagnostics in human or veterinary medicine. GTA, art. 9 (Switz.). If genetically modified vertebrates are produced for other purposes, their dignity is not respected, whatever those purposes may be. In these cases their production is therefore prohibited. This ban is the result of an abstract weighing of interests already undertaken by the national legislature concerning all cases outside of research, therapy, or diagnostics. FSVO, supra note 5, at 3. Anyone who willfully violates article 8 or 9 of the GTA is liable to a custodial sentence not exceeding three years or to a monetary penalty. GTA art. 35, para. 1a (Switz.). At present, putting genetically modified organisms into circulation in Switzerland is prohibited. See GTA art. 37a (Switz.) (‘‘No authorizations may be granted until 31 Decem-
also been integrated into a number of other national Swiss laws, namely in the Release Ordinance,\textsuperscript{142} the Patents Act,\textsuperscript{143} the Xenotransplantation Ordinance,\textsuperscript{144} and the Medical Professions Act.\textsuperscript{145}

The most important recognition and implementation of the dignity of living beings concept, however, was its incorporation as a guiding principle in the Swiss Animal Welfare Act (AWA) of 2008, in which it plays a fundamental role. This role is expressed in the very first article of the AWA, which states that the purpose of the Act is “to protect the dignity and well-being of the animal.”\textsuperscript{146} With that, the protection for animal dignity was enshrined for the first time in national animal welfare legislation.\textsuperscript{147} As protection for animal dignity—besides an

\textsuperscript{142} See Verordnung "über den Umgang mit Organismen in der Umwelt (Freisetzungsverordnung) [FrSV] [Ordinance on the Handling of Organisms in the Environment (Release Ordinance)]" Sept. 10, 2008, SR 814.911, art. 28, para. 2f (Switz.) (requiring license applications for marketing genetically modified organisms to prove, among other things, that the dignity of living beings is respected); FrSV art. 44, para. 1c2 (Switz.) (establishing that licenses are only approved if this requirement is met).

\textsuperscript{143} See Bundesgesetz "über die Erfindungspatente (Patentgesetz) [PatG] [Federal Act on Patents for Inventions]" June 25, 1954, SR 232.14, art. 2, para. 1 (Switz.) ("Inventions whose exploitation is contrary to human dignity or that disregard the integrity of living organisms or that are in any other way contrary to public policy or morality are not patentable.").

\textsuperscript{144} See Verordnung "über die Transplantation von tierischen Organen, Geweben und Zellen (Xenotransplantationsverordnung) [Ordinance on the Transplantation of Animal Organs, Tissues, and Cells]" Mar. 16, 2007, SR 810.213, art. 28, para. 4d (Switz.) (requiring applications for xenotransplantations to prove, among other things, that the dignity of genetically modified animals, whose organs, tissues, or cells are used, was respected).

\textsuperscript{145} See Bundesgesetz "über die universitären Medizinalberufe (Medizinalberufegesetz) [MedBG] [Federal Act on University Courses for Medical Professions]" Apr. 18, 1999, SR 811.11, art. 10h (Switz.) (requiring graduates of veterinary medicine to respect the dignity of living beings).

\textsuperscript{146} AWA, Dec. 16, 2005, SR 455, art. 1 (Switz.). Unlike with article 120, paragraph 2 of the Federal Constitution, supra note 82, also the French version of the AWA speaks of dignité de l’animal so that all language versions of the AWA are congruent in that regard. Note, that the AWA constantly uses the term animal dignity although, in accordance with the Federal Constitution, it should correctly speak of the “dignity of living beings.” See Rippe, supra note 82, at 11 (discussing the history of the constitutional language).

\textsuperscript{147} In the meantime, the protection of animal dignity is also anchored at a legislative level in the Animal Protection Act of South Korea. Dongmulbohobeb [Animal Protection Act], Act No. 4379, May 31, 1991, amended by Act No. 7167, Feb. 9, 2004, art. 1. Further, in the Netherlands, the “intrinsic value” of the animal is explicitly recognized. See Evaluatie Wet op de dierproeven 12 januari 1997, art. 1a (referring to “intrinsic value”).
animal’s well-being—is one of the pillars of Swiss animal welfare law, it must be considered in all areas regulated by the AWA.

A. Concept of Dignity Protection for Animals

Similar to the Federal Constitution, the term dignity in the AWA refers to inherent dignity. Animals possess a specific inherent worth and should therefore be given moral consideration and legal protection for their own sake, not merely to serve human interests, since they are economically useful or aesthetically valuable to humans. An animal’s inherent worth is based on an inherent good that can be promoted or harmed. Due to inherent worth, a living being must be able to lead a life typical of its species and to pursue individual objectives.

\[\text{148 While the well-being of animals was already part of the purpose of the former Swiss Animal Welfare Act of 1978, “animal dignity” was only included in the 2008 revision. See AWA, Dec. 16, 2005, SR 455, art. 3b (“[A]nimal well-being is given especially when (1) the husbandry and feeding are such that their bodily functions and their behavior are not disturbed, and excessive demands are not made on their capacity to adapt; (2) they are able to behave in a species-specific manner within the limits of their biological capacity to adapt; (3) they are clinically healthy; and (4) pain, suffering, harm, and anxiety are avoided.”). Accordingly, the term well-being means more than good health. It signifies a state of physical and mental balance in the absence of pain and suffering. Constrictions in respect to physical integrity or the satisfaction of behavioral needs of animals are not necessary prerequisites. See \textit{supra} note 19, at 43 \textit{et seq.}; Gerritsen, supra note 2, at 8 \textit{et seq.} For more on the term well-being, see generally Kirsten Schmidt, \textit{Wohlergehen}, in \textit{Lexikon der Mensch-Tier-Beziehungen} 422 \textit{et seq.} (Arianna Ferrari & Klaus Petrus eds., 2015) (providing further references).}\]

\[\text{149 Bolliger, Richner & Ruttimann, supra note 19, at 46; FSVO, supra note 5, at 2. Moreover, animal dignity is explicitly mentioned in various further articles of the Swiss animal welfare law. See, e.g., AWA, Dec. 16, 2005, SR 455, art. 4, para. 2 (Switz.); id. art. 10, para. 2; id. art. 17; id. art. 26, para. 1a; AWO, Apr. 23, 2008, 455.1, art. 25, para. 1 (Switz.); id. art. 105, para. 1d (mentioning animal dignity).}\]

\[\text{150 See \textit{supra} pp. 12–14.}\]

\[\text{151 For the distinction between contingent dignity and inherent dignity, see \textit{supra} note 92. With regard to animals, this means that the inherent dignity of an animal is always the same. For example, a cow always possesses the same inherent worth, regardless if it is worshipped as holy, as in India, or primarily used as a farmed animal, as in the U.S. or in Europe. See Camenzind, \textit{supra} note 87, at 182.}\]

\[\text{152 See Gotthard M. Teutsch, \textit{Die “Würde der Kreatur”—Erläuterungen zu einem neuen Verfassungsbegriff am Beispiel des Tieres} 38 \textit{et seq.} (1995); Goetschel, \textit{supra} note 74, at 143; Stohner, \textit{supra} note 87, 102; FSVO, \textit{supra} note 5, at 2. For the term inherent worth, see Rippe, \textit{supra} note 82, at 126 \textit{et seq.}; Arianna Ferrari, \textit{Eigenwert}, in \textit{Lexikon der Mensch-Tier-Beziehungen} \textit{supra} note 148, at 88 \textit{et seq.}\]

\[\text{153 To have an inherent good means to be able to take one’s own position to flourish. This flourishing can be promoted or harmed. See generally Rippe, \textit{supra} note 82, at 106 \textit{et seq.}}\]

\[\text{154 Errass, \textit{supra} note 79, at 204 \textit{et seq.} (providing further references). Whereas the Federal Constitution assumes that all plants and animals, as well as some other organisms, have an inherent good, see \textit{supra} pp. 16–15, under the AWA the dignity term is confined to vertebrates, cephalopods, and decapods, see \textit{infra} pp. 35–36, and under the GTA dignity is confined to animals and plants, see \textit{infra} p. 21. FSVO, \textit{supra} note 5, at 2.}\]
Accordingly, the AWA defines dignity as the “inherent worth of the animal that shall be respected when dealing with it.”155 Consistent with that understanding of the dignity of living beings, the inherent worth of an animal requires recognition of and respect for the fact that an animal is valuable in and of itself and is in possession of its own physical and psychological integrity. This legal prerequisite signifies both an appreciation of the uniqueness and otherness of animals and an acknowledgment of their intrinsic value.156 This intrinsic value, which is pre-existing and not constituted by law,157 conflicts with unlimited claims by humans regarding the utility of animals.158 Protection for dignity requires that animals be granted an existence separate from any human purpose and not be considered or treated as a mere means for human interests or ends, but must be valued for their own sake and respected in their natural, species-specific characteristics, needs, and behaviors.159

Recognition for animal dignity still covers the original concepts of animal welfare legislation, such as absence of pain,160 suffering,161

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155 See AWA, AS 2965 (2008), art. 3a (Switz.) (defining dignity as the inherent worth of an animal and mandating legal respect in accordance with this definition).

156 See Rippe, supra note 82, at 11 et seq.; Kley & Sigrist, supra note 34, at 38; Bol linger, Richner & Ruttimann, supra note 19, at 45; Gerritsen, supra note 2, at 6.


158 Michel, supra note 92, at 104 (providing further references). By 1993, the Council of States Control Committee stated that “animals are to be treated neither as humans nor as objects, but appropriately to their ‘dignity as living beings’ and according to an independent standard of their needs. Here, their feelings and their will to live are to be respected, and suffering to be avoided or reduced. This leads, for example, to a restrictive use of animals.” Vollzugsprobleme im Tierwesen: Bericht über die Inspektion der Geschäftsprüfungskommission des Ständerates an den Bundesrat [Enforcement Problems in Animal Welfare: Report of the Inspection of the Control Committee of the Council of States of the Federal Council] BBi I 622 (1993).

159 Steiger & Schweizer, supra note 22, at 1414; Kley & Sigrist, supra note 34, at 38; Katharina Friedli, Die Würde des Tieres in der neuen Schweizer Tier schutzgesetzgebung, 4 J. FÜR VERBRAUCHERSCHUTZ UND LEBENSMITTEL SICHERHEIT 387, 388 (2009); Boll linger, Richner & Ruttimann, supra note 19, at 45 et seq. See also Saladin & Schweizer, supra note 87, at 63 et seq. (arguing that animals have needs worthy of protection: life, survival, living together, well-being, development, and the absence of suffering).

160 Pain refers to an unpleasant sensory experience (sensation) that leads to physiological changes and behavioral responses designed to escape or avoid the negative experience. If a correlation with certain mimical indicators is not possible, animals’ sensation of pain should be determined on the basis of criteria such as the presence of nocireceptors, brain structures required for pain perception, learning of avoidance behaviors, or suspension of normal behavior under the influence of noxic stimuli. See FSVO, supra note 5, at 5 (providing the examples of post-operative pain following castration in male piglets and pain during the branding of horses using a cold or hot brand). See generally Almuth Hirt, Christoph Maihack & Johanna Moritz, Tier schutzgesetz—Kommentar 96 et seq. (3d ed. 2016); Boll linger, Richner & Ruttimann, supra note 19, at 69 et seq.; Richner, supra note 62, at 70 et seq.; Elisa Aaltola, Schmerz, in LEXIKON DER MENSCH-TIER-BEZIEHUNGEN, supra note 148, at 312 (providing further references).

161 Suffering means a long-lasting or permanent state experienced as stressful (such as continuing pain), accompanied by particular behavior or phenomenological expres-
harm,\textsuperscript{162} and anxiety,\textsuperscript{163} but it extends far beyond protection from mental and physical impairments.\textsuperscript{164} Animal dignity is, of course, always violated when the aforementioned injuries are inflicted (which may constitute animal cruelty, such as mistreatment, neglect, overwork, or cruel killing under the AWA).\textsuperscript{165} However, protection for animals’ dignity further guards animals from interference with their species-specific self-development by restricting or completely prohibiting certain activities that injure animals’ integrity without affecting or causing any physical, physiological, or mental stress.

\textbf{B. Ethical Aspects}

AWA protection for animal dignity extends beyond limitations on the classic animal welfare concerns of avoiding pain, suffering, harm, and anxiety. Indeed, the AWA defines animal dignity as follows:

Inherent worth of the animal that shall be respected when dealing with it. If any stress imposed on the animal cannot be justified by prevailing interests, then this constitutes a disregard for the animal’s dignity. Stress exists especially when pain, suffering, harm, or anxiety is inflicted on the animal, when it is exposed to humiliation, when there is substantial interference with its appearance or its abilities, or when it is excessively instrumentalized.\textsuperscript{166}

According to the Federal Council, a more precise legal definition of \textit{animal dignity} currently is not possible, and decisions regarding provisions. See FSVO, supra note 5, at 5 (providing the examples of heat stress in dairy cows and isolation of an individual animal that normally lives in a herd). See generally HIRT, MAISACK & MORITZ, supra note 160, at 99 et seq.; BOLLIGER, RICHTER & RÜTTIMANN, supra note 19, at 73 et seq.; RICHTER, supra note 62, at 71 et seq.; Elisa Aaltola, Leiden, in LEXIKON DER MENSCH-TIER-BEZIEHUNGEN. supra note 148, at 220 et seq. (providing further references).

\textsuperscript{162} Harm refers to an impairment of species-specific properties, functions and habits, especially impairment of growth, reproductive capacity, adaptive capacity, mobility, and species-specific social behaviors. See FSVO, supra note 5, at 5 (providing the examples of harm to reproductive capacity due to castration and harm to species-specific social behaviors due to ear- and tail-docking in dogs). See generally HIRT, MAISACK & MORITZ, supra note 160, at 101 et seq.; BOLLIGER, RICHTER & RÜTTIMANN, supra note 19, at 76 et seq.; RICHTER, supra note 62, at 74 et seq.

\textsuperscript{163} Anxiety means a sensation of threat accompanied by physiological responses and reflected in species-specific and/or individual behaviors. See FSVO, supra note 5, at 5 (providing the examples of restraint, e.g. holding, that can cause anxiety in many animals, especially if they are not accustomed to human handling and if this situation is also accompanied by an additional, unpleasant intervention, such as injection or blood sampling). See generally HIRT, MAISACK & MORITZ, supra note 160, at 100 et seq.; BOLLIGER, RICHTER & RÜTTIMANN, supra note 19, at 77 et seq.; RICHTER, supra note 62, at 74 et seq.

\textsuperscript{164} See, e.g., Michel, supra note 82, at 100.

\textsuperscript{165} See AWA, AS 2965 (2008), art. 26, para. 1 (Switz.) (listing actions that constitute animal cruelties under the AWA).

\textsuperscript{166} AWA, AS 2965 (2008), art. 3a (Switz.) The legal definition of dignity is mostly based on recommendations of the ECNH, which was delegated with the concretization of the term \textit{dignity of living beings}. See Federal Council, supra note 34, at 674.
tection for dignity must instead be determined on a case-by-case basis after a balancing of interests.\textsuperscript{167} However, Swiss animal welfare law contains a series of exemplary cases that state prohibited acts constituting disregard for animal dignity,\textsuperscript{168} such as sexually motivated activities with animals\textsuperscript{169} or excesses in animal breeding.\textsuperscript{170} Moreover, the AWA clarifies that there are various ethical ways in which one can violate animal dignity, and they are not necessarily associated with physical injury.\textsuperscript{171} In other words, under protection for animal dignity, the AWA forbids certain types of activities affecting animals, even if an animal itself does not perceive them as harmful. The AWA identifies humiliation, excessive instrumentalization, and substantial interference with an animal’s appearance or abilities as examples of such ethical aspects.\textsuperscript{172}

1. Humiliation

The term \textit{humiliation} (or \textit{degradation}) refers to any demeaning human conduct towards an animal that does not consider that animal’s nature. Humiliation occurs where an animal is not treated or respected for what it is,\textsuperscript{173} but rather like an object that can, for instance, be arbitrarily controlled or simply destroyed.\textsuperscript{174} An act of humiliation can concern an individual animal as well as an entire species,\textsuperscript{175} such as through a specific breeding objective, or a type of animal. Of note, an act of humiliation does not require that the animal itself possess an awareness of being humiliated.\textsuperscript{176}

\footnotesize
\begin{itemize}
\item \textsuperscript{167} Federal Council, \textit{supra} note 34, at 675. For the balancing test, see generally \textit{infra} pp. 37 et seq.
\item \textsuperscript{168} See \textit{infra} pp. 49 et seq.
\item \textsuperscript{169} AWO, AS 2985 (2008), art. 17, para. 2 (Switz.); see \textit{infra} p. 49.
\item \textsuperscript{170} AWO, AS 2985 (2008), art. 25 (Switz.). See generally \textit{Richner, supra} note 62, at 196 et seq.
\item \textsuperscript{171} Michel, \textit{supra} note 92, at 104.
\item \textsuperscript{172} The list is not exhaustive. \textit{Bolliger, Richner & Rüttimann, supra} note 19, at 47. A further example for an ethical violation of animal dignity is when humans do not accept the \textit{otherness and specific suchness} and the developmental possibility of animals, such as valuing them as deficient beings or keeping pets solely for prestige purposes. \textit{See Teutsch, supra} note 152, at 55 et seq.
\item \textsuperscript{173} \textit{Bolliger, Richner & Rüttimann, supra} note 19, at 47; FSVO, \textit{supra} note 5, at 6.
\item \textsuperscript{174} Rippe, \textit{supra} note 82, at 22.
\item \textsuperscript{175} For the doctrinal standpoint that the dignity of living beings should include not only individuals but also entire species, see \textit{supra} note 91.
\item \textsuperscript{176} There is no conclusive answer regarding the question whether an animal is able to feel humiliated. An analogy to human dignity is notable; humiliation of an individual is inappropriate even if the concerned person does not perceive it as such. Rippe, \textit{supra} note 82, at 13; Stefanie Schindler, \textit{The Animal’s Dignity in Swiss Animal Welfare Legislation—Challenges and Opportunities}, 84.1 Eur. J. of Pharmacoeconomics and Biopharmaceutics 253 (2013). According to the ECNH, the intent behind the prohibition against humiliation of animals is therefore primarily an educational objective, which generally reflects respect for the animal’s intrinsic value. \textit{ECNH/FCAE, supra} note 82, at 7.
\end{itemize}
Acts of humiliation towards animals include, for instance, giving or forcing animals to ingest intoxicating substances (alcohol, tobacco, et cetera), dyeing animals’ fur or feathers, applying ‘body art’ (such as tattoos or piercings) to animals, or exhibiting animals in an abnormal way, such as humanizing or otherwise ridiculing them by dressing them up in costumes or human clothes, styling their hair unnaturally, or shaving stilted patterns in their coats.\textsuperscript{177} In addition, humiliation includes training animals to perform unnatural behaviors or tricks in circuses, exhibits, advertising, et cetera, as a source of amusement or public entertainment.\textsuperscript{178} An act of humiliation can also be construed in the presentation of a submissive animal behavior designed to demonstrate human dominion over dangerous or physically powerful animals such as elephants, bears, lions, tigers, crocodiles, or poisonous snakes, especially when those animals are trained to perform such behavior patterns in zoos, circuses, and other animal shows in order to entertain an audience.\textsuperscript{179} Moreover, acts of humiliation are present when humans pester or otherwise provoke animals in exhibitions that do not allow an animal to retreat from view,\textsuperscript{180} in ‘mechanizing’ an animal that is perceived or used solely as a machine, such as the so-called ‘Robo-Rat’ (a remotely guided rat with electrical probes implanted into its brain),\textsuperscript{181} or in measures associated with an animal’s complete loss of control, such as cyborgs (i.e., hybrids made of a living organism and a machine, whose bodies are permanently supplemented by artificial components).\textsuperscript{182}

Further, an act of humiliation exists where humans represent animals as inanimate things.\textsuperscript{183} Similarly, humans deny an animal’s intrinsic value when they treat it like a dead object with a primarily instrumental value for humans. Corresponding examples include the use of animals as biomedical measuring instruments, organ suppliers for xenotransplantation,\textsuperscript{184} or food products in the context of breeding farmed animals,\textsuperscript{185} or also the linguistic usage in scientific publica-

\textsuperscript{177} BOLLIGER, GOETSCHEL, RICHTER & SPRING, supra note 53, at 18.
\textsuperscript{178} Id.; RUTTIMANN, RICHTER, LUCHINGER & FLUCKIGER, supra note 56, at 11.
\textsuperscript{180} GIERI BOLLIGER, ALEXANDRA SPRING & ANDREAS RUTTIMANN, Das Enthornen von Rindern unter dem Aspekt der Tierwürde 51 (2011); Steiger, supra note 91, at 6.
\textsuperscript{182} See BOLLIGER, RICHTER & RUTTIMANN, supra note 19, at 47 (providing further references).
\textsuperscript{183} FSVO, supra note 5, at 6.
\textsuperscript{184} See generally Andrea Arz de Falco, Die Würde des Tieres: Tierethische Aspekte in der etischen Debatte um die Xenotransplantation, in Die Würde des Tieres 311 et seq. (2002).
\textsuperscript{185} SAMUEL CAMENZIND, KLONEN VON TIEREN—EINE ETHISCHE AUSLEGEOORDNUNG 58 (2011).
tions or speeches on animal studies referring to animals as mere ‘material.’\footnote{Steiger, supra note 91, at 6.}

2. Excessive Instrumentalization

The term \textit{excessive instrumentalization} (or \textit{exploitation}) refers to any human conduct aiming to use an animal solely as a human tool without giving consideration to its interests or its physical and psychological needs.\footnote{Rippe, supra note 82, at 22; Schindler, supra note 176, at 253.} Thus, the term \textit{instrumentalization} includes not only a certain activity with an animal but also an attitude towards it.\footnote{See Camenzind, supra note 87, at 192. For more on the term \textit{instrumentalization}, see generally Michel, supra note 109, at 256 et seq.; Peter Schaber, \textit{Instrumentalisierung, in Lexikon der Mensch-Tier-Beziehungen}, supra note 148, at 165 et seq.} Absent consideration, the animal is not perceived as a living being with its own point of view and interests, but instead as an instrument predominantly for human purposes and a means to a human end.\footnote{Balzer, Rippe & Schaber, supra note 85, at 48; Bolliger, Richner & Ruttimann, supra note 19, at 48.} Instrumentalization leads to the objectification of animals, meaning that they are regarded and treated as being mere items and valued according to a market value, not according to their value as living beings.\footnote{Teutsch, supra note 152, at 46; Praetorius & Saladin, supra note 91, at 86. For the term \textit{objectification}, see generally Klaus Petrus, \textit{Verdinglichung, in Lexikon der Mensch-Tier-Beziehungen}, supra note 148, at 408 et seq. (providing further references).} As with humiliation, it is irrelevant whether an animal perceives instrumentalization as a stress.\footnote{Camenzind, supra note 87, at 191.}

Note, the AWA only prohibits instrumentalization when it is ‘excessive.’\footnote{AWA, AS 2965 (2008), art. 3a (Switz.).} The question of when this is the case has not yet been fully clarified. Admittedly, with every animal use comes a certain degree of instrumentalization.\footnote{It is a fact that humans instrumentalize animals—be it farmed animals, pets, laboratory animals, or wild animals—in various ambivalent ways. Among other things, animals are raised, slaughtered, and eaten as food; loved and pampered as actual friends; gazed at in zoos, circuses, and exhibitions; worshipped as gods; used in research, for breeding, or therapeutic purposes; and their skin, fur, and wool is worn as human clothing and shoes. All those animals are used to different degrees as a means to human ends, notwithstanding the keeping of pets even within the highest animal welfare law standards, because the pet husbandry always satisfies the emotional needs of the owner.} However, the AWA does not challenge instrumentalization that is otherwise allowed under Swiss law and therefore accepted by a majority of Swiss society. Examples include the legal instrumentalization of animals for the production of food and other goods, experimental uses (such as for medical purposes), sports and leisure, the production of luxury goods, entertainment, or for therapeutic and humanitarian purposes.\footnote{Bolliger, Richner & Ruttimann, supra note 19, at 48.} Nevertheless, even in those societally ac-
cepted areas, the AWA requires that exploitation of animals be minimized and not be excessive. An animal can legally be instrumentalized as long as its intrinsic value is considered. In order to prevent the excessive exploitation of an animal, a human user must take into account an animal’s conscious or subconscious self-interest in its own existence, including through meaningful interaction with the environment (self-assembly, self-preservation, and reproduction).

Although the term refers to an individual animal, the prohibition of excessive instrumentalization leads to a duty to keep animal use in general, for instance, in agriculture or animal experimentation, as low as possible.

Finally, and of particular note, the term excessive instrumentalization has to be distinguished from the term exclusive (complete) instrumentalization. According to the wording of the AWA, excessive instrumentalization can, under certain circumstances, be justified by prevailing human interests. Since dignity grants protection from denying any self-purpose and from exclusive utilization of a being with inherent worth for other ends, this Article argues that any exclusive instrumentalization of an animal is inconsistent with the untouchable normative core content of animal dignity and is therefore unconstitutional.

195 Id.
196 ECNH/FCAE, supra note 82, at 9; Bolliger, Richner & Ruttimann, supra note 19, at 48.
197 ECNH/FCAE, supra note 82, at 9.
198 The following is an illustrative example for the difference between an excessive instrumentalization of animals that still considers the animal’s intrinsic value, and a complete instrumentalization: A homeowner acquires a guard dog for protection against burglars and chooses a Dobermann from a recognized breeder for that purpose. Despite intensive training and due to its timidity against strangers, the dog does not meet the expectations of the owner. For that reason, the disappointed animal owner kills the Dobermann and buys a new dog. In this case there is a complete instrumentalization since the value of the dog coincides exclusively with its use. The dog is only of worth to its owner to the extent it can be used as a guard dog. In contrast, if the owner buys another dog and keeps and cares for the Dobermann as a pet, even if it is not qualified for being a guard dog, he attributes more than a mere instrumental value to the dog. Here, the dog owner recognizes the intrinsic value of the dog that exists independently of his own interests. See Camenzind, supra note 185, at 58.
199 See supra p. 22 (explaining the AWA’s language regarding animal dignity in relation to human dignity).
200 See supra p. 17 (detailing some elements of animal dignity protections in Swiss law and among animal law scholars generally).
201 Sitter-Liver, supra note 80, at 485; Michel, supra note 92, at 104.
202 For the core content of animal dignity see p. 20. The opinion of the author is supported, for example, by Praetorius & Saladin, supra note 91, at 44; Mastronardi, supra note 104, at 190; Michel, supra note 109, at 265, 277; Camenzind, supra note 185, at 192; Regina Binder & Petra Mayr, Rezension zu Kunzmann: Die Würde des Tieres—zwischen Leerformel und Prinzip, in ALTEx 4, at (2009); Brenner, supra note 85, 62 et seq; Michel, supra note 92, at 108; Michel, supra note 100, at 609.
Examples of complete instrumentalization include cloned laboratory animals[^203] that are used as disease models, other animals that serve solely as “laboratory test objects,”[^204] and animals that are used as playthings in competitions or game shows, such as fish for catching games.[^205] In those instances, the value of an animal depends exclusively on the animal’s applicability, meaning the benefit to humans.[^206]

3. **Substantial Interference with an Animal’s Appearance or Abilities**

The phrase *substantial interference with an animal’s appearance or abilities* refers to activities that cause a change that is not in an animal’s interest.[^207] Such a change often results in a permanent or even irreversible loss of function[^208] such as the loss of function suffered by dogs, cats, rabbits, fish, and doves due to selective breeding methods[^209]. Extensive selective breeding can result in substantial changes to animals’ appearance and abilities in order to achieve specific and often grotesque overemphasized body and plumage characteristics. Examples are English bulldogs, whose human-bred flat facial appearance and short neck often causes extreme difficulty with breathing[^210]; naked “Sphinx cats” who possess neither fur nor whiskers and therefore are severely impaired in their ability to orientate[^211]; and overbred “Bubble Eye” goldfish whose sight is substantially impeded by enlarged and upwards-rotated eyes[^212]. Loss of functions due to overbreeding exist not only in pets, but also in laboratory animals.

[^203]: Sitter-Liver, supra note 82, at 485 (calling cloning an “instrumentalization *par excellence*” of animals). For the cloning of animals, see generally Camenzind, supra note 87, at 7 et seq.; CAMENZIND, supra note 185, at 196 et seq. (providing further references).

[^204]: Vanessa Gerritsen & Andreas Rüttimann, Neue Wege im Tierversuchsrecht, in ANIMAL LAW—TIER UND RECHT, supra note 79, at 244.

[^205]: See Independent Swiss Complaint Authority for Radio and Television (ICA), Feb. 20, 2009, b.595, E.4.3. See also infra p. 60 (stating that the instrumentalization of trout on a television show represented a danger for public morals).

[^206]: See generally CAMENZIND, supra note 185, at 68 et seq. (explaining how the animal’s value is determined in the context of cloning); Camenzind, supra note 87, at 190 (explaining the test for determining the animal’s value in general).

[^207]: See FSVO, supra note 5, at 5 (noting that major interferences with appearance are changes that result in a loss of function and are not temporary, while major interferences with ability are changes that amount to harm, which is defined as the “[i]mpairment of species-specific properties, functions and habits”).

[^208]: FSVO, supra note 5, at 6.

[^209]: See ECNH/FCAE, supra note 82, at 8 (“The debate on respect for the dignity of living beings has been sparked in particular in relation to the production, further breeding and use of genetically modified animals. This is an area in which the possibility to violate the dignity is particularly likely. At present, the production of genetically modified animals comes under the definition of animal experiments and, as such, requires a permit.”).

[^210]: Id.

[^211]: Id. at 7. Hairless cats are bred to allow humans who suffer from allergies to keep cats as pets. The human interest “is of minor relevance, given the existence of other domestic animals which do not cause allergies.” Id.

[^212]: Id. at 9.
and farmed animals, such as turkey hens who suffer from such severe weakness in the legs that they may be unable to walk since their skeleton and limbs cannot support their weight, especially in the breast muscles,\textsuperscript{213} or cattle of the Belgian Blanc Bleu-type where a special gene ("Schwarzenegger gene") results in double muscling in hips and hind legs that enhances meat-yield but also increases the risk of difficult births and usually requires Caesarean sections.\textsuperscript{214} Also, the production of so-called hybrids—animals bred from wild and domestic\textsuperscript{215} species, such as "zorses" (crossbred from zebras and horses) or "zonkeys" (crossbred from zebras and donkeys)—may constitute substantial interference with an animal’s appearance.\textsuperscript{216}

Substantial interference also includes amputation or cropping body parts in farmed animals, such as shortening or removing the horns of cows, calves, or goats; the tails of pigs; or the beaks of hens.\textsuperscript{217} The same applies to animal castration, notwithstanding the justification that this practice is frequently necessary to avoid excessive reproduction resulting in the impoverishment and abandonment of unwanted animals.\textsuperscript{218} An act of substantial interference also exists in the practice of injecting dye into fish or other animals to achieve a phosphorescent effect (such as in "glowfish" or "glowpets").\textsuperscript{219}

A manipulation made in a figurative or filmic representation of an animal, and not to the animal itself, is not regarded as interference with an animal’s appearance and abilities.\textsuperscript{220} But if those manipulations constitute humiliation, they may nevertheless impact animal dignity.\textsuperscript{221} Regardless, the three categories can overlap. As with the example of certain overbred animals, it is conceivable that a user simultaneously humiliates, excessively instrumentalizes, and interferes substantially with the appearance or abilities of an animal.

\textsuperscript{213} \textit{Id.} at 5.
\textsuperscript{214} \textit{Id.} at 7. For the entire animal breeding issue, see \textsc{Bolliger, supra} note 19, at 150 \textit{et seq.}; \textsc{Richner, supra} note 62, at 196 \textit{et seq.} According to Swiss animal law, breeding constitutes prohibited “torture breeding” if the breeding objective causes “any pain, suffering, harm, or behavioural disorders in the parent animals or their offspring.” AWA, AS 2965 (2008), art. 10, para. 1 (Switz.); \textit{see also} \textsc{Richner, supra} note 62, at 209 \textit{et seq.}
\textsuperscript{215} For the distinction between wild animals and pets under Swiss law, \textit{see infra} note 602.
\textsuperscript{216} \textit{See} \textsc{Ruttimann, Richner, Luchinger \& Flückiger, supra} note 56, at 15.
\textsuperscript{217} \textit{See} FSVO, \textit{supra} note 5, at 6 (noting that “permanent or irreversible" change, such as tail or ear docking, amounts to a “major interference with the appearance”).
\textsuperscript{218} \textsc{Bolliger, Richner \& Ruttimann, supra} note 20, at 125 \textit{et seq.}; \textsc{Richner, supra} note 62, at 220 \textit{et seq.}; \textit{see also} FSVO, \textit{supra} note 5, at 6 (providing an example of “harm" to reproductive capacity: castration).
\textsuperscript{219} \textit{Bolliger, Richner \& Ruttimann, supra} note 20, at 49.
\textsuperscript{220} \textit{See} FSVO, \textit{supra} note 5, at 6 (defining “humiliation” as only acts which impact the animal itself).
\textsuperscript{221} \textit{See} discussion \textit{supra} Part V.B.1.
C. Balancing of Interests

According to general Swiss doctrine, protection for animal dignity—in contrast to the dignity of humans, which is strictly deontologically regarded as inviolable—is not absolute. The legislature decided that animal dignity is to be given only a relative value, which is qualified through utilitarian considerations and is rightly criticized by animal law scholars. Although every stress on an animal, within the meaning of the AWA, constitutes a violation of that animal’s dignity, certain violations may be justified from a legal perspective. If a justification by prevailing legitimate interests is possible, the dignity of a concerned animal can be considered “respected” despite the stress imposed on the animal, and the proposed intervention may be permitted. As a result, various uses of animals are socially, culturally, and legally considered legitimate and are not subject to legal scrutiny or fundamentally questioned in Switzerland.

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222 The term deontology (from the Greek deon for “obligation” or “duty”) refers to the normative ethical position that judges the morality of an action based on the action’s adherence to a rule or rules. See Klaus Peter Rippe, Ein Lebensschutz für Tiere!, in Animal Law—Tier und Recht, supra note 79, at 91 [hereinafter Rippe, in Animal Law].

223 See supra p. 19.

224 FSVO, supra note 5, at 2.

225 Id.; Balzer, Rippe & Schaber, supra note 83, at 49 et seq.; Steiger & Schweizer, supra note 22, at 1414; Rippe, supra note 82, at 13 et seq.; Steiger, supra note 91, at 2; Errass, supra note 22, at 1616; Michel & Schneider Kayasseh, supra note 25, at 14; Michel, supra note 109, at 273.

226 See, e.g., Engi, in Würde der Kreatur, supra note 115, at 127; Michel, supra note 109, at 101 (questioning whether it makes much sense to concretize the constitutional dignity-of-living-beings protection at the level of the animal welfare law and therefore relinquish a central norm of dignity—namely its absolute inviolability).

227 See AWA, AS 2965 (2008), art. 3a (Switz.) (“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.”); see also supra p. 25.

228 Bolliger, Richner & Ruttimann, supra note 19, at 49.

229 See AWA, AS 2965 (2008), art. 3a (Switz.) (“If any strain imposed on the animal cannot be justified by overriding interests, this constitutes a disregard for the animal’s interests.”) The implication is that a strain that can be justified does not violate the Act.

230 FSVO, supra note 5, at 2.

231 The term intervention refers to all measures and actions that are “undertaken with the affected animals and that are to be assessed with respect to the animal’s dignity.” Katharina Friedli, The Dignity of the Nibble Fish—Weighing the Benefits, in Animal Welfare Report 21–22 (FSVO ed., 2014).

232 FSVO, supra note 5, at 2.

233 See Michel & Schneider Kayasseh, supra note 25, at 6–7 (While “[h]uman dignity dictates a prohibition against the use of human beings as a means to an end,” many believe that animal dignity still allows for “permissible uses to which animals are put.” (emphases added)).
In order to be justified, a user's interest (i.e., the objective the intervention in the animal's dignity is designed to produce) must clearly outweigh, on balancing, the animal's interest in being spared from the violation. If the user's interest is not sufficient to justify the violation, then the animal's dignity is not only violated, but impermissibly disregarded. A finding that animal dignity is disregarded establishes an animal cruelty offense under the AWA that is subject to prosecution. From an ethical view, however, stresses on animals always remain a problem, even in cases in which they can be legally justified by a balancing of interests.

Of note, as a general constitutional principle, protection of animal dignity is on par with fundamental rights, such as property rights, economic freedom, and academic freedom of science and research, all of which also represent constitutional values, and are in the balancing of interests on the same normative level. Granting general and absolute priority to human interests would not be acceptable, since it would undermine the core content of animal dignity protection and reduce it to an empty phrase. Moreover, certain situations defined by Swiss animal law constitute a priori a disregard for animal dignity, meaning that a balancing of interests is obsolete since human interests can never prevail over the violation of animal dignity.

234 For the term balancing of interests, see generally Rippe, supra note 82, at 317 et seq.; Klaus Peter Rippe, Güterabwägungen im Tierversuchsbereich: Anmerkungen zu einem ethischen Paradigmenwechsel, in ALTEXethik 3 et seq. (2009); Engi, in Animal Law, supra note 87, at 51 et seq.; Arianna Ferrari & Vanessa Gerritsen, Güterabwägung, in Lexikon der Menschen-Tier-Beziehungen, supra note 148, at 139 et seq.

235 Saladin & Schweizer, supra note 87, at 71; Bolliger, Richner & Ruttimann, supra note 19, at 49; Steiger, supra note 91, at 2. The same system applies under the GTA. See supra note 143.

236 The terminology used by the legislature is inappropriate since it leads to the result that animal dignity is violated although it is, through the balancing test, considered “respected.” Further, in jurisprudence the term violation is typically used only if prevailing interests cannot justify an intervention in a legally protected interest. Camenzind, supra note 87, at 186.

237 See AWA, AS 2965 (2008), art. 26, para. 1 (Switz.) (criminalizing animal cruelty, which includes mistreating, neglecting, unnecessarily overworking, “or in any other way disregard[ing an animal’s] dignity”).

238 From an ethical point of view, a violation of animal dignity is no trivial offense that can be casually justified by appealing to prevailing human interests. Camenzind, supra note 87, at 186, 196.

239 See supra p. 16.

240 See supra p. 8.

241 Michel & Schneider Kayasseeh, supra note 25, at 9; Stucki, supra note 80, at 291.

242 AWO, AS 2985 (2008), art. 16 et seq. (Switz.) (listing “prohibited actions in all species”); Bolliger, Richner & Ruttimann supra note 19, at 50; see infra p. 49 and notes 279–80 (discussing examples of killing in a cruel manner or in the context of an organized animal fight).
I. Threefold Proportionality Test

Swiss law does not protect animals from every human activity that interferes with their dignity. However, every violation of animal dignity—i.e., every single human injury to animals—requires a legal justification. Carrying out a weighing of the interests answers the question of whether any stress or injury can be justified. Accordingly, and just as under the GTA, the dignity concept under the AWA includes a balancing of opposing interests on a case-by-case basis. The AWA itself does not specify how to conduct that balancing test, but the principle of proportionality, which is one of the main guidelines of Swiss administrative law, is the generally recognized procedure. It includes a threefold test, cumulatively requiring that an intervention is (1) suitable, (2) necessary to achieve a legitimate purpose, and (3) that a legitimate interest in the intervention prevails in a proportionality test over the severity of the stress that the intervention causes.

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243 Friedli, supra note 162, at 388.
244 Id.
245 See supra pp. 24–25, note 145 and accompanying text (discussing the GTA and its similar balancing test of interests).
246 Errass, supra note 22, at 1616. “It makes little sense to assess issues such as castration or breeding of animals across the board in a weighing of interests focused on whether or not animal dignity is respected. A given intervention may entail different strains on the one hand and different legitimate interests on the other hand, depending on the individual case. For example, the strain caused to an animal by neutering should be assessed differently depending on the animal’s species, gender and age, and on the neutering method used. In addition, different legitimate interests of varying importance come into play depending on whether the animal to be neutered is a cat, a horse or a piglet.” FSVO, supra note 5, at 3 et seq.
247 BOLLIGER, RICHTER & RÜTTIMANN, supra note 19, at 49 et seq. “The principle of proportionality is very important because administrative laws in Switzerland usually contain large and vague provisions giving the administration a great discretionary power. This power should therefore be exercised and used with restraint.” Thomas Fleiner, Cantonal and Federal Administrative Law of Switzerland, in INTRODUCTION TO SWISS LAW 27, 39 (F. Dessemontet & T. Ansay eds., 2004). According to the Swiss tradition, the principle of proportionality is considered to be part of the very basics of the rule of law and explicitly guaranteed by Article 5, paragraph 2, and Article 36, paragraph 3 of the Federal Constitution. Pursuant to Article 36, paragraph 3 of the Federal Constitution, any limitation of fundamental rights must be proportionate to the goals pursued. The underlying idea of the doctrine of proportionality is that a limitation of a fundamental right should not go further than is required by the public interest or for the protection of fundamental rights of others. The proportionality test has led to widely disseminated Federal Supreme Court case law. For some of the most important recent decisions, see FLEINER, MISIĆ & TOPPENWIEN, supra note 101, at 213.
248 See generally, e.g., BOLLIGER, RICHTER & RÜTTIMANN supra note 19, at 49 et seq. (discussing the principal of proportionality as applied to the AWA and analyzing factors considered); Camenzind, supra note 87, at 184 et seq. (discussing proportionality under the AWA as the balance between animal stresses and human interests). The FSVO established an “Animal Dignity Study Group,” which designed guidelines on how to proceed with animal dignity cases under the AWA and the GTO and, in particular, how to carry out the balancing of interests in a systematic and standardized way. FSVO, supra note 5, at 1 (providing a step-by-step guide to the analyses involved in the model proce-
Regarding protection for animal dignity, this means that, after a description of the aim249 of a proposed intervention and an exact presentation of the concrete facts of the individual case,250 any intervention must first demonstrate that it fulfills the intended purpose.251 If it is clear from the outset that an intended aim cannot be achieved by means of the proposed intervention, the intervention is prohibited, and there is no need for a weighing of interests.252 As a second step, an intervention must be necessary, meaning that there is no achievable measure that entails no stress or less stress for the animal but still promotes the user's interest.253 Thus, the question is whether an alternative to the proposed intervention exists which could also be used to achieve the intended aim but imposes little or no stress on the animal.254 If the first and second requirements are met, based on a full knowledge of the facts, a third and final determination is made as to whether the violation of the animal's dignity is proportional (appropriate).255 In order to examine appropriateness, the identified stress for the concerned animal—traditional aspects, such as pain, suffering, harm, and anxiety,256 as well as ethical aspects, including humiliation, excessive instrumentalization, and substantial interference with an animal’s appearance or abilities257—must be weighed against the...
user's specific intentions and interests. If the result of this balancing clearly indicates that the intervention and the violation of animal dignity has significantly more value, then, and only then, the intervention is deemed legally justified.

2. Difficulty in Weighing Different Interests

The balancing of interests is not an empirical method but a normative procedure. Its major difficulty is that it requires a moral judgment on the value of different interests that cannot be arrived at and verified by an appropriate scientific method but is based on non-quantifiable criteria. The weighing of different interests allows a degree of discretion, but without being random.

The primary problem lies in determining, weighing, and comparing the values underlying the interests of different categories (animal stress on one hand and, for instance, human health or other scientific benefit on the other hand) in a harm–benefit analysis and trying to determine which interests ultimately carry the greater moral weight. A request for a weighing of interests questions whether a planned intervention justifies a violation of animal dignity. In practice, there is of course a potential risk that animal interests are a priori attributed less weight than human interests because respect for the

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258 Friedli, supra note 231, at 24 (noting that only interests which are important to society as a whole are considered legitimate interests of the users, including the “health of people and/or the animal,” “spread of knowledge,” “preservation and improvement of ecological living conditions,” and “protection from interference in basic rights such as commercial freedom, freedom of ownership, freedom of research, freedom of association”).

259 Michel, supra note 109, at 273; see generally Bolliger, Richner & Ruttimann, supra 19, at 80 et seq. (noting that any infliction of pain, suffering, or other violation of animal dignity that is unjustified on balancing constitutes a criminal act under the AWA).

260 FSVO, supra note 5, at 3 (“[A] normative judgment concerns the way something should be, not the way it is[].”).

261 Id.

262 Id. (“Consequently, [the balancing of interests] is not about describing or explaining an empirical situation or verifying a hypothesis. Rather, it is about substantiating a judgment based on moral considerations. However, empirical facts do play an important role: which animals are involved? What type of intervention is proposed? What effects would the intervention have on the individual’s ability to lead a species-specific life? Empirical scientific knowledge is therefore vital in order to conduct a weighing of interests. However, this knowledge is not enough to arrive at a well-founded moral judgment. It requires normative criteria, which allow a weighting to be assigned to the interests for moral consideration on both the ‘strain’ side and the ‘interests’ side of the weighing of interests. Therefore, research scientists or those responsible for animal welfare enforcement cannot undertake the necessary weighing of interests (solely) from a scientific perspective. They need to expand their outlook and consider how an intervention’s effects on the animals compare, from a moral perspective, with the interests described by the law as legitimate.”).

263 Id.

264 Id.

265 Camenzind, supra note 87, at 195.
inherent worth of animals essentially depends on the attitude an individual person holds towards animals. Moreover, for example, regarding animal experiments for basic research, the expected benefit of an experiment is often hypothetical and cannot be quantified. Note, however, that since both animal welfare and the dignity concept have constitutional stance, it is not permissible to grant human interests a general and absolute preference.

Since the AWA does not specify the sort of human interests that might prevail as legitimate (or more valuable), the GTA’s non-exhaustive specifications are adopted as a guide. Under the GTA, the values underlying interests in human and animal health, guarantee of food security, reduction of harm to the environment, increase of knowledge, and “substantial economic, social, or environmental benefit for society” may all carry greater weight in a balancing test. Additionally, a user’s interests can also include individual fundamental rights protected by the Federal Constitution. However, individual interests in the sense of specific private interests cannot be included in the balancing of interests.

Consequently, not every interest is given consideration as a possible justification for an intervention in animal dignity, but rather only

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266 Id. at 192.
267 See infra Part V.F.4.a (discussing animal experimentation).
268 Schindler, supra note 176, at 251.
269 See supra pp. 8, 16 (discussing Switzerland’s constitutional clauses protecting animal welfare and animal dignity, respectively).
270 See ECNH/FCAE, supra note 82, at 3 ("We disregard an animal's dignity . . . if we give it no consideration and take it for granted that human interests take precedence.").
271 See AWA, AS 2965 (2008), art. 3, para. 1 (Switz.) (defining dignity through the balancing test, without listing which human interests are to be considered in balancing). Only in connection with animal experiments is there an explicit reference to interests that may be used as justifications, interests that should therefore be included in the balancing test. These interests are listed in the AWO. AWO, AS 2985 (2008), art. 137, para. 1 (Switz.) (listing “the preservation or protection of the life and health of humans and animals[,] new knowledge on fundamental processes of life,” and the protection of the natural environment as legitimate interests).
272 Errass, supra note 79, at 230; FSVO, supra note 5, at 7.
273 See GTA, AS 4803 (2003), art. 8, para. 2 (Switz.) (listing legitimate interests that may warrant genetic modification); Errass, supra note 82, at 151. Note that the GTA does not speak of overriding interests (as article 3 of the AWA does), but of legitimate interests, and that the list of interests in article 8, paragraph 2 of the GTA, does not have an order of priority intended by the legislature. Accordingly, they cannot be put into an absolute order such that, for example, human and animal health could be said to take precedence over the other interests. However, relative weightings are possible. For example, it can be said that human health is relatively important as a rule, whereas increasing knowledge has relatively minor importance. The as a rule illustrates the importance of a case-by-case assessment, because the interests mentioned do not always carry the same weight. FSVO, supra note 5, at 8 (providing an example regarding health, in which “the development of a treatment for a life-threatening disease would be given more weight than one for a non-life-threatening disease.”).
274 FSVO, supra note 5, at 8.
275 Id.
interests that are particularly valued in Swiss society. Underlying values and interests that are deemed legitimate in Switzerland, such as food production, pest control, and scientific inquiry, may thus override the protection of animal dignity. The same applies to artificial insemination for breeding purposes or the neutering of pets and stray animals. Even though all of these practices undoubtedly violate animal dignity, they are widely approved in Swiss society and therefore provide justification for an intervention in animal dignity as long as the requirements of Swiss animal welfare law (regarding slaughter, animal experiments, et cetera) are met.

From an animal welfare view, however, most of the human interests the GTA considers legitimate are not at all convincing. For example, it is highly debatable whether the production of animal-source foods is necessary and relevant for the guarantee of food security. Given that one-third of the meat produced in Europe is not eaten, there is no question that this surplus is not necessary for the guarantee of food security. In this light, the breeding, keeping, and killing of animals for meat production, which is not necessary to guarantee food security, disregards animal dignity. On the other hand, there are cases, such as sexually motivated activities with animals (zoophilia), in which it is clear from the outset that animal dignity is not respected. In regards to zoophilia, the legislature has conducted an abstract weighing of interests (in anticipation of individual procedures) and preemptively imposed a general ban.

Any change in an animal beyond what is normal must be evaluated if it represents a type of stress. If the stress is due to a non-natural cause, such as genetic modification, this means that there may be a disregard of the animal’s dignity. For the assessment of stress, the Federal Food Safety and Veterinary Office (FSVO) distinguishes various degrees of stress—slight/mild stress, moderate/substantial stress.

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276 Friedli, supra note 231, at 24.
277 See id. (citing interests related to health, knowledge, and the “preservation and improvement of ecological living conditions” as legitimate interests).
278 RUTTIMANN, RICHNER, LUCHINGER & FLÜCKIGER, supra note 56, at 11 et seq.
279 See Gerritsen, supra note 2, at 8 et seq. (“Swiss society and authorities are not willing to stop the exploitation of animals.”).
280 See id. at 5, 7 (“Swiss animal welfare law does assertively protect the dignity and well-being of animals, but not their life.”).
281 The general question of the necessity of consumption of animal food products is not discussed within this Article. Instead, see generally, e.g., JONATHAN SAFRAN FOER, EATING ANIMALS (2009), for a discussion of the societal expectations of eating meat. HI-LAL SEZGIN, ARTRECHT IST NUR DIE FREIHEIT: EINE ETHIK FÜR TIERE ODER WARUM WIR UMDENKEN MÜSSEN (2014), for a discussion of the ethical need to live a strict vegan life.
282 Camenzind, supra note 87, at 196 (providing further references).
283 Id.; see also infra p. 49 (discussing the mass killing of “one-day chicks”).
284 See AWO, AS 2985 (2008), art. 16, para. 2 (Switz.) (listing sexually motivated activities with animals as a priori violations of animal dignity).
285 AWO, AS 2985 (2008), art. 16, para. 2 (Switz.); see infra p. 42.
286 FSVO, supra note 5, at 6.
287 Id.
stress, and severe stress—based on the severity–degree classification under Swiss animal welfare law used in animal experiments. In other areas, the three stress categories form a relatively rough grid that frequently allows a measure of discretion. It is important to consider an animal’s overall well-being when assessing how a particular stress will affect the animal’s characteristics, functions, and habits.

Of course, the identification in principle should include all stresses and all legitimate interests involved in an individual case. Note, however, that where there are several stresses or user’ interests, factors are not aggregated in the balancing test. Rather, in each particular case, the decisive factors are those that constitute the most severe form of stress for the animal on the one hand, and only those that constitute the most significant of the user’s interests on the other hand. Still, the proportionality test is not limited to a mere ‘quality control’ of interventions in animals. In fact, animals’ interests must always be weighed appropriately and may not be routinely subordinated to human utility considerations.

Generally, the more serious an interference in the dignity of animals and the more trivial, or even unnecessary, it is in terms of the

288 Id. For the severity degrees according to article 24 of the AWO, see infra p. 56 (listing the severity degrees and the corresponding stress levels). At least to some degree, for the weighing of animal interests one can also refer to criteria elaborated by the Federal Supreme Court. See BGer, Oct. 7, 2009, 135 BGE II 401 (establishing criteria for the weighing of animal interests); see also ERRASS, supra note 74, at 230.
289 FSVO, supra note 5, at 7 (“This applies to all of the criteria . . . with a view to species-specific properties, functions or habits. This is because the basic concept of a natural development is based on the existence of a particular range of normal properties, functions, and habits for each species. Differences within that range may not constitute a strain. Strain can be said to exist only if that range is exceeded, for example as a result of genetic modifications. However, because there are no clear boundaries in this regard, there is an unavoidable lack of precision.”).
290 Id. (“For example, the loss of reproductive capacity (e.g. as a result of castration) is certainly a strain, but not necessarily a severe one. [The strain is not severe] if the other criteria to be considered in order to assess the animal’s [well-being] as a whole are not adversely affected, i.e. if a castrated cat is able to lead an otherwise normal life for a cat.”).
291 Friedli, supra note 231, at 24 (“[T]he weightings of the identified types of distress and/or interests are not added together in order to weigh the benefits[,]”; FSVO, supra note 5, at 7 (“[Factors] cannot add up to a total that might lead to classification in a higher category. For example, if there is a mild degree of strain on several criteria (pain, suffering, anxiety, etc.), this does not mean that the overall strain becomes substantial or severe. Conversely, it also follows that, even if there is considerable strain across all criteria, it should be regarded as less important than a severe stress on one criterion only.”).
292 Id. (“The crucial factor in determining the overall weighting is therefore the greatest individual strain in each case. The same applies to the weighting of legitimate interests.”); Friedli, supra note 231, at 24 et seq.
293 See generally FSVO, supra note 5 (noting that the balancing test will sometimes not justify an intervention).
294 BGer, Oct. 7, 2009, 135 BGE II 384; BGer, Oct. 7, 2009, 135 BGE II 406; Schweizer & Errass, supra note 74, at 2151; Michel, supra note 109, at 275.
human interests, the more critically it is evaluated. In contrast, the more negligible an intervention is for the affected animal and the more necessary it is in serving the interest of another living being, the more it is considered tolerable.

In other words, the greater the impact to an animal and its dignity, the greater the requirements for the user justification. Only morally significant reasons may be considered sufficient justifications for violations of animal dignity. Consequently, luxury needs and pleasure, hobby, sports, and leisure interests can never be regarded legally justifiable. The same applies to violations of animal dignity that result from negative human emotions (such as aversion, intent to cause damage, reaction to emotional burdens, convenience, boredom, humor, lust, malice, revenge, retribution, sensationalism, tedium of the animal, resentment, arrogance, anger, or destructiveness). Further, pure economic interests alone never justify a violation of animal dignity.

An illustrative example for the balancing of interests regarding animal dignity is the keeping and use of kangal fish (also known as “nibble fish” or “doctor fish”). Due to their willingness to feed on human dead skin cells, kangal fish have been used for many years in the treatment of psoriasis, neurodermatitis, and other chronic skin diseases. However, besides this therapeutic use, the use of kangal fish for cosmetic or recreational purposes recently became popular in nail treatments. Kangal fish (Garra rufa) is a species that originally lives and breeds in the pools of some Turkish river systems and hot springs. Tim Kelsey, *The Miracle of the Fishes*, *Sunday Times*, Mar. 3 1996, at 7. See generally Friedli, * supra* note 231 (describing the medical and recreational use of “nibble fish” and applying the balancing test to each type of use).

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295  *ECNH/FCAE*, * supra* note 82, at 8; *Bolliger, Richner & Rüttimann*, * supra* note 19, at 50.
296  *ECNH/FCAE*, * supra* note 82, at 8; Kley & Sigrist, * supra* note 34, at 37; *Bolliger, Richner & Rüttimann*, * supra* note 19, at 50.
297  *Balzer, Rippe & Schäfer*, * supra* note 83, at 60; *Engi, in Würde der Kreatur, supra* note 117, at 133; *Rippe, in Animal Law, supra* note 222, at 90.
298  See *Bolliger, Richner & Rüttimann*, * supra* note 19, at 50 (noting that interests related to convenience or aesthetics are not sufficient).
299  See * id.*
300  See *Bolliger & Gerritsen*, * supra* note 135, at 17 (providing further references); Gieri Bolliger & Andreas Rüttimann, *Rechtlicher Schutz der Tierwürde—Status Quo und Zukunftsperspektiven, in Würde der Kreatur, supra* note 80, at 73; *Engi, in Animal Law, supra* note 87, at 90; *Engi, in Würde der Kreatur, supra* note 115, at 134 (remarking that this, however, does not reflect practice); see also § 1 of the German AWA (“No one may cause an animal pain, suffering, or harm without good reason.”); *infra* note 479. See generally *Hirt, Maisack & Moritz, supra* note 160, at 449; Christoph Maisack, *Lebensschutz für Tiere—Notwendige Erweiterung oder logische Folge des Würdeschutzes? Ein Blick auf das Lebensschutzkonzept im deutschen und österreichischen Tierschutzrecht, in Würde der Kreatur, supra* note 80, at 219 (providing corresponding case law).
301  See *Fish Pedicures and Fish Spas*, CDC, [http://www.cdc.gov/healthywater/hygiene/body/fish_pedicures.html](http://www.cdc.gov/healthywater/hygiene/body/fish_pedicures.html) (May 7, 2012) (accessed Feb. 28, 2016) (referring to the fish as “doctor fish”). Kangal fish (Garra rufa) is a species that originally lives and breeds in the pools of some Turkish river systems and hot springs. *Tim Kelsey, The Miracle of the Fishes, Sunday Times*, Mar. 3 1996, at 7. See generally *Friedli, supra* note 231 (describing the medical and recreational use of “nibble fish” and applying the balancing test to each type of use).
studios, wellness facilities, bars, and nightclubs across many countries, as a spa treatment—i.e. a ‘fish pedicure.’ In light of animal dignity, although the stress on the fish—caused by forced starvation and their living conditions consisting of a bleak environment in a tank or treatment tub without any opportunities to retreat—is likely to be similar with both types of use, at most the medical use of kangal fish can be considered justifiable. However, in contrast to the medical use, where patients with skin diseases find relief from chronic severe itching and therefore an increase in well-being, every use of kangal fish that focuses exclusively on relaxation, beauty, or entertainment clearly qualifies as excessive instrumentalization. Mere cosmetic, wellness, or recreational applications of the fish’s nibbling behaviors are not necessary, since there are numerous options for achieving the intended aims that do not depend on the use of animals. As a result, the stress imposed on kangal fish cannot be justified by overriding interests.

D. Paradigm Shift from Pathocentric to Restricted Biocentric Approach

Animal protection can be based on various concepts. In contrast to anthropocentric animal protection, which is framed by human requirements, in German, the term ethical animal protection refers to

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303 Id.
304 CDC, supra note 301.
305 See Friedli, supra note 231, at 22 (describing the living conditions of fish used for the therapeutic purpose).
306 Id. at 25.
307 Id.
308 Id. at 23.
311 The anthropocentric position (from the Greek ἄνθρωπος for human) exclusively considers humans as objects of moral concern. Anthropocentric Definition, Merriam-Webster, http://www.merriam-webster.com/dictionary/anthropocentric [https://perma.cc/8964-U97B] (accessed Mar. 5, 2016) (defining the term as “considering human beings as the most significant entity in the universe,” or alternately, “interpreting or regarding the world in terms of human values and experiences”). Towards animals and plants, indirect duties may be recognized at best. See generally, e.g., Michael Allen Fox, Anthropocentrism, in ANIMAL RIGHTS AND ANIMAL WELFARE 66 et seq. (Marc Bekoff ed., 2d ed., vol. 1 2010) (defining anthropocentrism, under which “humans are at the center of things”); Gary Steiner, Anthropozentrismus, in LEXIKON DER MENSCH-TIER-BEZIEHUNGEN, supra note 148, at 28 et seq. (identifying various types of anthropocentrism).
the protection of animals for their own sake. \textsuperscript{312} Ethical animal protection is based on the moral postulate that animals, as living and sentient \textit{fellow creatures}, \textsuperscript{313} are to be respected and esteemed by the intellectually superior human. \textsuperscript{314} These days, the ethical animal protection principle is recognized as a “legal imperative” \textsuperscript{315} and a basic value in practically all modern occidental countries. \textsuperscript{316}

Ethical animal protection can further be divided into sub-classifications of pathocentric and biocentric animal protection. Pathocentric animal protection considers an animal’s sentience—its capacity to experience sensations (sentientism)—and suffering in particular, and it underlies most of the Western animal welfare laws. \textsuperscript{317} According to the principle of equality, animal suffering must be approached like human suffering. \textsuperscript{319} “Pain is pain, no matter what the species of the

\textsuperscript{312} This term may seem a bit strange within the English-language legal context, but it is widely used in German-speaking literature and jurisprudence. Michel, supra note 82, at 91. For the term ethical animal protection see, for example, Teutsch, Lexikon der Tierschutzethik 59 et seq. (1987); see also Bolliger, supra note 19, at 5 et seq. (distinguishing anthropocentric and ethical animal welfare); Strucki, supra note 80, at 294 et seq.

\textsuperscript{313} Although the term fellow creature is not explicitly used in Swiss animal welfare law, the legislature and the Federal Supreme Court sometimes refer to it, emphasizing the affiliation of all living beings, especially between humans and animals. See, e.g., the statement of the Parliamentary Committee on Legislation of the Council of States, supra note 372; BGer, Feb. 8, 1989, 115 BGE IV 254 (Switz.). Contrary to the Swiss AWA, the German AWA uses the term fellow creature. Tierschutzgesetz [TierSchG] [Animal Welfare Act], May 18, 2006, BGBl. I at 1206, § 1 (Ger.) (“The aim of this Act is to protect the lives and well-being of animals, based on the responsibility of human beings for their fellow creatures.” (emphasis added)). See generally Hirt, Maisack & Moritz, supra note 160, at 5 et seq.

\textsuperscript{314} Michel, supra note 82, at 91. Already Jean-Jacques Rousseau (1712–1778) and Jeremy Bentham (1748–1832) recognized that animals require protection from pain and suffering. See Bentham, infra note 324, at 311; Eisenhart von Loeper, Einführung zum Tierschutzgesetz, in TIERETHIK 37 (Hans-Georg Kluge ed., 2002) (describing the contributions of Rousseau and Bentham).

\textsuperscript{315} Michel, supra note 82, at 91. See Bolliger, supra note 19, at 6 (providing further references); Goetschel & Bolliger, supra note 32, at 183.

\textsuperscript{316} See generally, e.g., John Webster, Sentience and Animal Protection, in ANIMAL RIGHTS AND ANIMAL WELFARE (Marc Bekoff ed., 2d ed., vol. 2 2010) 507, 508 et seq. (discussing the term sentience).

\textsuperscript{317} The pathocentric position (from the Greek \textit{pathos} for suffering) includes any sentient entity in the community of living beings for purposes of moral consideration. See generally, e.g., Petra Mayr, Das pathozentrische Argument als Grundlage der Tierethik 45 et seq. (2003); Rippe, supra note 82, at 157 et seq. The need for protection of animals due to their ability to suffer is generally ascribed to Jeremy Bentham (1748–1832) and his famous quote: “[T]he question is not, Can they reason? nor, Can they talk? but, Can they suffer?” Jeremy Bentham, An Introduction to the Principles of Morals and Legislation 311 (Oxford Univ. Press 1879) (1789).

\textsuperscript{319} See Peter Singer, Cloning Humans and Cloning Animals, in THE CLONING SOURCEBOOK 160, 166 (Arlene Judith Klotzko ed., 2001). There are some forms of pain that animals can feel “and which we must presume they feel in a manner similar to the way in which we would feel it.” Id.
being who feels it.”

Pathocentric animal protection includes all sentient animals and focuses, on the one hand, on protecting them from cruelty by preventing pain, suffering, harm, and anxiety, and, on the other hand, on ensuring their well-being.

On the contrary, biocentric animal protection finds its justification in the animal’s mere existence and recognizes an inherent moral value in all living beings, regardless of their sentence or lack thereof.

As discussed above, the Swiss dignity protection concept is based on the belief that animals are to be protected beyond mental and physical stresses, based on a recognition of their inherent worth. This introduction of the legal protection of animal dignity can be declared—not only in Switzerland but also worldwide—a new dimension in animal welfare law. In protecting aspects of animal welfare not nec-

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320 Id.
321 See generally, e.g., Michel, supra note 100, at 600 et seq. The concept of well-being is based mostly on the health of an animal and the animal’s freedom to conduct activities in a manner consistent with the animal’s species. Consequently, animal welfare legislation seeks to positively guarantee prerequisites providing for satisfactory living conditions for animals, such as appropriate food, shelter, exercise, and contact with conspecifics. The principle of well-being therefore seeks to take into account the physical and emotional needs of animals in a comprehensive manner and goes significantly further than mere avoidance of suffering. Under this principle, animals should be “able to live in a way consonant with their species and their nature,” and they should be able to fulfill their natural needs and desires.” Michel, supra note 82, at 93. See also BOLLIGER, RICHHNER & RÜTTIMANN, supra note 19, at 43 et seq. According to the 1979 definition of Great Britain’s Farm Animal Welfare Council, which in 2011 was replaced by the Farm Animal Committee (FAWC), well-being requires the guarantee of the so-called five freedoms, which are progressively being introduced into national animal welfare legislation. The five freedoms are: “1. Freedom from [h]unger and [t]hirst—by ready access to fresh water and a diet to maintain full health and vigour; 2. Freedom from [d]iscomfort—by providing an appropriate environment including shelter and a comfortable resting area; 3. Freedom from [p]ain, [i]njury or [d]isease—by prevention or rapid diagnosis and treatment; 4. Freedom to [e]xpress [n]ormal [b]ehavior—by providing sufficient space, proper facilities and company of the animal’s own kind; and 5. Freedom from [f]ear and [d]istress—by ensuring conditions and treatment which avoid mental suffering.” Five Freedoms, FAWC, http://webarchive.nationalarchives.gov.uk/20121007104210/http:/www.fawc.org.uk/freedoms.htm [https://perma.cc/F98U-4Q6A] (Apr. 16, 2009) (accessed Mar. 5, 2016). For the term well-being according to the AWA, see supra note 148.
322 The biocentric position (from the Greek bios for life) grants moral protection to all living beings for their own sake. See Biocentric Definition, Merriam-Webster, http://www.merriam-webster.com/dictionary/biocentric [https://perma.cc/JQ2K-89ZL] (accessed Mar. 5, 2016) (defining the term as “considering all forms of life as having intrinsic value”). Not suffering, but criteria like dignity, integrity, or telos are morally related. See generally, e.g., Rippe, supra note 82, at 99 et seq.
323 Besides physical health and the avoidance of mental stress, well-being includes, first, a guarantee of the ability to engage in species-specific behavior and, second, protection against disturbance with bodily functions and behavior caused by excessive demands on the animal’s ability to adapt. Additionally, the concept of dignity recognizes animals’ inherent worth.
324 See Gerritsen, supra note 2, at 2 (recognizing the “far-reaching significance” of Switzerland’s conception of animal dignity); Schindler, supra note 176, at 253 (“The situation in Switzerland is unprecedented and unique, and . . . a lot might be at stake.
essarily associated with physical impairments, the biocentric criter-
ium is unique in otherwise largely anthropocentric Swiss legis-
lation. It signifies a remarkable shift from a pathocentric fo-
cus to a biocentric approach to animal welfare.

However, in Switzerland, the biocentric orientation—and the pro-
tection of animal dignity—is not fully implemented. For two primary
reasons, Swiss animal law represents, according to prevailing doctrine,
a restricted biocentric position, which weighs the inherent worth of
various animals differently.

First, in contrast to the animal welfare clause and the dignity of
living beings clause in the Federal Constitution, which both include all
animals, the AWA applies essentially only to vertebrates, meaning only to mammals, birds, reptiles, amphibians, and fish. Except the
two categories of cephalopods (octopuses, squids, et cetera) and deca-
pods (lobster, crawfish, et cetera)—categories that are covered by the
Swiss Animal Welfare Ordinance—all invertebrate animals are ex-
cluded from protection under Swiss animal welfare law, despite
often possessing unique and highly specialized sensory abilities.

The departure from the pathocentric approach may open a new field of animal protec-
tion, which goes beyond not harming but actually influences our viewpoint toward re-
garding animals with more consideration and respect[].

The biocentric aspect reflects, for example, the fact that it is irrelevant whether
an animal itself perceives a humiliation or excessive instrumentalization as a stress. See supra p. 23.

Camenzind, supra note 87, at 195. Also, in Swiss law, belonging to the human
species still is a central construction line. See Margot Michel & Saskia Stucki, Vom
Recht über Tiere zu den Legal Animal Studies, in DISZIPLINIERTE TIERE? PERSPEKTIVEN
DER HUMAN ANIMAL STUDIES FÜR DIE WISSENSCHAFTLICHEN DISZIPLINEN 239 et seq. (Re-
ingard Spannring et al. eds., 2015).

Schindler, supra note 176, at 253.

FSVO, supra note 5, at 2; see also ERRASS, supra note 74, at 209 et seq.

Compared to that, an egalitarian biocentric approach to animal welfare, as it was
characterized by Albert Schweitzer in his Ethics of Reverence for Life, posits equal
moral status to all animals. See Albert Schweitzer, Kulturphilosophie 301 (2d ed.
1992). See generally Albert Schweitzer, Die Lehre von der Ehrfurcht vor dem
Leben (1963); Rippe, supra note 82, at 134 et seq. For the distinction between restricted
biocentrism and egalitarian biocentrism, see generally id. at 111 et seq.

See supra pp. 7 and 15.

AWA, AS 2965 (2008), art. 2, para. 1 (Switz.).

See AWA, AS 2965 (2008), art. 2, para. 1 (Switz.) (“The Federal Council decides to
which invertebrates [the AWA] applies and to what extent . . . guided by scientific
knowledge.”). Up to this point, however, the Federal Council has acted very cautiously
in protecting only cephalopods and decapods, considering only in these animals sci-
entific evidence for the ability to suffer, expressed through postural harm and stress-in-
duced behavioral changes. See Bolliger, Richner & Rüttimann, supra note 19, at 53
(providing further references).

See, e.g., May R. Berenbaum, Bugs in the System: Insects and Their Impact on
Human Affairs 38–43 (1995) (discussing the various unique sensory abilities of in-
sects); Univ. of R.I., Graduate Sch. of Oceanography, How Do Marine Invertebrates De-
2016) (discussing the hearing abilities of marine invertebrates).
The Swiss legislature justifies this remarkable limitation and the legal discrimination against invertebrates—which constitute approximately 97% of all known animal species and include, for instance, snails, clams, worms, spiders, and insects—with a lack of unambiguous scientific evidence demonstrating that these animals possess conscious perception and the ability to experience pain and suffering.

Second, the AWA protects an animal’s dignity and well-being, but it does not protect an animal’s life per se. Although being alive can be considered an animal’s most fundamental interest and, while highly debated by philosophers, an animal’s death can be deemed the most significant and irreversible harm, the AWA provides no general protection for animals’ lives. The reason the Swiss legislature declines to recognize a fundamental life-claim for animals lies in the various legalized human uses that are largely inseparable from killing animals. Even though, according to Swiss law, the killing of an animal alone is not unlawful, at least some intentions by an actor and some manners of killing are illegal. Explicitly prohibited, for example, is

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335 See AWA, A5 2965 (2008), art. 2, para. 1 (Switz.) (“This Act applies to vertebrates.”) In deciding, under its authority, whether to extend protections to invertebrates, the Federal Council “is guided by scientific knowledge on the sensitivity of invertebrate animals.”; see also FSVO, supra note 5, at 2 (“[N]ot all living beings have the same inherent worth. Rather there is a hierarchy . . . . [A] distinction is made between vertebrates [and] invertebrates.”).
336 See generally Julian Nida-Rümelin, Tierethik I: Zu den philosophischen und ethischen Grundlagen des Tierschutzes, in ANGEWANDE ETHIK: DIE BEREICHSETHIKEN UND IHRE THEORETISCHE FUNDIERUNG (2005) (discussing why the assumption that animals only live in the present and possess awareness neither of themselves nor of the future is highly controversial both in animal ethics and biological literature, and is mostly rejected by scholars); Rippe, supra note 82, at 279 et seq. (discussing whether killing an animal is ethically permissible).
337 See generally Ueli Vogel., DER BUNDESTIERVOLKSWIRTSCHAFTLICHE TIERECHT 159 (1980); Goetschel & Bolliger, supra note 32, at 215; Storzer, supra note 87, at 109; Bolliger & Gerritsen, supra note 135, at 10; Bolliger, Richner & Rüttimann, supra note 19, at 58; Steiger, supra note 91, at 3; Richner, supra note 62, at 63; Hirt, Masack & Moritz, supra note 160, at 101 et seq.; Gerritsen, supra note 2, at 10; Rüttimann, Richner, Lüchinger & Flückiger, supra note 56, at 28; Klaus Petrus, Schaden, in LEXIKON DER MENSCH-TIER-BEZIEHUNGEN, supra note 148, at 306.
338 Rüttimann, Richner, Lüchinger & Flückiger, supra note 56, at 12. As in most parts of the world, animals are killed in Switzerland by slaughter for obtaining food; by hunting and fishing; when they are old, severely injured, sick, or maladjusted; when they are considered ‘undesirable’ young animals, such as in case of ‘unusable’ day-old chicks, see infra p. 57; when they are used as laboratory animals; when they are used for the feeding of carnivorous animals; and when humans wish to combat ‘pests’ or certain animal diseases. Id.
340 See generally Goetschel & Bolliger, supra note 32, at 215 et seq. (comparing protections applicable to the killing of animals in Switzerland, Germany, and Austria).
the killing of a vertebrate, cephalopod, or decapod in a cruel or mischievous way or within the context of an organized animal fight.

However, other ways of killing do not constitute a criminal offense as long as they do not cause any unnecessary pain, suffering, harm, or anxiety to an animal. Within these limits, the owner of an animal may decide on the animal’s life and death. Consequently, in Switzerland, practices such as the production of animals in order to kill them, which is a fundamental, direct or indirect aspect of the production of meat, milk, and eggs, and of most animal experiments, are lawful, as is putting animals to sleep even if they are young, strong, and healthy. From an ethical and animal welfare point of view, however, euthanasia without good reason should clearly be rejected. Many scholars criticize both the lack of protection for an animal’s life and the strongly limited scope of applying the AWA.

341 Due to their preclusion from the AWA generally, supra p. 36, all other invertebrates are completely excluded from any AWA protection from killing. Goetschel & Bolliger, supra note 32, at 216.

342 See AWA, AS 2965 (2008), art. 26, para. 2b (Switz.) (criminalizing the act of “deliberately and without provocation [killing] an animal in a manner that causes it suffering[.]”). See generally Bolliger, Richner & Ruttimann, supra note 19, at 139 et seq.; Richner, supra note 62, at 93 et seq.

343 AWA, AS 2965 (2008), art. 26, para. 2c (Switz.); see Bolliger, Richner & Ruttimann, supra note 19, at 59. See generally Bolliger, Richner & Ruttimann, supra note 19, at 146 et seq.; Richner, supra note 62, at 95 et seq.

344 Swiss animal welfare law sets strict general standards regarding the (lawful) killing of vertebrates, cephalopods, and decapods. Any unnecessary pain, suffering, harm, and anxiety for an animal must be avoided with its killing. This is consistent with the general principle of article 4, paragraph 2 of the AWA, which states that no one shall, without justification, inflict pain, suffering, harm, or anxiety on an animal. AWA, AS 2965 (2008), art. 4, para. 1 (Switz.). See generally Bolliger, Richner & Ruttimann, supra note 19, at 63 et seq. (discussing prohibited and permitted methods of killing). The AWO determines guidelines for killing procedures that are as gentle, quick, and painless as possible. See AWO, AS 2985 (2008), arts. 177–79 (Switz.) (describing a training requirement for slaughterhouse personnel, including training on stunning and bleeding, and giving the FSVO authority to define lawful methods of killing). Animals may be euthanized only by persons who have the necessary knowledge and skills to do so. AWO, AS 2985 (2008), art. 177, para. 1 (Switz.). Further, vertebrates may only be killed after they have been rendered unconscious by stunning or anesthesia. AWO, AS 2985 (2008), art. 178, para. 1 (Switz.). If not all statutory requirements—which (along with the the lack of instruments) make a lawful killing largely impossible to a layperson—are met, the statutory offense of cruel killing must be considered. See generally Bolliger, Richner & Ruttimann, supra note 19, at 58 et seq.; Richner, supra note 62, at 234 et seq.

345 Bolliger, Richner & Ruttimann, supra note 19, at 59. The killing of animals that belong to someone else, however, affects property rights and can have both private and criminal consequences. Id. at 103; Bolliger, Goetschel, Richner & Spring, supra note 53, at 48 et seq.; Ruttimann, Richner, Lüchinger & Flückiger, supra note 56, at 36 et seq.

346 See Bolliger, Richner & Ruttimann, supra note 19, at 59 (criticizing an owner’s entitlement to determine whether an animal lives or dies).

347 See infra notes 445, 457.
E. Implications and Consequences

The inclusion of the dignity of living beings concept in the Federal Constitution has led to a series of dignity-related amendments in Swiss law. In particular, besides the already-mentioned implementation in the GTA and some non-primarily animal-related statutes, the new Swiss animal welfare law of 2008 contains various provisions that are directly based on animal dignity protection. In addition, the general legal position of animals has changed.

1. Change of Animals’ Legal Status

The most representative revision of Swiss law against the background of animal dignity protection is the elimination of the animals’ former legal status as mere “things.” In 2003, five years before the complete revision of the AWA, the Swiss Civil Code (CC) was amended by a provision that explicitly states that “animals are not objects.” This clarification, which at first glance would appear self-evident, signifies a legal “recognition of animals as living and feeling fellow creatures,” since animals were previously legally subsumed under the category of ‘things’ for many centuries in Switzerland (as around the world). To date, only a few countries have enacted legislation that frees animals from the legal status of mere objects.

348 See supra p. 21.
349 E.g., AWO, AS 2965 (2008), art. 25, para. 1 (Switz.); AWO, AS 2965 (2008), art. 105, para. 1d (Switz.).
350 SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB] [CIVIL CODE] Dec. 10, 1907, SR 210, art. 641a, para. 1 (Switz.).
351 Within this Article, the terms things and objects are used interchangeably. For the incompatibility of animal dignity and an animal’s status as a thing, see CATHERINE SPRUNZ, DIE RECHTSSTELLUNG DES TIERS, INSBESONDERE IM ZIVILPROZESS 8 et seq. (2002).
352 See supra note 11.
353 ZGB, SR 210, art. 641a, para. 1 (1907) (Switz.) (situating the provision within the context of property law).
355 It was due to this long legal tradition that it took until 2003 for the so-called “Amendment Act on Basic Principles Regarding Animals” (“Grundsatzartikel Tiere”) to finally be implemented. Michel, supra note 82, at 102 et seq. Note, however, article 641a, paragraph 2 of the Civil Code, which states that animals are still subject to the provisions pertaining to objects when no “special provisions” exist for animals. ZGB, Dec. 10, 1907, SR 210, art. 641a, para. 2 (Switz.). The term special provisions refers in particular to animal welfare legislation. This means that in all legal areas where it is not explicitly stated otherwise, the provisions regarding objects must be ‘analogously’ applied as long as they do not contradict Swiss animal welfare law. “This means that a property law regulation must then be applied to animals when its scope of protection might be extended to animals [consistent with the purpose of the amendment, and so] the regulation can also fulfill an animal welfare function.” Michel, supra note 82, at 103.
356 Before Switzerland, only Austria (in 1988) and Germany (in 1990) had amended similar legal provisions regarding animals in their federal laws. See ALLGEMEINES
As a result, in Switzerland animals enjoy their own special legal status somewhere between persons and objects. The purpose of this revision was to reflect in the law a change in the general perception in Swiss society towards animals as sentient fellow creatures possessing dignity and, in particular, to acknowledge the increasing prevalence of pets. Accordingly, although the general change in legal status applies to all animals, it primarily affects pets. There were various special provisions implemented in Swiss law regarding lost, mislaid, and abandoned pets; pets in inheritance law; the acquisition of pets (particularly in the case of adverse possession); the allotment of pets in divorce or the dissolution of non-marital cohabitation or of a civil union; calculating compensation claims for killed or injured pets; the adjudication of the costs for healing injured animals; and the preclusion of distraint for pets. In these areas, provisions have been amended to improve the protection for the relationship between pet owners and their animals. Examples include an article in the Swiss Code of Obligations (CO), according to which a court is authorized to

BÜRGERLICHES GESETZBUCH [ABGB] [CIVIL CODE] § 285 (Austria) ("Animals are not things; they are protected by special laws. The provisions in force for . . . things apply to animals only if no contrary regulation exists."); BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE], § 90a (Ger.) ("Animals are not things. They are protected by special statutes. They are governed by the provisions that apply to things, with the necessary modifications, except insofar as otherwise provided.").

357 It is not entirely clear whether the Amendment Act on Basic Principles Regarding Animals of 2003 created an independent legal category for animals. Certain authors argue that animals have a sui generis legal status but do not constitute their own legal category, which of course gives rise to the question as to what the purpose of the amendment was, if not exactly to introduce a third legal category in addition to persons and objects. Indeed, it was a declared goal of the legislature to improve the legal status of animals. Michel, supra note 82, at 104; see PARLIAMENTARY INITIATIVE, BB 4166 et seq. (2002). What these authors likely mean is that animals do not de lege lata constitute a special category lying somewhere between legal persons and legal objects, yet are still to be grouped with legal objects. Michel, supra note 82, at 104; see Michel & Schneider Kayasseh, supra note 25, at 20 (noting that animals are still treated as objects in most cases).

358 Michel & Schneider Kayasseh, supra note 25, at 20; BOLLIGER, GOETSCHEL, RICHERN & SPRING, supra note 53, at 180. The Amendment Act on Basic Principles Regarding Animals is not explicitly based on the constitutional principle of dignity of living beings protection, but refers to it and represents a significant concretization of animal dignity, which does not rely on a balancing of interests. ERRASS, supra note 74, at 231; Stucki, supra note 80, at 288.

359 Steiger & Schweizer, supra note 22, at 1415; BOLLIGER, GOETSCHEL, RICHERN & SPRING, supra note 53, at 180; ERRASS, supra note 22, at 1616.

360 Michel & Schneider Kayasseh, supra note 25, at 37–40.

361 Id. at 27 et seq.

362 Id. at 21 et seq.

363 Id. at 22 et seq.

364 See generally, e.g., STRUNZ, supra note 351, at 85 et seq.; OMBLINE DE FORET, LE STATUT DE L’ANIMAL EN DROIT CIVIL (2006); BOLLIGER, GOETSCHEL, RICHERN & SPRING, supra note 53, at 179 et seq.; RUTTMANN, RICHERN, LUCHINGER & FLUCKIGER, supra note 56, at 99 et seq.

365 BUNDESGESETZ BETREFFEND DIE Erganzung DES Schweizerischen Zivilgesetzbuches (Fünfter Teil: Obligationenrecht [Federal Act on the Amend-
consider the sentimental value (so-called “affectional value”) of a pet when that animal is killed or injured, and a provision in the Civil Code that empowers a court in divorce disputes to grant exclusive ownership over a pet to the party who can provide the best conditions for the animal.

In each of these situations, the value of the individual animal and the relationship to its keeper is of particular significance. However, animals kept for commercial purposes are not considered under these provisions. Therefore, even if relevant to animal welfare, the amendments are highly anthropocentric, defining as especially valuable only those animals that are valuable from a human’s perspective, i.e., those that are “lucky enough not to be born as an object of utility.”

Moreover, although animals are no longer considered objects under Swiss law, the amendment does not signify that they have gained legal personhood. The new provisions were not accompanied by any fundamental reform of the basic structures and functions of property law.

Under Swiss law, animals still do not possess any subjective rights and remain subject to property law.

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366 Bundesgesetz betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (Fünfter Teil: Obligationenrecht) [Federal Act on the Amendment of the Swiss Civil Code (Part V: The Code of Obligations)] Mar. 30, 1911, AS 27 317 (Switz.).

367 ZGB, SR 210 (1907), art. 651a, para. 1 (Switz.). See generally Eveline Schneider Kayasseh, Die Gerechtliche Zuweisung von Familientieren in ehe- und partnerschaftsrechtlichen Verfahren, in ANIMAL LAW—TIER UND RECHT, supra note 79, at 271 et seq. (discussing custody determinations regarding pets in family law proceedings).

368 Gerritsen, supra note 2, at 5.

369 Swiss animal law follows the so-called “protection of interests” principle. Accordingly, animals do not have subjective rights, see supra note 111 (defining subjective rights), but rather interests worth protecting, including physical and mental integrity. Horany, supra note 12, at 154. For the protection of interests principle, see generally Bolliger, supra note 19, at 6. Under the protection of interests principle, animals’ interests, which can also be described as needs, are not attributed to the animals by humans but are accepted by them, with the result that they perceive animals as holders of interests. Jedelhauser, supra note 50, at 43; Bolliger, Richner & Rüttimann, supra note 19, at 52. However, Swiss animal welfare law restricts, as seen above, the protection of interests principle in various respects, protecting largely only vertebrates and excluding an animal’s most essential interest—its life—from the scope of application. See supra p. 36 (explaining the exclusion of invertebrates from the protected class of animals and the exclusion of an animal’s interest in life from the recognized interests under the AWA).

370 However, the recognition of the inherent worth of a non-human being, as it is represented by the animal dignity concept, is not a complete anomaly in Swiss law. The Swiss Federal Supreme Court grants a partial version of human dignity also to human embryos (see BGer, Dec. 22, 1993, 119 BGE 1a 460, but this can only apply as an objective constitutional principle and does not directly create a right to life. Michel, supra note 82, at 108 (providing further references); Engi, in ANIMAL LAW, supra note 87, at 49.
world—still can be legally disposed of, including by being bought, sold, and, under certain conditions, even killed by their owners. Nevertheless, the incorporation of the amendment effected a modification of the legal order that went beyond a mere adaptation of legal terminology to the altered feelings of Swiss people towards animals: The strict dichotomy between persons and objects was broken up, and space was created for development of a distinct legal status for animals as sentient fellow creatures.

2. Amendments in Animal Welfare Legislation

Many new provisions of the 2008 Swiss animal welfare law must be understood in light of the dignity concept. For instance, various statutory regulations on the keeping of animals are closely related to protection for animal dignity. An example is an AWO article, which is rather unique worldwide, stating that animals of sociable species must be allowed adequate social contact with conspecifics. In other words, Swiss animal welfare law requires that all social animals, including many pets, farmed animals, wild animals, or laboratory animals, shall be kept, according to their species-specific needs, at a minimum in pairs, even if this contradicts their owners' interests.

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371 See supra p. 43 (examining the legality of killing animals for various purposes). The status of animals as property has been fundamentally criticized by a number of philosophers and animal lawyers around the world. For an overview of the issue, see, for example, Klaus Petrus, *Eigentum, in Lexikon der Mensch-Tier-Beziehungen*, supra note 148, at 87 et seq. (providing further references).

372 The result is that animals are not objects but *de lege lata* not persons either—they are not legal entities in terms of having any rights. *See Parliamentary Initiative, BBL 4168 (2002)* (discussing animals' lack of legal rights). Accordingly, animals have neither subjective rights nor any legal obligations. They are basically still placed in the category of legal objects, but their legal status differs in many ways from that of other legal objects. Animals occupy a third and special status reserved for exceptional legal objects—living and feeling fellow living beings with their own dignity, to be protected for their own sake. *See Michel, supra note 82, at 104* (providing further references); *Stucki, supra note 80, at 288* (providing further references).


374 *AWO, AS 2985 (2008), art. 13* (Switz.); *Bolliger, Richner & Ruttimann, supra note 19, at 163.

375 *See Bolliger, Gortenschel, Richner & Spring, supra note 53, at 133* (noting that most small animals qualify as social); *Richner, supra note 62, at 145* (discussing the extent of socializing required for domestic dogs). Social interactions are not only enriching; they are part of the normal behavior of social animals, so these animals shall not be held isolated from conspecifics. This principle applies to wild animals, laboratory animals, particularly to farmed animals, such as cattle, pigs, sheep, goats, horses, and poultry, and finally to many pets, such as ornamental birds, aquarium fish, and most rodents. With regard to various animal species, the AWO defines the minimum requirements for social contacts. Whereas group housing is required for numerous animals (such as guinea pigs, budgerigars, or yaks), for others visual contact (such as for sheep and goats, AWO, AS 2985 (2008), art. 52, para. 4 and art. 55, para. 4 (Switz.)), or visual, auditory, and odor contact with conspecifics, is required (for example for horses, AWO,
An example is the keeping of budgerigars, which are highly social flocking birds, but previously were often isolated from conspecifics, making it easier to train them to sing or talk. Another provision prohibits in many instances the feeding of animals to other live animals due to the dignity of the feeders, such as live mice used as food for snakes and other reptiles.

Other examples of new AWA provisions include mandatory educational courses for animal owners, such as for owners of dogs, ferrets, large parrots (macaws and cockatoos), and horses in order to improve the owners’ general understanding of the animals and their species-specific needs, as well as courses for fishermen to teach them to reduce pain for fish caught in angling. The most recent significant dignity-related AWA amendment is a provision that prohibits the import of dolphins and other cetaceans. The ban came into effect in 2013 and, as a result, ended the keeping of these animals in Switzerland.

AS 2985 (2008), art. 59, para. 3 (Switz.). See also Rüttimann, Richner, Lüchinger & Flückiger, supra note 56, at 63. If group housing is arranged, this should, however, be adequately applied or adapted when a social partner dies and the remaining animal is incompatible with new conspecifics. Cats and dogs may be held without constant contact with conspecifics if they instead have sufficient contact with humans and sufficient activity. Bolliger, Richner & Rüttimann, supra note 19, at 163.

ECNH/FCAE, supra note 82, at 3.

See AWO, AS 2985 (2008), art. 4, para. 3 (Switz.) (“Live animals shall only be fed to wild animals . . . [that exhibit] normal catching and killing behaviour [where] (a) the animal’s nutrition cannot be assured with dead animals or other feed; (b) a reintroduction to the wild is planned; or (c) wild animals and predators are kept in a shared enclosure, where the enclosure shall also be set up in a manner appropriate to the animal of prey.”). See generally Bolliger, Goetschel, Richner & Spring, supra note 53, at 77 (explaining when live animals can be fed to animals kept as pets).

See AWO, AS 2985 (2008), art. 68 (Switz.) (“People who want to acquire a dog shall provide proof of competence regarding their knowledge about keeping dogs . . . before they acquire the dog, unless they can show evidence of having already owned a dog.”). See generally Bolliger, Goetschel, Richner & Spring, supra note 53, at 90 (providing an example of how the law works in practice); Richner, supra note 62, at 136 (pointing out that compulsory training consists of a four-hour course).

See AWO, AS 2985 (2008), art. 85, para. 3a (Switz.) (requiring proof of competence for keeping ferrets at wild animal facilities); see also Richner, supra note 62, at 185 (describing the characteristics and needs of ferrets).

See AWO, AS 2985 (2008), art. 85, para. 3b, art. 89d (Switz.) (requiring a license to keep large birds).

See id. art. 31, para. 4b, art. 198 (explaining requirements for keeping horses). Note that the duty of educational courses applies only for owners of more than five horses. Id. See generally Rüttimann, Richner, Lüchinger & Flückiger, supra note 56, at 94.

See AWO, AS 2985 (2008), arts. 97, 196 (Switz.) (describing course requirements for fishing).

AWA, AS 2965 (2008), art. 7, para. 3 (Switz.).

Although respect for animal dignity was not the decisive reason considered by the Swiss Parliament, it played an important role in the passage of the new provision. The ban was only possible since constitutional fundamental rights, such as economic freedom, are not weighed more than animal welfare factors. For the lawfulness of the ban
3. Criminal Provisions Sanctioning Disregard of Animal Dignity

Since protection for animal dignity is a fundamental principle of Swiss animal welfare law, its encroachment must be punishable. Consequently, since 2008 the AWA explicitly prohibits the disregard of animal dignity, and it includes a criminal offense for this in the rank of animal cruelty. This is equal to other severe animal welfare crimes, such as mistreatment, neglect, cruel or mischievous killing, or abandonment. Under the AWA, anyone who, for example, “mistreats, neglects, unnecessarily overexerts an animal, or disregards its dignity in any other way” commits an act of animal cruelty. As seen, disregarding animal dignity “in any other way” includes, for instance, humiliation, excessive instrumentalization, or substantial interference with an animal’s appearance or abilities as long as there is no justification by prevailing interests. The statutory language clarifies that the mistreatment, neglect, or unnecessary overexertion of animals also constitutes a disregard of their dignity. All animal cruelty in Switzerland qualifies as a misdemeanor—there is no animal welfare crime in the rank of a felony under Swiss law. Animal cruelty is penalized with a custodial sentence (imprisonment) of up to three years or a monetary penalty that can vary, depending on the offender’s income, at least theoretically, of up to more than 1 million Swiss francs (one Swiss franc corresponds more or less to one U.S. Dollar).


386 See supra Part IV.
387 Bolliger & Ruttimann, supra note 300, at 73.
388 See AWA, AS 2965 (2008), art. 4, para. 2 (Switz.) (“No one may inflict pain, suffering or harm on an animal, induce anxiety in an animal or disregard its dignity in any other way without justification.” (emphasis added)).
389 AWA, AS 2965 (2008), art. 26, para. 1a (Switz.).
390 Id. art. 26, para. 1; Bolliger, Richner & Ruttimann, supra note 19, at 191 et seq.; Richner, supra note 62, at 99. In Switzerland, punishment for animal cruelty has been regulated since 1942 at a national level (first under the Criminal Code, and since 1981 under the AWA). Before 1942, it was a matter of cantonal regulation, and all cantons enacted corresponding criminal animal cruelty provisions between 1842 and 1885. See generally Bolliger, Richner & Ruttimann, supra note 19, at 97 et seq. (providing further references).
391 See supra p. 37.
392 Animal dignity can only be disregarded ‘otherwise,’ if the aforementioned actions are dignity disrespects as well. Andreas Ruttimann, Der Tierquälereibestand der Vernachlässigung Eine kritische Auseinandersetzung mit dem Urteil des Bundesgerichts, Jusletter, July 8, 2013 4.
393 AWA, AS 2965 (2008), arts. 26–28 (Switz.).
394 Id. art. 26. According to article 26, paragraph 2, the punishment is a monetary penalty of up to 180 daily penalty units if the offender acts negligently. Id. According to article 34 of the Swiss Criminal Code, for a monetary penalty the court defines first the
In addition to that general criminal offense under the AWA, the Animal Welfare Ordinance (AWO) contains a comprehensive catalogue of human behaviors towards animals that constitute a disregard of animal dignity and therefore are expressly forbidden. Of note, all listed activities are illegal and punishable, regardless of any physical or mental suffering, or harm of the concerned animals. Consequently, in all these cases the proportionality test is obsolete (since it was anticipated by the legislature), and no prevailing human interest can legally justify any of the listed actions. In these terms the AWO forbids, for example, and the beating of animals' eyes or genitalia and the breaking or squeezing of the tail, the use of animals for exhibition, advertisement, films, or other similar purposes if such use is obviously associated with pain, suffering, or harm for the animal. The AWO also prohibits the administration of substances and products for the purpose of improving performance or modifying an animal's outward appearance if it impairs the health or well-being of an animal (‘doping’), participation in competitions and animal sport activities in which prohibited substances or products are used, and parcel shipment of animals. Likewise, absolutely forbidden are sexually motivated activities with animals (zoophilia).

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dignity protection. Sexually motivated activities with animals always constitute a disregard of animal dignity. Thus, they are absolutely forbidden, regardless of any physical harm or anxiety for a concerned animal.404

Besides prohibitions referring to actions involving all vertebrates, cephalopods, and decapods, the AWO also lists a number of species-specific bans on the disregard of animal dignity.405 Examples include docking of the tail in cattle;406 clipping of teeth in piglets;407 force feeding in domestic poultry;408 removing vibrissae in horses;409 docking of the tail, cropping of the ears, and surgical interventions to create floppy ears in dogs;410 amputation of the claws of domestic cats and other feline species;411 angling with the intention of releasing fish back into the water;412 surgical interventions to facilitate the keeping of pets such as the resection of teeth; the clipping of wings, and the removal of secretion glands.413

4. Dignity Protection for Dead Animals?

Swiss animal welfare law protects only living animals.414 However, it is not clear whether dignity protection, or at least some impact

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404 Before 2008, zoophile activities were punishable under Swiss animal law only in cases of physical suffering or harm that was clearly verified. Bolliger, supra note 403, at 82.
405 AWO, AS 2985 (2008) art. 17 et seq. (Switz.).
406 Id. art. 20a.
407 Id. art. 18b.
408 Id. art. 20e.
409 Id. art. 21e; see Ruttimann, Richner, Luchinger & Flückiger, supra note 76, at 23. For the criminal animal welfare provisions regarding the handling of horses in sports, see generally Claudia V. Brunner, Tierquälerei im Pferdesport—eine Analyse der Strafrechtsnormen des Tierschutzgesetzes 127 et seq. (2013).
410 AWO, AS 2985 (2008), art. 22a (Switz.); Bolliger, Goetschel, Richner & Spring, supra note 53, at 98; Richner, supra note 62, at 164 et seq.
411 AWO, AS 2985 (2008), art. 24a (Switz.); Bolliger, Goetschel, Richner & Spring, supra note 53, at 126; Richner, supra note 62, at 173.
412 AWA, AS 2965 (2008), art. 23, para. 1a (Switz.).
413 Id. art. 24, para. 2.
414 Several articles of the AWA and AWO mention this fact explicitly. See, e.g., AWA, AS 2965 (2008), art. 3c (Switz.) (defining an animal experiment as any measure in which a live animal is used); AWO, AS 2985 (2008), art. 13 (Switz.) (stating that a license is required for commercial trading and for advertising purposes with live animals); AWO, AS 2985 (2008), art. 183, para. 2 (Switz.) (stating that live chicks shall not be stacked on top of each other). However, it applies to all the provisions. Under the AWA, an animal’s life begins with hatching or with entry into the birth canal. Bolliger, Richner & Ruttimann, supra note 19, at 55; Richner, supra note 62, at 54. Not covered by the animal welfare law’s scope of application are, therefore, eggs of birds and reptiles, or spawn of fish and amphibians, whereas animal embryos and fetuses within the womb are protected as part of the mother animal. Goetschel, supra note 19, at 14. An exception to that general rule applies in the area of animal experimentation and the production of genetically modified animals and mutants that have a significant clinical pathological phenotype. According to Article 112 of the AWO, these provisions apply not only to vertebrates (litera a), cephalopods and decapods (litera b), but also to mammals, birds, and reptiles in the last third of the gestation period prior to birth or hatching.
thereof, ranges beyond an animal’s death that goes beyond a respectful treatment of dead animals, especially in cases where animals are used for human purposes, but nonetheless are treated like garbage.\textsuperscript{415} Since the AWA does not preclude a corresponding interpretation, it is not unreasonable to subsume the dignity of deceased animals under the scope of the statutory dignity protection, including the above-mentioned criminal prohibition on disregard for animal dignity.\textsuperscript{416} Occasional case law,\textsuperscript{417} and an analogous consideration of human dignity, support the application of the dignity provisions to dead animals. Because, as shown, the constitutional dignity concept cannot have a fundamentally different meaning regarding animals than it does regarding humans, and human dignity and animal dignity must mean the same at their core,\textsuperscript{418} the legal effect of animal dignity cannot categorically exclude treatment of animals beyond death.\textsuperscript{419} The prohibition of instrumentalization derived from human dignity begins before

\textsuperscript{415} For cadavers, in any case, the provisions of the Swiss animal epidemic legislation must be considered. See Bolliger, Richner & Rüttimann, supra note 19, at 56 (noting that while dead animals are not covered under animal welfare legislation, treatment of animal carcasses is still subject to animal disease legislation); Bolliger, Goetschel, Richner & Spring, supra note 53, at 461–67 (discussing the several ways in which a pet owner can dispose of the pet’s body and the applicable legislation for each method).

\textsuperscript{416} AWA, AS 2965 (2008), art. 26, para. 1a (Switz.); see Bolliger & Rüttimann, supra note 300, at 76; BGer, Oct. 30, 2009, BGE AG09/068 (Switz.).

\textsuperscript{417} See Bolliger & Rüttimann, supra note 300, at 76 (referring to a penalty order of October 30, 2009 in the Canton of Aargau, with which an animal keeper was sentenced by the District Office Aargau, among other things, for disregard of animal dignity since he had left a badly decomposed goat carcass for more than a week in his stable). The Stiftung für das Tier im Recht (TIR) is gathering all the criminal animal welfare law proceedings of Switzerland in a database. All around 16,000 criminal decisions in animal welfare matters since 1982 are available at http://www.tierimrecht.org/de/faelle [https://perma.cc/9B6V-GB9S]. The present case can be found under the internal case number AG09/068.

\textsuperscript{418} See supra Part IV.C (comparing the constitutional animal dignity concept with the constitutional human dignity concept).

\textsuperscript{419} Bolliger & Rüttimann, supra note 300, at 76.
birth and does not end immediately with a human’s death but instead lasts beyond.\footnote{420} Accordingly, questionable customs must be scrutinized critically. These customs, which can be observed now and then in Switzerland, include “arts” with dead animals, the hanging of dead crows in order to deter conspecifics from agricultural fields, degrading presentations of body parts of animals (such as hunting trophies) or taxidermy, or the attaching of dead chicks on a Christmas tree as food for foxes (and in particular for visitors’ entertainment) in an animal park.\footnote{421} The same is true for controversial rites like the old-style “Gansabauet” in the Swiss townlet Sursee (Canton of Lucerne), where, once a year, blindfolded people try to behead a suspended dead goose with a sword,\footnote{422} or the throwing of dead fish into an audience that is practiced by the “Zunft zur Schiffleuten”\footnote{423} each year on the occasion of the “Sechseläuten,” a traditional folk festival in Zurich.\footnote{424} 

\section*{F. Claims for Necessary Legal Adjustments}

Everyday practices of human–animal relationships in Switzerland demonstrate that the constitutional mandate to protect animal dignity—even if declared as a main purpose of national animal welfare law—is not sufficiently implemented into national legislation. Many current human ways of handling animals are hardly in line with respect for animal dignity but are still explicitly, or at least implicitly, legal. The AWA establishes the general principle that anyone who deals with animals must accommodate their needs as best as possible and care for the animals’ well-being, but this is only insofar as the animal’s “intended use” permits such care.\footnote{425} Therefore, the AWA only

\footnote{420}{See Michel, supra note 82, at 268 (discussing the question of instrumentalization of human embryos, fetuses, and brain-dead people); see also BGer, Apr. 16, 1997, 123 BGE I 112 (stating that human dignity also includes the right to a decent funeral).}

\footnote{421}{BOLLIGER, RICHTER & RÜTTIMANN, supra note 19, at 51.}

\footnote{422}{See Gansabauet, START SÜRSEE ONLINE, http://www.sursee.ch/de/kultur/gansabauet [https://perma.cc/T78Y-FVRL] (accessed Feb. 16, 2016) (detailing the corresponding custom, which takes place each year on Nov. 11).}


\footnote{425}{AWA, AS 2965 (2008), art. 4, para. 1 (Switz.). See generally BOLLIGER, RICHTER & RÜTTIMANN, supra note 19, at 64 et seq. (discussing the requirements of article 4, paragraph 1 of the AWA).}
prohibits the infliction of stress when an activity is “unjustified,” that is, without sufficient legal justification. Of course, this terminology is barely compatible with the animal dignity concept since it legalizes any suffering necessarily accompanying animals’ “intended use.”

Discussed below are some obvious instances where current Swiss animal welfare legislation fails to adequately protect animal dignity, or where there are significant deficits in enforcement by criminal and administrative authorities.

1. Extension of the AWA Scope of Application to All Animals

As mentioned previously, due to the controversial state of science on the capability for perception and suffering of animals, the AWA applies only to vertebrates, cephalopods, and decapods. Hence, although the delineation of vertebrates from other animal groups is based on a morphological condition, and not on sentience, the pathocentric focus still prevails.

Consequently, but in contrast to the constitutional dignity protection that includes all animals (regardless of their zoological classification), the AWA protects only the dignity of vertebrates, cephalopods, and decapods.

The considerable narrowing of the scope of Swiss animal welfare law in general is greatly criticized by animal law scholars. Regard-

\footnotesize{\begin{itemize}
    \item \textsuperscript{426} See Gerritsen, supra note 2, at 5 (“A huge restriction to this maxim is posed by the \textit{designated use} of the respective animal; a laboratory animal, for instance, has to be handled with the same care as other animals but at the same time may intentionally be harmed within the limits of the specific license.”); see Michel, \textit{supra} note 82, at 102 (giving the example of the intensive keeping of farmed animals and the use of animal experiments as being restricted, but still permitted in principle in keeping with the “designated use of the animal.”).
    \item \textsuperscript{427} AWA, AS 2965 (2008), art. 2, para. 1 (Switz.); see supra p. 36 (discussing the AWA’s exclusion of many invertebrate animal species). However, various indications suggest that invertebrates also feel pain. See Hirt, Maisack & Moritz, \textit{supra} note 160, at 97 \textit{et seq}. For example, spiders bite off the leg on which they are stung by a wasp or a bee. See Rippe, \textit{supra} note 82, at 310 (discussing an experiment in which researchers injected two different poisons on two of the spider’s legs—one of which was a painful poison, and the other was not painful—and the spider bit off the leg injected with painful poison. While this is an indication of the existence of sentience, the spider might have felt a different sensation than that of what humans recognize as pain, which resulted in the self-mutilation). For the fact that research constantly produces new findings about the pain and suffering ability of invertebrates, see generally Thomas Richter, \textit{Artenschutz und Tierschutz bei Wirbellosen, in Das Buch vom Tierschutz 812 et seq.} (Hans Hinrich Sambraus & Andreas Steiger eds., 1997).
    \item \textsuperscript{428} Fleiner-Gerster, \textit{supra} note 34, at 5.
    \item \textsuperscript{429} Friedli, \textit{supra} note 164, at 388; Bolliger, Richner & Ruttimann, \textit{supra} note 19, at 53; Michel, \textit{supra} note 30, at 102.
    \item \textsuperscript{430} See \textit{supra} Part IV.B (discussing the dignity of living being concept in Article 120, paragraph 2 of the Federal Constitution).
    \item \textsuperscript{431} See \textit{supra} pp. 41 \textit{et seq}. (discussing the criminal provisions of the AWA that refer only to actions with these animals).
    \item \textsuperscript{432} See, e.g., Vogel, \textit{supra} note 338, at 184 \textit{et seq.}; Goetschel, \textit{supra} note 19, at 20; Goetschel \& Bolliger, \textit{supra} note 32, at 200; Bolliger, Goetschel, Richner \& Spring, \textit{supra} note 53, at 9; Bolliger, Richner \& Ruttimann, \textit{supra} note 19, at 54.
\end{itemize}}
ing animal dignity in particular, the limitation suffers from an inner contradiction because, against the background of the biocentric Swiss dignity concept, according to which animals are to be protected beyond physical impairments, it is inconsistent to exclude most invertebrates, due to the lack of unequivocal scientific proof of their sentience.\textsuperscript{433} Since the AWA is also supposed to protect animals from stresses that are not accompanied by pain, suffering, harm, or anxiety, it is paradoxical that this broader protection ultimately benefits only those animals in which the ability for such perceptions is considered scientifically evident.\textsuperscript{434}

In order to protect the dignity of all animals, as the Federal Constitution mandates, and in order to leave the “conceptual soil of pathocentric animal protection”\textsuperscript{435} in which the AWA somehow is still rooted, the legislature should extend the AWA scope to include invertebrates too.\textsuperscript{436} This would not signify that all animals are equal, but rather would leave space to satisfy the different needs of vertebrates vis-à-vis invertebrates by differentiated regulations.\textsuperscript{437} A modern legal animal welfare system should cover all animals, allowing for gradations in intensity of protection based on sentience.\textsuperscript{438} The legal possibility of this is evident in the examples of Germany\textsuperscript{439} and Austria.\textsuperscript{440} Both countries include essentially all animals in the scope

Animal law scholars question whether the Swiss legislature should protect all types of animals even when it is unclear from a scientific point of view that they are able to experience pain and suffering. Protection for animals should be the rule and not the exception; consequently, invertebrates’ lack of sentience should be proven in order to deny them protection. See Vogel, supra note 338, at 184 et seq. (questioning whether or not Swiss legislators are truly looking to protect animals). This would be consistent with the general burden-of-proof rule of article 8 of the Swiss Civil Code that applies to the entire Swiss law and according to which the burden of proving the existence of an alleged fact rests on the person who derives rights from that fact. Birgitte Rebsamen-Alisser, Der Vollzug des Tierschutzrechts durch Bund und Kantone 11 (1994); Strunz, supra note 283, at 13.

\textsuperscript{439} Bolliger & Ruttimann, supra note 306, at 75.

\textsuperscript{440} Id.

\textsuperscript{435} Michel, supra note 82, at 102.

\textsuperscript{436} Goetschel, supra note 19, at 151 et seq.; Stohner, supra note 87, at 109.

\textsuperscript{437} See Stohner, supra note 87, at 109.

\textsuperscript{438} Michel, supra note 82, at 109.

\textsuperscript{439} The German animal welfare law basically protects all animals. Hirt, Maisack & Moritz, supra note 160, at 96. However, certain animal species or groups in different contexts are protected differently. Id. For instance, the provisions related to killing, interventions, amputations, trade, and breeding are valid only for vertebrates (such as the criminal provisions), whereas the standards on slaughter apply only to warm-blooded animals (mammals and birds). On the other hand, according to § 18, paragraph 2 of the German Animal Welfare Act, the causing of significant pain, suffering, or harm to an invertebrate without good reason is chargeable. See infra note 383 (discussing the language of the Act). Hence, even the unnecessary killing of an invertebrate animal, such as an ant or spider, could be punished in Germany. See generally Hirt, Maisack & Moritz, supra note 160, at 556 et seq.

\textsuperscript{440} See AWA, BGBI. I, No. 118/2004, § 3, para. 1 (Austria) (stating that “[t]he subject Federal Act shall apply to all animals”). This act also bans cruelty to animals in § 5 and
of their national animal welfare acts—and this is so even without any protection of animal dignity, as the concept exists in Switzerland.

2. Life Protection for Animals

Swiss animal welfare law protects the well-being and dignity of an animal, but not its life per se. Even if the legislature argues that a life sustainment principle is not intended to be part of the dignity protection concept, the lack of life protection signifies a grave restriction on animal welfare and is, like the largely limited scope of the AWA, highly criticized by animal law scholars in general. Further, it stands in contradiction to the dignity concept. The question arises as to whether protection for animal dignity necessarily results in protection for an animal's life—i.e., whether a dignity protection that does not include the protection for life represents an inner contradiction. In other words: Is it possible to kill an animal without necessity and still preserve its dignity?

As seen, legal protection for animal dignity explicitly includes recognition of an animal’s inherent worth. Given that an animal has a legally recognized value, it is not clear why this worth—and thus the animal’s existence—should not be worthy of protection. It seems contradictory that a value recognized by law can be extinguished without any special requirements. Indeed a value can hardly be more ignored than by its complete destruction. If behaviors such as the humiliation or excessive instrumentalization of animals require justification as impairments of an animal, this must apply a fortiori to the killing without reasonable cause in § 6, referring to all animals, including invertebrates. See generally Binder, supra note 373, at 23 et seq.

441 See supra p. 42.
442 The Swiss legislature explicitly accepted the tension between the dignity and welfare of animals on the one hand and the absence of protection of their lives on the other. Federal Council, supra note 34, at 674.
443 See Bolliger, Richner & Ruttimann, supra note 19, at 58 et seq. (exploring the notion that Swiss animal welfare laws protect an animal’s dignity, but not an animal’s life); Michel & Schneider Kayasseh, supra note 25, at 30.
444 See, e.g., Vogel, supra note 338, at 159; Goetschel & Bolliger, supra note 32, at 215; Bolliger, Goetschel, Richner & Spring, supra note 53, at 10 et seq.; Bolliger, Richner & Ruttimann, supra note 19, at 58 et seq.; Richner, supra note 62, at 64; Gerritsen, supra note 2, at 10; Ruttimann, Richner, Luchinger & Flückiger, supra note 56, at 12 et seq. See generally Rippe, supra note 82, at 295 et seq. (declaring that a killing ban should exist). For the issue of legal protection of an animal’s life, see generally Jörg Luy, Zum Problem gesetzlicher Regelungen des Lebensschutzes von Tieren, in Psychologische Aspekte zum Tier im Recht 47, 49 et seq. (Gieri Bolliger et al. eds., 2011) (discussing the efficacy of laws which protect animals from wanton and painful deaths, but not from being killed altogether).
445 Rippe, supra note 82, at 95.
446 AWA, AS 2965 (2008), art. 3a (Switz.).
447 Bolliger & Ruttimann, supra note 300, at 84.
448 Ruttimann, Richner, Luchinger & Flückiger, supra note 56, at 14.
449 Id.
killing of the animal itself.\(^{450}\) Consequently, dignity protection is inextricably linked to respect for an animal’s life. Allowing the unconditional killing of animals constitutes a \textit{per se} disregard for those animals’ dignity.\(^{451}\)

In order to resolve this contradiction and to take due consideration of animal dignity, Swiss animal welfare legislation should explicitly guarantee legal protection of an animal’s life.\(^{452}\) In 1989, the Swiss Federal Supreme Court stated that only a comprehensive life protection for animals meets the ethical expectations of Swiss society.\(^{453}\) This would not exclude a lawful killing of animals under certain circumstances, even against the background of the dignity protection concept. However, in every case a killing would necessarily have been preceded by a careful balancing of interests.\(^{454}\) Practices such as the killing of animals for fashion or luxury goods,\(^{455}\) the putting to sleep of healthy animals, be it by veterinarians on request of the animals’ owners\(^{456}\) or in animal shelters (because the animals cannot be placed),\(^{457}\) or the killing of “waste animals” that are a surplus in zoos\(^{458}\) or in pedigreed breedings\(^{459}\) would hardly pass the balancing test, since, in most of the cases, they are not necessary.

Regardless, from both a legal and an ethical point of view, general protection for animals’ lives would be a significant advancement in Swiss law. Although it is unknown how much animals are able to anticipate and experience fear of death,\(^{460}\) the result of killing them is that their most valuable interest—their interest in life—is taken from them.\(^{461}\) With the sole exception of euthanizing animals to end suffering—

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\(^{450}\) See Rippe, \textit{supra} note 82, at 94 \textit{et seq.}; Errass, \textit{supra} note 79, at 229.

\(^{451}\) Bolliger \& Ruttimann, \textit{supra} note 306, at 84. See generally Rippe, \textit{supra} note 82, at 93 \textit{et seq.}

\(^{452}\) See Goetschel, \textit{supra} note 20, at 151 \textit{et seq.}; Goetschel \& Bolliger, \textit{supra} note 32, at 215; Bolliger \& Ruttimann, \textit{supra} note 300, at 84 \textit{et seq.}

\(^{453}\) See BGer, 115 BGE IV 248 (holding food production or pest control would not contradict the protection of life principle).

\(^{454}\) Bolliger \& Ruttimann, \textit{supra} note 300, at 85.

\(^{455}\) Steiger, \textit{supra} note 91, at 4; see also \textit{Ethical Principles of the Federation of Swiss Veterinarians} (2005) (“Veterinarians perform euthanasia by following the rules of medical art, according to a precise diagnosis and prognosis, taking into account the quality of life of the animal, and with respect for the animal and the owner; the reject both an extension of suffering and a shortening and a shortening of life alone at the request of the owner”).

\(^{456}\) See Steiger, \textit{supra} note 91, at 4.

\(^{457}\) See Goetschel, \textit{supra} note 19, at 159; Goetschel \& Bolliger, \textit{supra} note 32, at 214; Steiger, \textit{supra} note 91, at 3 \textit{et seq.}

\(^{458}\) For the “elimination” of unwelcomed puppies in pedigreed breedings see Goetschel \& Bolliger, \textit{supra} note 32, 216 \textit{et seq.}; Richner, \textit{supra} note 62, at 229 \textit{et seq.}; and generally Bolliger, \textit{supra} note 19, at 189 \textit{et seq.}

\(^{459}\) See Bolliger, Richner \& Ruttimann, \textit{supra} note 19, at 78 (providing further references).

\(^{460}\) \textit{Supra} p. 42.
ing, every killing of an animal represents an inhumane act. A general life protection for animals—or at least the requirement of a “reasonable cause” for the killing, as it is dictated by German and Austrian animal law—would far better express the human responsibility for animals as fellow creatures that underlies ethical animal welfare in general and is explicitly recognized by the Federal Supreme Court in the aforementioned decision.

3. Legal Improvements for the Handling of Farmed Animals

Intensive rearing of animals represents an instrumentalization par excellence. In order to produce animal-based foods at the lowest possible cost, farmed animals often are kept in restrictive circum-

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462 Goettschel & Bolliger, supra note 32, at 215; Richner, supra note 62, at 233; Ruttimann, Richner, Luchinger & Flückiger, supra note 56, at 28. See generally Bolliger, Goettschel, Richner & Spring, supra note 53, at 454 et seq. (finding that for a concerned animal itself the killing is probably never acceptable, regardless of the reasons and the used method). Accordingly, at least from an ethical point of view, any non-medically indicated animal killing is questionable. Bolliger, Goettschel, Richner & Spring, supra note 53, at 40. For the question of the ethical legitimacy of animal killing, see generally Bolliger, supra note 23, at 271 et seq. (providing further references).

463 AWA, BGB. I at 1094, § 1, para. 1 (Ger.) (stating that the aim of the act is “to protect the lives and well-being of animals, based on the responsibility of human beings for their fellow living beings”). Cf. AWA, BGB. I, No. 118/2004, § 1 (Austria) (“The Federal Act aims at the protection of the life and well-being of animals based on man’s special responsibility for the animal as a fellow living being.”). Thus, in both Germany and Austria, legal protection refers to the animal’s life per se, and not only to the absence of pain or suffering caused by humans. Additionally, however, in Germany and Austria one has the right to kill an animal for certain purposes. Note, however, that any killing of an animal requires a so-called ‘good reason.’ See AWA, BGB. I at 1094, § 1 (Ger.) (“No one may cause an animal pain, suffering, or harm without good reason.”); AWA, BGB. I, No. 118/2004, § 6, para. 1 (Austria) (“It is prohibited to kill animals without proper reason.”). Without such a justification, the killing of animals is unlawful. Although German and Austrian law provide a number of “good” or “proper” reasons that legitimize the killing of animals, particularly in the context of food production, pest control, and animal experimentation, all these reasons are only exceptions which are not able to undo the basic life sustainment principle. See generally, Rippe, supra note 82, at 96 et seq.; Hirt, Maisack & Moritz, supra note 160, at 102 et seq. (discussing German animal welfare law); Binder, supra note 310, at 98 et seq.; Binder, supra note 373, at 71 et seq. (discussing Austrian animal welfare law).

464 Michel & Schneider Kayasseh, supra note 25, at 17.

465 Council of States Control Committee, supra note 457.

466 According to article 2, paragraph 2a of the AWO, Swiss animal welfare law defines farmed animals as “animals of species that are kept directly or indirectly for the production of food or for certain other benefit or are intended for such use.” AWO, AS 2985 (2008), art. 2, para. 2 (Switz.). Hence, farmed animals are kept not for emotional reasons, but for economic reasons and used in the agricultural sector as work aids, in particular in food production—namely for meat, milk, and eggs. However, the range of use of farmed animals extends far beyond this. They are used, for example, as hunting dogs, avalanche dogs, guide dogs, for riding, breeding, and as guard animals, or for the clothing industry. Bolliger, Goettschel, Richner & Spring, supra note 53, at 13; Ruttimann, Richner, Luchinger & Flückiger, supra note 56, at 16. See generally Klaus Petrus, Nutztiere, in Lexikon der Mensch-Tier-Beziehungen, supra note 148, at 263 et seq. (defining the term farmed animals).
stances that do not meet their fundamental species-specific needs.\textsuperscript{467} Although the legal and practical situation for farmed animals in Switzerland is admittedly better than, for example, in the U.S.,\textsuperscript{468} from an animal welfare perspective, treatment of Swiss farmed animals is far from perfect.\textsuperscript{469} Also, in Switzerland, the value of millions of farmed animals\textsuperscript{470} is defined almost exclusively through their performance, which is reflected in efficiency-oriented husbandry governed by the principle of maximizing the economical applicability of its “product.”\textsuperscript{471} Once an animal has reached its slaughter weight or once its milk producing or egg laying performance diminishes, the animal is typically slaughtered, since further housing of the animal is not profitable.\textsuperscript{472} Moreover, body parts of farmed animals are often routinely cut or amputated so a producer can keep more animals in a smaller space. Common practices include the trimming of beaks in poultry,\textsuperscript{473} the grinding of teeth tips in piglets,\textsuperscript{474} and the dehorning of cattle and goats.\textsuperscript{475}

Other consequences of factory farming’s unilateral focus on economics concern established practices in the husbandry of calves and laying hens. Every year, more than two million male chicks (so-called “day-old chicks”) in Switzerland are gassed or shredded immediately upon hatching as “production waste,”\textsuperscript{476} since they are useless for egg production and are therefore considered worthless.\textsuperscript{477} Additionally,  

\begin{itemize}
\item \textsuperscript{467} Petrus, supra note 479, at 263 et seq.
\item \textsuperscript{468} See generally \textit{The CAFO Reader—The Tragedy of Industrial Animal Factories} (Daniel Imhoff ed., 2010) (depicting the miserable life conditions of farmed animals in the U.S.).
\item \textsuperscript{469} By 1993, the Council of States Control Committee reproved the instrumental relationship with the animal, which is frequently found in Swiss agriculture, and could be best described by the term \textit{animal production}. Council of States Control Committee, supra note 163, at 623.
\item \textsuperscript{470} In 2014, Switzerland had over 1.5 million cattle, 60,000 farmed horses, 1.5 million pigs, 400,000 sheep, 90,000 goats, and more than 10.6 million chickens. \textit{Switzerland Statistics, Fed. Stat. Off.}, http://www.bfs.admin.ch/bfs/portal/de/index/themen/07/03/blank/data/01/03.html [https://perma.cc/259J-NNHG] (2016) (accessed Feb. 20, 2016).
\item \textsuperscript{471} See Michel, supra note 82, at 108.
\item \textsuperscript{473} See AWO, AS 2985 (2008), art. 20a (Switz.) (forbidding debeaking in domestic poultry). Allowed, however, is to trim the hook on the upper beak of the animals as long as a complete closing of beak is still possible. \textit{Id.} Note, the trimming of the tips of beaks in domestic poultry is legal even without anesthesia as long as this is conducted by an expert. AWO, AS 2985 (2008), art. 15, para. 2 (Switz.).
\item \textsuperscript{474} See \textit{id.} art. 15, para. 2 (Switz.) (explaining that the grinding of teeth tips in piglets is allowed even without any anesthesia).
\item \textsuperscript{475} See \textit{id.} art. 32 (Switz.) (allowing animal keepers who have a corresponding certificate of competence to dehorn animals that are younger than three weeks).
\item \textsuperscript{476} See \textit{id.} art. 183, para. 1 (Switz.) (naming this procedure in a euphemistic way ‘homogenization’).
\item \textsuperscript{477} Since the breeding of laying hens is concentrated on the highest egg production, these animals have only few muscle tissue that is edible for humans and are therefore
the calves of dairy cows are often separated from their mothers on the
day of their birth so that milk can be used for sale rather than to feed
young animals.\textsuperscript{478} Further, when male calves of dairy cattle are born,
they are usually slaughtered a few days later because they are consid-
ered useless for milk production, and rearing would be inefficient due
to their low muscle mass.\textsuperscript{479}

Self-evidently, those practices run diametrically contrary to the
basic idea of animal dignity protection.\textsuperscript{480} They represent severe inter-
ventions in the dignity and well-being of animals primarily serving to
increase efficiency, i.e., pecuniary interests. However, those interests
alone are insufficient to justify such massive impairments.\textsuperscript{481} The
dignity protection concept is not satisfied when purely economic interests
qualify to justify almost complete disregards for an animal’s intrinsic
worth.\textsuperscript{482} Current practices in farmed animal husbandry frequently
represent exclusive instrumentalization of animals, which are disre-
garded in the core content of their dignity over a longer period of deny-
ing their essential needs, in particular for movement, reproduction,
and social contacts. The need for appropriate social contacts is disre-
garded not only by solitary housing (which is prohibited under Swiss
law),\textsuperscript{483} but also when animals are crowded together in a confined
space and are therefore exposed to massive overstimulation.\textsuperscript{484} Only
an optimal species-appropriate husbandry and handling of farmed ani-
mals, which reduces suffering to a minimum, passes the balancing of
interests.\textsuperscript{485} Consequently, in light of dignity protection, the Swiss le-
gal framework has to be designed to be much more animal-appropri-


\textsuperscript{480} See Goetschel, \textit{supra} note 74, at 155 et seq. See generally, e.g., Andreas Stei-

\textsuperscript{481} See \textit{supra} page 37.

\textsuperscript{482} Id.

\textsuperscript{483} AWO, AS 2985 (2008), art. 13 (Switz.).

\textsuperscript{484} STOHNER, \textit{supra} note 87, at 129.

\textsuperscript{485} Id. at 110 et seq.
ate. For that, the legislature must orient primarily to the actual needs of the animals and not to economic considerations.\textsuperscript{486} Absolute prohibitions are requested for practices where animals’ body parts are trimmed or completely removed.\textsuperscript{487} Those interventions in the appearance and abilities of animals are carried out exclusively for pecuniary motives.\textsuperscript{488} But again, purely economic interests never suffice to justify such serious violations of animal dignity.\textsuperscript{489} Against the background of dignity protection, it is intolerable that animals are mutilated in order to squeeze them into husbandry systems arranged around economic efficiency.\textsuperscript{490} The conditions of farmed animal husbandry must rather be adapted to the needs of animals.\textsuperscript{491} The Swiss legislature should, likewise, expressly prohibit (as a disregard of animal dignity) the killing of male day-old chicks or of calves only a few days after their birth. To these animals, any respect for their intrinsic worth is completely denied under the current legal situation.\textsuperscript{492} Under this practice of mass elimination, producers can present only economic interests that are never able to prevail over the massive impairment of animal dignity.\textsuperscript{493}

4. Better Enforcement of the Animal Dignity Concept

The position and protection animals enjoy in the legal system always reflect the esteem and importance that they have in society. Although both the principle of animal dignity protection in the AWA and the related criminal provisions are clear, their effectiveness, as with all laws, is ultimately determined not only by their wording, but mostly by their actual application, which means by their enforcement in practice.

Enforcement of Swiss animal welfare law is the responsibility of the cantons,\textsuperscript{494} which delegate this task to their cantonal authori-

\begin{footnotes}
\item[486] BOLLIGER & RUTTIMANN, supra note 300, at 86.
\item[487] See generally BOLLIGER, SPRING & RUTTIMANN, supra note 180, at 54 et seq. (regarding the dehorning of cows and calves, a legal expertise of the Stiftung für das Tier im Recht (TIR) qualifies this practice clearly as disregard for animal dignity). Of note, however, this legal interpretation has not been accepted by the Swiss legislature, although TIR’s careful balancing of interests indicates a preponderance of the animal’s dignity interests compared to the user’s economic interests. \textit{Id.}
\item[488] As far as it concerns the safety of humans and animals, forced physical adaptations of animals to specific farming systems can be avoided by technical stable adaptations to the animals’ needs for space, structure, and management, et cetera. See BOLLIGER, SPRING & RUTTIMANN, supra note 180, at 57 (regarding the dehorning of cattle).
\item[489] See supra p. 33.
\item[490] \textit{Id.}
\item[491] BOLLIGER & RUTTIMANN, supra note 300, at 87.
\item[492] \textit{Id.}
\item[493] \textit{Id.}; Steiger, supra note 91, at 4.
\item[494] BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, art. 80, para. 3 (Switz.); AWA, AS 2965 (2008), art. 32, para. 2 (Switz.).
\end{footnotes}
ties.\textsuperscript{495} In line with the general division of Swiss animal welfare law into criminal matters and administrative matters\textsuperscript{496} in all cantons is a two-track enforcement system that applies to violations of Swiss animal welfare law.\textsuperscript{497} On the one hand, there is enforcement of the criminal animal welfare law provisions, meaning the prosecution and sanctioning of animal welfare law crimes by the cantonal criminal authorities.\textsuperscript{498} On the other hand, cantonal administrative agencies are responsible for the enforcement of administrative animal welfare law, which has to ensure compliance with the legal standards of the AWA and AWO.\textsuperscript{499} Both at the criminal and administrative levels, more consideration must be given to the protection of animal dignity, as the following examples demonstrate.

a. Enforcement of Criminal Animal Welfare Law

The enforcement of criminal provisions of the AWA lies in the hands of cantonal criminal authorities.\textsuperscript{500} To date, the animal dignity concept and the associated fundamental reorientation of Swiss animal welfare law have not yet been noticeably reflected in case law. Although there are numerous available criminal sentences for violations of absolute bans under the AWO (such as for zoophilia, docking and cropping in dogs, et cetera),\textsuperscript{501} Swiss courts and other judicial bodies do not often identify prohibited activities as disregarding animal dignity.\textsuperscript{502} In decisions where animal dignity is explicitly referenced, this happens typically in combination with other animal cruelty offenses.\textsuperscript{503} Regrettably, the autonomous AWA offense of disregard for

\textsuperscript{495} See AWA, AS 2965 (2008), art. 70, para. 1 (Switz.) (stating that the federal government ensures compliance, but the canton governments enact their provisions).

\textsuperscript{496} Criminal animal welfare law provides sanctions for violations of the criminal provisions of the AWA, whereas administrative animal welfare law serves primarily the guarantee of the well-being of animals through administrative measures. See Goetschel & Bolliger, supra note 32, at 175 et seq., 230 et seq.; Bolliger, Richner & Rüttimann, supra note 19, at 28; Michel, supra note 82, at 597 et seq.

\textsuperscript{497} Id.

\textsuperscript{498} Id.

\textsuperscript{499} The cantonal authorities act in accordance with different procedural rules. Strafprozessordnung [SR], Federal Criminal Code [FCC], Oct. 5, 2007, SR 312 (Switz.) (explaining that criminal proceedings are handled uniformly). In administrative proceedings, the federal and cantonal administrative procedure law are applicable. The criminal and administrative authorities act basically independently of each other, but they often rely on mutual support. See generally Bolliger, Goetschel, Richner & Spring, supra note 53, at 52 et seq.; Richner, supra note 62, at 120; Rüttimann, Richner, Luchinger & Flückiger, supra note 56, at 39 et seq.

\textsuperscript{500} Bundesverfassung [BV] [Constitution] Apr. 18, 1999, art. 80, para. 3 (Switz.).

\textsuperscript{501} AWA, AS 2965 (2008), arts. 16 et seq. (Switz.).

\textsuperscript{502} See Michelle Richner, Nora Flückiger, Andreas Rüttimann & Christine Kunzli, Schweizer TierSchutzstrafpraxis 2012 25 (2013) (showing the extremely low percentage of cases that are strictly for violation of dignity).

\textsuperscript{503} See, for example, the penalty order of the office of the district attorney Baden of September 10, 2012, under which an offender who had held two cats by their hind legs in the air while inflicting pain on them had been convicted for mistreatment and disregard for animal dignity (case AG12/077 in the database of TIR, supra note 417), or the
animal dignity rarely has attained an independent significance in criminal enforcement practice so far.\footnote{378} A positive exception can be found in a decision of the Independent Swiss Complaint Authority for Radio and Television (ICA), which in 2009 considered the use of living trout for a catching game on a national television show to be a non-justifiable excessive instrumentalization and therefore a disregard for the dignity of the fish.\footnote{383} Nevertheless, convictions on the ethical aspects of animal dignity—i.e., protection from humiliation, excessive instrumentalization, and substantial interference with an animal’s appearance or abilities—are still almost completely missing.\footnote{384} Apparently, Swiss criminal authorities deliberately refrain from sanctioning human behavior that does not necessarily cause pain, suffering, harm, or anxiety to animals.\footnote{385} However, neither from an animal welfare point of view nor from a legal standpoint is it acceptable that an official statutory offense is largely ignored.\footnote{386} This is bolstered by the fact that the protection of animal dignity has constituted a main purpose of Swiss animal welfare law for eight years.\footnote{387} Further, the disregard for animal dignity, as every other violation of the AWA, is an offense that must be prosecuted ex officio by the competent criminal prosecution authorities as soon as they have knowledge of a crime.\footnote{388}

Increased engagement of criminal authorities with the ethical aspects of animal dignity is vitally important for the further specification of this concept, which is not yet conclusively defined. The aim must be to develop criteria in the form of case law that helps to assess which human actions, beyond physical and physiological stresses not already

\footnote{378} Enforcement of the criminal provisions of the AWA is an issue not only concerning disregard for animal dignity but in general regarding all animal cruelty provisions. See Gerritsen, supra note 2, at 11 et seq. See generally Bolliger, Richner & Ruttimann, supra note 19, at 249 et seq. (discussing various deficits in criminal animal welfare law enforcement); and the reports of the Stiftung für das Tier im Recht (TIR), which each year comprehensively analyzes the practice of Swiss prosecution authorities in criminal animal welfare law matters at Stiftung für das Tier im Recht, http://www.tierimrecht.org/de/faelle [https://perma.cc/6Z9E-4L4D] (accessed Feb. 20, 2016).

\footnote{383} See supra note 420 (discussing the decision of the ICA which stated that the instrumentalization of fish represented a danger for public morals and therefore constitutes a violation of article 4, paragraph 1 of the Federal Act on Radio and Television (Bundesgesetz über Radio und Fernsehen) Mar. 24, 2006, SR 784.40 (Switz)).

\footnote{384} Bolliger & Ruttimann, supra note 300, at 77.

\footnote{385} Id.

\footnote{386} Id.

\footnote{387} Id.

\footnote{388} AWA, AS 2965 (2008), art. 1 (Switz.).

\footnote{389} Richner, supra note 62, at 116. See generally Bolliger, Richner & Ruttimann, supra note 19, at 230 et seq. The counterpart to the “offense prosecuted ex officio” in Swiss criminal law is the “offense prosecuted on complaint” that is only prosecuted in case the victim files a formal criminal complaint. Schweizerisches Strafgesetzbuch [SrGB] [Criminal Code] Dec. 21, 1937, art. 30 (Switz.).
covered by the various AWO bans, qualify as disregard for animal dignity.\textsuperscript{511}

Of note, however, criminal prosecution authorities are only able to help expand the dignity protection concept to a certain degree. Many human behaviors that must be critically considered in light of the animal dignity concept cannot be sanctioned, since Swiss law legitimizes them.\textsuperscript{512} But at least those activities that are undoubtedly illegal must be prosecuted and sanctioned, and this ultimately contributes to a greater societal awareness of the issue of animal welfare.\textsuperscript{513} Consequent punishment has to take place, for instance, in the case of obvious humiliation of animals used in entertainment. Degrading practices with animals that cannot be legitimized must be strictly prosecuted and sanctioned as disregarding animal dignity.\textsuperscript{514} Examples include the unnatural performances of animals in circuses, which can still be observed in Switzerland, the coloring of animals’ fur or feathers, and the exhibition of pets with ridiculous costumes, such as for ‘dog weddings’, pet fashion parades, or during Halloween.\textsuperscript{515} In these instances, results from the balancing test clearly favor the animals’ interests: while already the existence of human necessity is doubtful, a justification fails upon examination of the requested reasonableness. As a result, the mentioned practices represent a clear disregard for animal dignity under the AWA.

Another area where the disregard for animal dignity is obvious, and consistent sanctioning is therefore needed, concerns animal breeding where various excesses typically occur.\textsuperscript{516} Certain breeding practices that produce bizarre outer appearances and often a loss of function for the animals are still commonplace in Switzerland.\textsuperscript{517} However, by summer 2016, not a single Swiss breeder had been sentenced for disregarding animal dignity under the AWA. Nevertheless, over-breeding is a clear intervention in the appearance and abilities of animals. Overriding interests cannot justify this, since breeders can only seriously argue aesthetic motives.\textsuperscript{518}

\begin{footnotes}
\footnotetext{511}{BOLLIGER \& RUTTIMANN, supra note 306, at 78.}
\footnotetext{512}{See, e.g., supra p. 56 (discussing the handling of farmed animals).}
\footnotetext{513}{BOLLIGER \& RUTTIMANN, supra note 300, at 78.}
\footnotetext{514}{GOETSCHEL \& BOLLIGER, supra note 32, at 244.}
\footnotetext{517}{See supra p. 26.}
\footnotetext{518}{BOLLIGER \& RUTTIMANN, supra note 300, at 79.}
\end{footnotes}
The lack of convictions regarding humiliating displays of animals and the disregard of dignity in animal breeding illustrates that Swiss law enforcement agencies generally are not sufficiently aware of the significance and implications of animal dignity protection. In order to develop true practical effects, the authorities should sharpen this awareness. Additionally, an increased awareness for the ethical aspects of animal dignity in Swiss society is essential. Criminal prosecution authorities can sanction illegal behavior only with corresponding knowledge, which in turn requires increased reporting of animal welfare offenses by attentive citizens.\footnote{519}{See Schweizerische Strafprozessordnung [StGB] [Criminal Code] Oct. 5, 2007, SR 101, art. 301, para. 1 (Switz.) (“Any person is entitled to report an offense to a criminal justice authority in writing or orally.”). See generally Bolliger, Richner & Ruttimann, supra note 19, at 232 et seq. (reporting on animal welfare offenses); Bolliger, Goetschel, Richner & Spring, supra note 53, at 498 et seq.; Ruttimann, Richner, Lüchinger & Flückiger, supra note 56, at 514 et seq.}

\textbf{b. Enforcement of Administrative Animal Welfare Law}

In contrast to criminal animal welfare law, cantonal administrative agencies have the responsibility to enforce the administrative animal welfare law.\footnote{520}{Michel, supra note 82, at 613. See generally Christine Kunzli & Vanessa Gerritsen, Rechtlicher Rahmen bei privaten Tierschutzkontrollen 99 et seq. (2012). If criminal offenses against the AWA are found, the administrative enforcement authority shall report them. AWA, AS 2965 (2008), art. 24, para. 1 (Switz.). Note that only minor cases are excepted from that duty. Here, administrative authorities may decide not to report the criminal offense. AWA, AS 2965 (2008), art. 24, para. 4 (Switz.); see Bolliger, Richner & Ruttimann, supra note 19, at 263.} For this purpose the cantons are equipped with cantonal veterinary services and specialized technical offices.\footnote{521}{AWA, AS 2965 (2008), art. 33 (Switz.). See generally Bolliger, Goetschel, Richner & Spring, supra note 53, at 54; Ruttimann, Richner, Lüchinger & Flückiger, supra note 56, at 41 et seq.} Their main task is to enforce the minimum legal standards of Swiss animal welfare law in order to guarantee that animals are not illegally subjected to pain, suffering, harm, or anxiety.\footnote{522}{PSVO, SWISS VETERINARY SERVICE, BASED ON THE OIE TOOL FOR EVALUATING THE PERFORMANCE OF VETERINARY SERVICES 12, 14 (2014).} As a rule, the cantonal veterinary services carry out their tasks by effecting administrative measures and by imposing administrative means of coercion.\footnote{523}{See generally Rehşam-Alebsi, supra note 432, at 85 et seq.; Jedelhauser, supra note 50, at 125 et seq. For instance, the authorities may forbid people who have been sentenced for repeated or serious violations of Swiss animal welfare law or who are incapable of keeping or breeding animals for other reasons, for a specified or unspecified period, from keeping or breeding animals, or from trading in or working professionally with animals. AWA, AS 2965 (2008), art. 23, para. 1 (Switz.). Such prohibitions are valid throughout Switzerland, id. art. 23, para. 2 (Switz.), and filed in a central register, AWO, AS 2985 (2008), art. 212a, para. 2 (Switz.). See generally Bolliger, Goetschel, Richner & Spring, supra note 53, at 55 et seq.; Ruttimann, Richner, Lüchinger & Flückiger, supra note 56, at 41 et seq. Further, the competent authorities must intervene immediately when it is found that animals are being neglected or kept under unsuitable conditions. The authority may seize the animals as a precautionary measure.
Moreover, the cantonal veterinary services are responsible for the granting of licenses that Swiss law requires for various types of animal handling.\textsuperscript{524} In granting licenses, the administrative authorities always have to examine, among other things, whether a requested animal use is consistent with animal dignity protection.\textsuperscript{525} One example of an area of licensing where emphasis must be given to dignity protection is the use of living animals for promotional purposes that require a license according to Swiss law.\textsuperscript{526} The use of animals as an advertising medium represents a \textit{per se} instrumentalization and must therefore be examined critically in each individual case.\textsuperscript{527} A license must be denied when animals are humiliated within the advertising shots, such as by unnaturally changing their appearances. Further examples where the granting of a license must be based on a thorough review of the respect for animal dignity include commercial animal breeding,\textsuperscript{528} animal fairs, animal markets, and animal exhibitions where animals are traded.\textsuperscript{529} Moreover, the cantonal veterinary services are responsible for the licensing of animal experiments and the commercial keeping of wild animals, which are discussed in more detail in the following Sections.

\textsuperscript{524} FSVO, supra note 523, at 14, 15.

\textsuperscript{525} Since the protection of animal dignity is a fundamental principle spanning all areas of Swiss animal welfare law, see supra p. 16, it also applies if this is not explicitly mentioned in the statutory licensing requirements. Bolliger & Rüttimann, supra note 300, at 79.

\textsuperscript{526} AWA, AS 2965 (2008), art. 13, para. 1 (Switz.); see also AWO, AS 2985 (2008), art. 105, para. 1d (Switz.) (stating that a license according to article 13 of the AWA shall only be granted if it is ensured in advertisement that the animals do not suffer or endure harm, the transport conditions are met, and the animals’ dignity is not disregarded in other ways). The term \textit{advertisement} under Swiss animal welfare law refers to any activity by which attention is drawn with commercial intentions to a specific product, a company, or an activity with living animals. Examples include advertisements in press products; recordings for radio, film, and television; the performance of animals in department stores, fundraising, fashion shows, et cetera; the use of animals as shop window decoration; and the distribution of animals as giveaways. Bolliger, Goetschel, Richner & Spring, supra note 53, at 508.

\textsuperscript{527} Bolliger & Rüttimann, supra note 300, at 82.

\textsuperscript{528} AWO, AS 2985 (2008), art. 101, para. 1d (Switz.).

\textsuperscript{529} Id. art. 104, para. 3 (Switz.).
i. Animal Experiments

Just like in many other parts of the world, animal experiments are legal in Switzerland. Statistics on animals used in research have been primarily constant for the last several years. In 2014, more than 600,000 animals were experimented on in Switzerland—mostly mice, but also primates, dogs, cats, horses, and many other mammals. Almost 60% of these animals were used for basic research purposes.

Swiss animal welfare law declares animal testing to be permissible, but at least it sets a series of restrictions. Most importantly, animal experiments must be limited to the absolute necessary minimum and are only allowed if they represent a so-called ultima ratio. Any person who wants to conduct an animal experiment needs a license from the cantonal veterinary service.

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530 See AWA, AS 2965 (2008), art. 3c (Switz.) (“Animal experiment: Any measure in which a live animal is used with the aim of (1) testing a scientific assumption, (2) observing the effect of a particular measure in the animal, (3) testing a substance, (4) obtaining or testing cells, organs or bodily fluids, except when this is in the context of agricultural production, diagnostic or curative operations on the animal or for determining the health status of animal populations, (5) obtaining or replicating organisms alien to the species in question, (6) teaching or training.”).

531 See Gerritsen & Rüttimann, supra note 204, at 242 (discussing various initiatives to abolish or largely limit animal experiments in Swiss law, which all failed in official referendums).


533 Id.

534 ‘Basic research’ is driven purely by curiosity and a desire to expand knowledge. It tends not to be applicable to the real world in a direct way, but it furthers general information and enhances the understanding of the coherences in the world. In contrast, ‘applied research’ is used to answer a specific question that has direct applications and focuses on the solution of a concrete problem. Bolliger, supra note 19, at 360.

535 See TV STATISTIK, http://tv-statistik.ch/de/statistik/index.php (accessed Mar. 6, 2016) (illustrating figures on basic research experiments that have been increasing for several years).

536 AWA, AS 2965 (2008), art. 17 (Switz.); AWO, AS 2985 (2008), art. 6, para. 1 (Switz.).

537 Bolliger, supra note 93, at 9; BGer, 135 BGE II 384; see AWA, AS 2965 (2008), art. 17 (Switz.) (“Animal experiments that inflict pain, suffering, harm, or anxiety on an animal, substantially impair its general well-being, or may disregard its dignity in any other way, shall be limited to the absolutely necessary minimum.”).

538 AWA, AS 2965 (2008), art. 18, para. 1 (Switz.) For the granting of animal-experiment applications, the cantonal veterinary services are supported by cantonal committees on animal experiments consisting of experts for animal experiments, among whom animal welfare organizations must also be appropriately represented. Id. art. 34, para. 1. The committees examine applications and submit a proposal to the licensing authority. Further, they are consulted on the inspection of laboratory animal husbandry and the conduct of experiments. Id. art. 34, para. 2. See generally Isabelle Haner, Gieri Bolliger & Antoine F. Goetschel, Gehirnhaltungspflicht von Mitgliedern der Tierschutzkommissionen 11 et seq. (2011); Krepper, supra note 35, at 311.
For a laboratory animal, regardless of whether it was genetically produced or raised through traditional breeding methods, an experiment (and its whole existence) represents a serious instrumentalization. Therefore, this constitutes a violation of animal dignity that, in addition, is frequently associated with massive suffering. In the balancing of interests, which also applies in the field of animal testing and has to be conducted for every single animal experiment, this places high requirements on the side of the human user. Due to the general uncertainty regarding the transferability of findings from animal studies to humans, often already the suitability of a planned experiment is doubtful. In the subsequent check of necessity, the burden of proof of showing the absence of alternatives lies with the researcher. Whenever an alternative for a planned animal experiment exists, a license must be denied. Further, in the final assessment of reasonableness, human concerns may not be given per se preference since animal welfare and the protection of animal dignity are equal to the fundamental right of academic freedom under the Federal Constitution. Moreover, because animal dignity must be valued in assessing an experiment, the killing of the concerned animals (which is typically part of animal experiments or which happens after them) also has to be justified since it disregards an animal’s value.

541 See supra note 234, at 3.
542 Of course, there is the question of whether animal experiments are generally superfluous. According to various reputable scientists, animal experiments are a scientifically dubious research method whose results can hardly be fully applied to humans and which should therefore be avoided not only from an animal welfare viewpoint, but also from a scientific perspective. For the corresponding topic, which cannot be discussed here, see generally, for example, ANDREW KNIGHT, THE COSTS AND BENEFITS OF ANIMAL EXPERIMENTS (2011) (explaining that there are few human benefits to animal experiments).
543 See Gerritsen & Rüttimann, supra note 204, at 246 (providing further references).
544 See Krepper, supra note 35, at 313; Krepper, supra note 96, at 41.
545 See supra pp. 8 et seq.
546 ERASS, supra note 22, at 1620; Rippe, supra note 82, at 94 et seq.
547 See supra p. 28. Swiss law prohibits only the cloning of human beings, such as forbidding producing human embryos for research purposes. Zusatzprotokoll zum Übereinkommen zum Schutz der Menschenrechte und der Menschenwürde im Hinblick auf die Anwendung von Biologie und Medizin über das Verbot des Klonens von menschlichen Lebewesen [Supplementary Protocol to the Convention for the Protection of Human Rights and Human Dignity with regard to the
In addition, the constitutional guarantee of an inviolable core content of animal dignity must manifest in a general upper stress limit for animals that cannot be exceeded. This is of particular importance in the field of animal experiments. Swiss animal welfare law expresses the stress, which is inflicted on animals in experiments, by so-called severity degrees that range in a scale from severity degree 0 (no stress) to severity degree 3 (severe stress). Note that even experiments qualified with severity 0 or severity 1 (mild stress) usually lead to the death of the concerned animals and may constitute a disregard for animal dignity. However, experiments with severity degree 3 inflict such a high stress level on an animal that they can never be justified in light of the core content of animal dignity, regardless of the purpose pursued by an experiment. Thus, these experiments represent a per se disregard for animal dignity. As a consequence of this fundamental incompatibility of severity degree 3 experiments with the Federal Constitution, these experiments should not be approved by cantonal veterinary authorities and should be generally prohibited by the legislature.

See supra p. 20.

BOLLIGER & RUTTIMANN, supra note 300, at 87.


Id. art. 24(a). Animal experiments with severity degree 0 are procedures and actions performed on animals for experimental purposes that do not inflict pain, suffering, or harm on the animals, engender anxiety or impair general well-being. Id.

Id. art. 24(d). Animal experiments with severity degree 3 are procedures and actions performed on animals for experimental purposes that cause medium- to long-term moderate pain or severe pain, medium- to long-term moderate harm or severe harm, long-term severe anxiety or a severe impairment of general well-being. Id.

Id. art. 24(b)–(c). Animal experiments with severity degree 1 are interventions and procedures in animals for experimental purposes that cause short-term mild pain or harm, or a slight impairment of the general condition, whereas animal experiments with severity degree 2 (moderate stress) are interventions and procedures in animals for experimental purposes that cause short-term moderate or medium- to long-term mild pain, suffering, or harm, short-term moderate anxiety, or a short- to medium-term severe impairment of the general condition. Id.

For example, the killing of animals for the purpose of removal of tissues and organs is legally considered as an animal experiment with severity degree 0.


An example is the so-called LD50 test for the determination of the toxicity of a substance. See BOLLIGER, supra note 19, at 416. Animals are injected with different doses of the substance in order to detect the amount by which exactly half of the animals die. Depending on the experimental setup, the extremely excruciating agony of the animals may drag for several days. See, e.g., id.

BOLLIGER & RUTTIMANN, supra note 300, at 88.
Finally, the constitutional animal welfare clause is also contradicted by the “Three R Concept” (replacement, reduction, and refinement)\(^{559}\) to which researchers in Switzerland usually refer to as an established guiding principle for a “more ethical” use of laboratory animals.\(^{560}\) The concept is also promoted by the Federal Food Safety and Veterinary Office.\(^{561}\) The Three R Concept should be considered unconstitutional since it springs from the assumption that human interests in using laboratory animals are more important than the interests of animals.\(^{562}\) Again, this contradicts the principle that the constitutional animal welfare clause and fundamental rights, such as academic freedom, are equal.\(^{563}\)

In practice, however, animal experiments are still regarded as the “Golden Standard” (i.e., the automatic choice as an established method) in medical and pharmaceutical research in Switzerland, and researchers are hardly ever denied a license. From 2010 to 2014, nationwide only 45 out of 5,426 applications—and the use of more than two million laboratory animals—were rejected by the cantonal veterinary services.\(^{564}\) In the Canton of Zurich, where most applications are submitted, not a single animal experiment was denied in this period.\(^{565}\) In 2014, almost 13,000 animals (including primates, dogs, and rodents) nationwide were used in animal experiments with a severity degree 3.\(^{566}\) Such licensing practices do not satisfy the dignity protection concept and must therefore be fundamentally rethought.\(^{567}\) Further, the dignity concept also requires the legislature to undertake serious efforts to avoid impairments of laboratory animals, even if experiments with them might be considered justified in legal terms.\(^{568}\)

The AWA expressly requires the national government to promote the development, acceptance, and application of methods that replace

\(^{559}\) The concept dates back to the work of William M. S. Russell and Rex L. Burch, PRINCIPLES OF HUMANE EXPERIMENT TECHNIQUE (1959), and is based on methods which avoid or replace the use of animals in research (replacement); the use of methods that enable researchers to obtain comparable levels of information from fewer animals, or to obtain more information from the same number of animals (reduction); and the use of methods that alleviate or minimize potential pain, suffering, or distress, and enhance animal welfare for the animals used (refinement). See, e.g., Bolliger, supra note 19, at 383 et seq.


\(^{562}\) Errass, supra note 22, at 1620. See generally Rippe, supra note 84, at 7 et seq.

\(^{563}\) See supra p. 7.


\(^{565}\) Id.

\(^{566}\) Number of Animals 1983–2014, supra note 533.


\(^{568}\) Gerritsen & Rüttimann, supra note 204, at 244.
animal experiments. Nonetheless, both the promotion and financing of such alternative methods are highly neglected by the Swiss government.

**ii. Commercial Keeping of Wild Animals**

In Switzerland, every commercial keeping of wild animals requires a license that is granted by the cantonal veterinary services. In examining these applications, the veterinary service has to determine, among other things, whether a requested use of animals is consistent with the protection of the animal’s dignity. This applies, for example, to the keeping of animals in zoos. If it is not possible to pro-

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569 See AWA, AS 2965 (2008), art. 22, para. 2 (Switz.) (requiring the national government, in collaboration with universities and industries, to “promote, in particular, the development, acceptance, and application of methods that replace animal experiments, that reduce the number of used laboratory animals, or that reduce stress for the animals”). See generally Gerritsen & Rüttmann, supra note 204, at 243 et seq. Of note, however, methods that only reduce animals’ stress are, as discussed above, actually unconstitutional. Also, the stance of animal welfare is a national objective. Bundesverfassung [BV] [Constitution] Apr. 18, 1999, SR 101, art. 80 (Switz.). Further, the same duty derives from Article 64 and 118 of the Federal Constitution, see Gerritsen & Rüttmann, supra note 204, at 245, and from the AWA mandate to reduce animal experiments to an absolutely necessary minimum. AWA, AS 2965 (2008), art. 17 (Switz.); see, e.g., Krepper, supra note 36, at 305 et seq.

570 See generally Gerritsen & Rüttmann, supra note 204, at 247 et seq. (providing an illustrative description of the stark inadequacy in financial means with which the Swiss government supports, on the one hand, projects involving animal experiments and, on the other hand, projects in research for alternative methods).

571 See AWO, AS 2985 (2008), art. 90, para. 2a (Switz.) (providing that the following are deemed to be commercial keepings of wild animals: “zoo gardens, circuses, safari parks, wild-life parks, small zoos, dolphinariums, aviaries, public aquariums, public terrariums, permanent animal shows, and similar facilities that can either be visited for money or can be visited free of charge but are operated in conjunction with commercial facilities such as restaurants, shops, or recreational facilities”). Also included are facilities in which wild animals are kept or used commercially for medical treatments, for the production of eggs, meat, or fur or for similar purposes, id. 2b, and facilities in which wild animals are bred for hunting or fishing. Id. 2c.

572 The term wild animal refers under Swiss animal welfare law to all vertebrates, cephalopods, and decapods, which are not domestic animals. AWO, AS 2985 (2008), art. 2, para. 1b (Switz.). As domestic animals, the AWO lists domesticated animals of the equine, bovine, porcine, ovine and caprine species (excluding exotic species); domesticated yaks and water buffalos; lamas and alpacas; domestic rabbits, dogs, and cats; and domestic pigeons and poultry, such as domestic hens, turkeys, guinea fowl, geese, and ducks. AWO, AS 2985 (2008), art. 2, para. 1a (Switz.). Accordingly, wild animals under Swiss law are those animals that have not been domesticated and therefore remain largely unaffected by humans in their behavior and reproduction. Id. They live not only in the outdoors, but are also kept in zoos, animal and wildlife parks, and in private households. Id. Because they are not regarded as domesticated, from a legal point of view many traditional pets, such as guinea pigs and hamsters, are also classified as wild animals, although they are kept in private households. See Bolliger, Goetschel, Richner & Spring, supra note 53, at 12; Bolliger, Richner & Rüttmann, supra note 19, at 56 et seq.; Rüttmann, Richner, Lochinger & Fluckiger, supra note 56, at 14 et seq.

573 AWO, AS 2985 (2008), art. 90, para. 1 (Switz.).
vide an animal in a zoo with an environment in which it can undertake its natural behavior in an unimpeded, species-specific way, the veterinary authority has to examine whether human user interests, such as imparting knowledge about animals or entertaining visitors, clearly prevails over any impairment of animal dignity. Moreover, in considering the necessity of the animal use, the question arises whether the exhibition of animals at a zoo is actually needed in order to provide interested people with information about animals’ behaviors and habitats. Given that many zoo visits primarily serve entertainment purposes, various alternatives (such as books, magazines, Internet articles and films, or television programs) appear to be at least as appropriate for transferring knowledge about animals. Against the background of the animal dignity concept, humans cannot assume to have a claim to a certain animal use. Licensing practices must take this into account by rejecting applications if the balancing test does not clearly result in favor of the applicant. Further, regardless of whether a wild animal is kept as a pet or in a zoo, a license must generally be refused if the husbandry requires interventions in its abilities, such as the trimming of the wings of birds in order to prevent them from flying away.

Other applications that have to be critically examined are those for the keeping of wild animals in circuses. Even though the last Swiss circus which still had elephants in its program stopped such practice at the end of 2015, there still exists highly questionable presentations of lions, camels, zebras, grey rheas, et cetera, in Swiss circus rings. Among experts there is an increasing consensus that species-specific behaviors are commonly denied to wild animals being kept in circuses. This is due in particular to the lack of adaptability of undomesticated wild animals to a life in captivity and the ever-changing venues. Consequently, in recent years, many countries all over the world (such as Austria, Belgium, Bulgaria, Denmark, Greece, the Netherlands, Slovenia, Israel, Costa Rica, Bolivia, Colombia, El Salvador, Mexico, Panama, Peru, and Singapore) have passed general or at

574 Bolliger & Ruttimann, supra note 300, at 81.
575 Id.
576 Id.
577 Id.; Steiger, supra note 91, at 6.
578 AWO, AS 2985 (2008), arts. 90, 94 (Switz.).
least partial bans on keeping wild animals in circuses.\textsuperscript{581} Further, the license-granting veterinary authority must also consider that presentations in which animals are forced to perform unnatural tricks often constitute both evident humiliations and excessive instrumentalizations that serve only the entertainment of an audience and must therefore be qualified as disregarding animal dignity. Given the constitutional dignity protection, it is incomprehensible that Switzerland lags behind the animal law standard of numerous other countries in protecting circus animals. Because housing problems and humiliating performances of wild circus animals both violate animal dignity to a degree that clearly prevail over human interests, animal dignity can only be taken into consideration with a general ban on wild animals in circuses.\textsuperscript{582}

VI. CONCLUSION AND OUTLOOK

With the inclusion of the dignity of living beings concept in the Federal Constitution and, in particular, with its substantiation regarding animals in the AWA, Switzerland entered into a new era of animal law. Recognition and protection for animal dignity goes beyond a purely sentientist position and represents a fundamental shift in legal principles and policies aimed at guarding animals against injuries not necessarily associated with physical or mental aspects, but which otherwise affect an animal’s self-purpose. Together with the change in legal status of animals, which represents another remarkable legislative step, protection for animal dignity delivers an important message: Swiss law acknowledges animals as autonomous beings with an inherent worth to be protected for their own sake, and not merely as a reflection of their owners’ rights.\textsuperscript{583}

Unquestionably, this essential conceptual shift in Swiss animal welfare law cannot just be symbolic, but must lead to crucial changes in the everyday realities of human–animal relationships. However, by now, such changes are regrettably only rudimentary. In Switzerland, many animals are still instrumentalized in a way that is incompatible with respect for their dignity. The Swiss legislature has decided to

\textsuperscript{581} See Verbote der Haltung von Wildtieren in Zirkussen auf städtischen Flächen, PETA DEUTSCHLAND, http://www.peta.de/VerbotWildtiereImZirkus [https://perma.cc/7P6Q-S57A] (accessed Feb. 11, 2016) (providing an overview of countries that have enacted corresponding prohibitions).

\textsuperscript{582} BOLLIGER & RUTTIMANN, supra note 300, at 88.

\textsuperscript{583} This insight reflects the opinion of the Swiss Federal Supreme Court, which stated clearly in 1989: “The basic attitude of man to animal, however, has evolved over time in terms of responsibility for these living beings to so-called ‘ethical animal welfare’ (BBL 1977 I 1084), which goes further than the protection of inanimate things, and recognizes animals as living and sentient beings, as fellow living beings, whose respect and esteem is a moral postulate for the intellectually superior humans.” See BGer, Aug. 2, 1989, 115 BGE IV 254 (Switz.) (finding lawful the behavior of a car driver who caused a rear-end collision due to slowing down abruptly to avoid running over a fox that crossed the road).
grant only a relative value to animal dignity in favor of a dignity conception that allows for the assessment of interests. Thus, although the dignity of living beings (including animal dignity) must always be considered,\textsuperscript{584} it is not absolutely protected. However, even if legal protection for an animal’s dignity does not exclude its instrumentalization—because the normative content of dignity means to be in the world for one’s own sake—at a minimum, an animal’s exclusive instrumentalization is inconsistent with the Federal Constitution. The constitutional requirement to take animal dignity into consideration includes at the very least a programmatic obligation on the part of the government to focus on finding alternatives regarding exclusive instrumentalization of animals whenever possible and to promote and subsidize these alternatives.\textsuperscript{585} Such research for alternatives is completely insufficient at present, for instance, in the area of animal experiments, although Swiss animal welfare law clearly establishes that animal experiments may only be conducted as \textit{ultima ratio}.\textsuperscript{586} Other examples of practices used, despite existent alternatives, include governmental programs for the eradication of epizootic diseases for which there are available alternatives (such as vaccinations) and which therefore are primarily politically and economically motivated,\textsuperscript{587} or national subsidies for factory farming that completely deny the animal’s inherent worth, turning them into a mere means of production.\textsuperscript{588}

Thus, the vouchsafed standard of Swiss legal animal protection typically depends neither on an animal’s need for freedom from pain, suffering, harm, and anxiety, nor on its need for well-being or protection of its dignity, but largely on an animal’s “intended use.”\textsuperscript{589} Consequently, not only animal experimentation, but also other highly debatable practices such as the intensive keeping of farmed animals or the performance of wild animals in circuses are legally regulated

\textsuperscript{584} Bundesverfassung [BV] [Konstitution] Apr. 18, 1999, SR 101, art. 120, para. 2 (Switz.); see supra p. 12; Michel, supra note 109, at 276 et seq. (discussing the distinction between the dignity of humans and the dignity of animals according to their legal status as natural persons and legal objects, respectively).

\textsuperscript{585} Michel, supra note 109, at 108.

\textsuperscript{586} See supra p. 64.

\textsuperscript{587} See Michel, supra note 109, at 108 (referencing the prohibition on the vaccination against aphthous fever, the ’foot-and-mouth’ disease).

\textsuperscript{588} Id.

\textsuperscript{589} See Michel, supra note 82, 110 (providing the illustrative example of the vouchsafed standard of protection accorded to a dog, which highly depended on the fact that the dog is kept and used within the framework of animal experiments or within the framework of pet keeping, although dogs in both circumstances have the exact same needs).
(maybe better than elsewhere) but are still permitted. In other words, Swiss law still legitimizes the use of animals in general, and even the national animal welfare law itself contains numerous provisions that allow severely harming animals for various “intended uses.” Further, an obvious tension remains between the core content of animal dignity and an animal’s legalized complete instrumentalization when human interests have been deemed to take priority. Consequently, many animals in Switzerland are still used as a mere means to someone else’s end.

All this stands in clear contradiction to the spirit of the animal dignity concept. The constitutional mandate is not sufficiently considered if the purpose of the AWA unambiguously commits to protecting animal dignity, while numerous other statutory provisions run diametrically contrary to it. Respect for animal dignity cannot be limited to an attitude, but must entail specific legal requirements or prohibitions. Although Swiss animal law might be considered progressive by international comparison, it continues to lag in its protection of animals in highly problematic and exploitive fields, such as agriculture, breeding, research, and entertainment. To fully integrate and implement the dignity concept, many established social, cultural, and legal practices of animal use must be scrutinized and fundamentally questioned on both a legal and a societal level. If these practices do not pass the balancing of interests test, then they must be consistently forbidden.

Significant deficits exist not only in Swiss legislation, but also in the enforcement of the animal dignity concept by the cantonal criminal and administrative authorities. As discussed, protection for animal dignity is still hardly reflected in judicial decisions. At a minimum, there does exist a few primary and important basic approaches. In 2009, animal dignity played a significant role in two different, yet very similar, groundbreaking decisions by the Federal Supreme Court, which declared the approval of animal experiments on non-human primates in the field of neuroinformatic basic research unjustifiable. For

Note, however, that the Swiss animal welfare law provisions regarding the keeping of farmed animals represent only minimum standards, AWA, AS 2965 (2008), art. 6, para. 2 (Switz.), whose disregard legally constitutes an animal welfare law offense, often even an animal cruelty crime. See generally BOLLIGER, RICHTER & RUTTIMANN, supra note 19, at 161 et seq. (explaining that respecting these provisions does not ensure species-appropriate animal husbandry). Birgit Christensen, Person oder Würde des Tiers?—Rechtsphilosophische und rechtshistorische Anmerkungen zur Begründung von Rechten für Tiere, in WURDE DER KREATUR, supra note 80, at 108.

See Klaus Petrus, Würde, in LEXIKON DER MENSCH-TIER-BEZIEHUNGEN, supra note 148, at 425 (illustrating an example of a Swiss farm cow, which is artificially inseminated and whose calves are taken away from her shortly after their birth; which grows up in an anonymous environment, although it is a gregarious animal; which lives during 275 days a year on a space of 100 x 185 centimeters (about 40 x 73 inches); which is fed with concentrate; and which is treated prophylactically with antibiotics—everything in accordance with current Swiss animal welfare law).

Michel, supra note 82, at 100.
the very first time, the highest Swiss court referred to animal dignity, and a crucial part of its rationale relied on recognition of the dignity of primates. The Federal Supreme Court decided that the interests of the primates outweighed the possible benefits of the proposed research. 593 Those decisions demonstrate the great innovative potential of the animal dignity concept in setting clear boundaries on the instrumentalization of animals. They also represent a possible change in priority of academic freedom over animal welfare concerns. 594

However, the two primate verdicts of 2009 still represent rare exceptions to court decisions regarding animal-dignity-related matters. 595 Even in criminal cases in which offenders obviously violate absolute animal welfare prohibitions, 596 judicial authorities barely recognize and address the forbidden activities as disregarding animal dignity. 597 Further, judgments on the ethical aspects of animal dignity are still almost nonexistent. The criminal authorities seem to refrain from addressing and sanctioning activities that are not necessarily associated with pain, suffering, harm, or anxiety for animals. However, neither from a constitutional standpoint nor from an animal welfare view, is it acceptable that the statutory animal cruelty offense of disregard for animal dignity 598 is largely ignored in practice. As a result, there is a lack of lawsuits concerning even obvious disregards for

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593 Although the competency of the cantonal committee on animal experiments, see supra note 539, was the crucial factor leading to the respective verdict, dignity aspects have elaborately been the subject of discussion in the Federal Supreme Court’s finding. BGer, Oct. 7, 2009, 135 BGE II 384 (Switz.). The Federal Supreme Court stated: “Even if [animal dignity] cannot and should not be equated with human dignity, this indeed requires that natural creatures, at least to a certain degree, be regarded and valued as being of equal stature with humans. . . . The consanguinity existing between the dignity of animals and that of humans can be seen in particular with regard to non-human primates.” BGer, Oct. 7, 2009, 135 BGE II 405 (Switz.). For the hierarchical gradation of laboratory animals in Swiss law, see AWA, AS 2965 (2008), art. 20, para. 2 (Switz.) (“Experiments on evolutionarily superior animals may only be conducted if the purpose of the experiment cannot be achieved on animal species that are lower on the evolutionary scale, and if no suitable alternative methods are available.”). Note, however, although apes have a high level of ‘human’ traits (such as self-awareness, individuality and reasoning powers), this view is of course rather speciesistic and neither consistent with the animal dignity concept, nor with a general pathocentric approach, which is based on the sentence of a living being and not on genetic proximity. Dignity includes the protection of an animal’s inherent worth, regardless of any similarity to man. Michel & Schneider Kayassreh, supra note 25, at 10 et seq.; Michel, supra note 82, at 108. See generally, e.g., BOLLIGER, supra note 19 at 365 et seq. (discussing problematic primate experiments); Ursula G. Sauer, Primatenversuche in der Grundlagenforschung und die Würde des Tieres—eine kritische Erörterung, in WAS HEISST “TIERWÜRDE”? 31 et seq. (AnimalFree Research ed., 2009).

594 Michel, supra note 82, at 109.

595 Compare BGer, Mar. 14, 2013, 6B_635/2012 BGE II 384 (Switz.) (mentioning animal dignity in a decision regarding an animal neglect case in 2013), with RUTTIMANN, supra note 321, 1 et seq. (explaining that the Court inadmissibly constricted the term and meaning of animal dignity).

596 AWO, AS 2985 (2008), art. 16 (Switz.).

597 BOLLIGER, RICHTNER & RUTTIMANN, supra note 19, at 137.

598 AWA, AS 2965 (2008), art. 26, para. 1 (Switz.).
animal dignity, such as excesses in animal breeding or unnatural performances of wild animals in circuses. This is even more troubling as animal dignity protection represents, as described, a central purpose of Swiss animal welfare law, and its disregard, like any other animal cruelty, constitutes an offense that must be prosecuted and punished ex officio by the competent authorities.\textsuperscript{599}

These circumstances clarify the urgent need for better education of Swiss law enforcement agencies regarding animal welfare law in general and the meaning and significance of the dignity concept in particular. Additionally, an increase in awareness of animal dignity protection is essential in Swiss society as a whole, especially since offenders can only be prosecuted if the competent authorities are informed about criminal acts, and this requires willingness to file criminal charges by attentive and educated citizens.\textsuperscript{600} In this context, the media are prompted to treat critically any events and scenes that disregard the dignity of animals.\textsuperscript{601} Moreover, procedural institutes, such as the right to appeal for animal welfare organizations in animal welfare matters in order to participate in animal cruelty proceedings (which Switzerland still lacks),\textsuperscript{602} would valuably strengthen public focus.\textsuperscript{603}

Furthermore, the cantonal veterinary authorities responsible for the administrative enforcement of Swiss animal welfare law are obliged to take animal dignity into account to the best of their ability. Especially when deciding on the granting of licenses required for specific animal uses, these authorities always have to consider the dignity protection concept. However, established uses of animals, such as animal testing or the keeping of wild animals in zoos and circuses, are not fundamentally questioned by the veterinary authorities, even

\textsuperscript{599} See supra p. 61.

\textsuperscript{600} See BOLLIGER, RICHER & RUTTIMANN, supra note 19, at 299 et seq. (explaining the importance of informed citizens reporting criminal acts).

\textsuperscript{601} See generally Marianne Sommer, Ape for Ape's Sake—Die Würde des Tieres in den Medien am Beispiel von National Geographic, in DIE WÜRDE DES TIERES 341 et seq. (Martin Liechti ed., 2002).

\textsuperscript{602} By now, only the Umbrella Association of the Bernese Animal Welfare Organizations has the right in the Canton of Bern to be involved in cantonal criminal animal welfare law proceedings. BOLLIGER, RICHER & RUTTIMANN, supra note 19, at 240 et seq. In contrast, rights to appeal for national organizations in the fields of environmental protection exist on a national level. BUNDESGESETZ ÜBER DEN UMWELTSCHUTZ [FEDERAL ACT ON THE PROTECTION OF ENVIRONMENT] Oct. 7, 1983, SR 814.01, AS 1122 (1984), art. 55 (Switz.). Regarding the protection of nature and cultural heritage, see BUNDESGESETZ ÜBER DEN NATUR- UND HEIMATSCHUTZ [FEDERAL ACT ON THE PROTECTION OF NATURE AND CULTURAL HERITAGE] July 1, 1966, SR 451, AS 1637, art. 12 (Switz.).

\textsuperscript{603} Michel, supra note 82, at 614; see Praetorius & Saladin, supra note 91, at 120 et seq. (discussing the claim for the right to appeal in animal welfare matters); GOETSCHEL, supra note 74, at 159 et seq.; GOETSCHEL & BOLLIGER, supra note 32, at 222 et seq.; STOHNEN, supra note 87, at 112 et seq. See generally Gieri Bolliger & Antoine F. Goetschel, WAHRNEHMUNG TIERLICHER INTERESSEN IM STRAF- UND VERWALTUNGSVERFAHREN 34 et seq. (2011) (explaining the right to appeal process).
though this is exactly what a consistent implementation of the dignity concept demands. Accordingly, veterinary authorities must consider animals’ concerns in each licensing process, and they must reject applications if no clear prevailing usage interests are asserted.

In conclusion, irrespective of contradicting philosophical views, various open questions, skeptical astonishment, and derision from all over the world, the introduction of animal dignity protection in Swiss law is a fact. It is rightly stated that animals deserve dignity—and this is also unequivocally confirmed by the Federal Supreme Court—regardless of whether the animals themselves are aware of their dignity and can perceive a disregard for it. Dignity cannot be explained from functional contexts, but only intrinsically in recognition of the inherent worth of the dignity-holder. The insight that animals, like all forms of life, possess this independent inherent worth puts all living beings in relation to each other. Denial of the inherent worth of an animal and its reduction to an instrumental value ignores not only that animal’s dignity but also threatens its life. However, for humans, recognition of animal dignity is not free. Although it is legally considered only a relative value, it is a moral one that includes concrete obligations and requires a departure from established ways of industrial economic handling of animals. It must lead, expressed in positive terms, to a reconstruction of food production practices without industrial breeding, keeping, and killing of animals, to a renewal of medical 

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604 For an overview of the various arguments of philosophers and ethicists against the Swiss animal dignity concept, see generally Rippe, supra note 82, at 16 et seq. (providing convincing counterarguments in favor of legal animal dignity protection). Regrettably, even some animal law scholars are skeptical regarding the animal dignity concept in general. See generally, e.g., Regina Binder, Würde erster und zweiter Klasse? — Überlegungen zur Forderung nach Anerkennung der Würde aus tierschutzrechtlicher Sicht, 3 TIERETHIK 32 et seq. (2011) (arguing from an overly pessimistic standpoint that the animal dignity concept would only awaken expectations that cannot be fulfilled, resulting in no clear benefit for animal protection, and can be termed “no more than a second class dignity”). For better cooperation between animal ethicist and animal lawyers in general, see Goetschel & Bolliger, supra note 100, at 190 et seq.

605 BGer, Oct. 7, 2009, 135 BGE II 384 (Switz.); BGer, Oct. 7, 2009, 135 BGE II 405 (Switz.).

606 See generally Engi, in Animal Law, supra note 87, at 72 et seq. (illustrating that animals, like humans, are not ‘created’ but ‘become’ (i.e., without creation by someone else)). Animals possess their own reason to exist, which leads to the fact that they should not get in a relation of complete disposibility but should be respected and protected in a fundamental unavailability. Id.

607 Some philosophers emphasize in this context that human dignity demands respect for animal dignity. See, e.g., Jean-Claude Wolf, Tierschutz und Würde des Menschen, in Die Würde des Tieres 61 et seq. (Martin Liechti ed., 2002); Petra Mayr, Die Würde des Tieres ist antastbar—Zur Überlegenheit des pathozentrischen Arguments in der Tierethik, in Würde der Kreatur, supra note 80, at 233 et seq.; or the often cited quote of Albert Schweizer: “Who does not respect the dignity of animals, cannot take it from them, but he loses his own dignity.” Although this view is undoubtedly right, it does not give a rationale of animal dignity, but focuses on human dignity. Brenner, supra note 85, at 64.

608 Rippe, supra note 222, at 90.
and pharmaceutical research that require no animals, and to pet-keeping, sports, and entertainment industries that do not involve animal suffering.\textsuperscript{609}

In juristic terms, the introduction of the dignity concept has been relatively recent, and the possible implications have yet to be fully understood. This takes time and patience, but various positive, incipient stages in Swiss animal law are obvious. Even if the recognition of animal dignity neither signifies that the use of animals by humans is questioned, nor that animals are provided with their own rights, the animal dignity concept unquestionably represents a milestone for animal welfare law. With this fundamental new approach, Switzerland has taken an ambitious and farsighted step forward into a new sphere of legal animal protection. Admittedly, there are still many other—and perhaps more important—animal welfare issues to solve than protecting animals from non-physical stresses such as humiliation or excessive instrumentalization. However, the dignity concept includes a programmatic dimension,\textsuperscript{610} the importance of which should not be underestimated. Protection of animal dignity has strong appeal,\textsuperscript{611} and demands from humans are not only scientifically objective and logical, but also empathetic and require a deep personal commitment when judging an animal’s interests.\textsuperscript{612} One can assume that once the dignity concept has found broad acceptance, both in society and in legal institutions, general awareness of the need to protect animals from any kind of cruelty will have risen enormously. In other words, a progressive animal welfare concept like the Swiss goal of animal dignity protection can indeed prove to be the motor of change in societal perceptions that subsequently paves the way for further developments in animal welfare legislation and the interpretation of other laws, as well as for improvements in jurisdiction.\textsuperscript{613}

Against the background of an increasingly and highly welcomed international collaboration in animal law matters,\textsuperscript{614} the Swiss animal dignity concept can hopefully serve as a model for other countries, re-

\textsuperscript{609} See Brenner, supra note 85, at 65; Engi, in Animal Law, supra note 87, at 81 et seq.

\textsuperscript{610} Michel, supra note 82, at 109.

\textsuperscript{611} Rippe, supra note 82, at 30.

\textsuperscript{612} Krepper, supra note 35, at 303.

\textsuperscript{613} Michel, supra note 82, at 88 (citing Christoph Engel, Die Grammatik des Rechts—Funktionen der rechtlichen Instrumente des Umweltschutzes im Verbund mit ökonomischen und politischen Instrumenten, 3 Gemeinschaftsgüter: Recht, Politik und Ökonomie, Preprints aus der Max Planck-Projektgruppe, Recht der Gemeinschaftsgüter 21 et seq. (2000) (discussing the power of normativity and the motivating effect of legal norms)).

\textsuperscript{614} This international approach and collaboration is reflected not only in the mutual adoption of established animal law concepts between national legislatures all over the world but also in the education of international animal lawyers at renowned institutes, such as at the Center of Animal Studies (CALS) at Lewis & Clark Law School in Portland, Oregon. See Natasha Dolezal, Pamela Frasch & Kathy Hessler, Animal Law—A Global Phenomenon, 1 Global J. Animal L. 1, 1 et seq. (2014).
Regardless of terminology, it is irrelevant whether an animal’s inherent worth is called ‘dignity,’ ‘intrinsic value,’ or otherwise. Of primary importance is that national legislators realize that animals deserve to be protected beyond freedom from infliction of pain, suffering, harm, and anxiety. The Swiss Federal Council rightly considered the legal recognition of animal dignity as a first step towards acknowledging animals’ independent right to exist. However, this first step requires a commitment to take further, more deliberate steps, and this applies to Swiss law and enforcement as well. Even if there are still several complex questions to answer, namely how to conduct a fair balancing test to elaborate the distinction between a justified violation of animal dignity from a punishable disregard, the concept must lead to concrete changes in policy, legislation, and law application. These changes will inevitably open new areas of animal welfare not yet covered by Swiss legislation. However, they require both the legislature and the enforcement authorities to consequently consider and courageously implement the animal dignity concept in practice, especially when examining traditional, everyday areas of animal use. This is the only way to ensure that animals and their dignity are truly granted the respect and protection they deserve and are entitled to by law. As in the classic novel *Utopia* by Thomas More (1478–1535), legal protection of animal dignity in a largely still anthropocentrically aligned society has as a counterpicture two sides: One side is the demonstration of an ideal state towards which one should strive. The other is the critical questioning of reality.

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615 Federal Council, *supra* note 34, at 663.
616 See Engi, in *Animal Law*, *supra* note 87, at 78 *et seq.* (discussing proposals for a stronger emphasis of animal dignity *de lege ferenda*).
617 Camenzind, *supra* note 87, at 197 (citing THOMAS MORE, *UTOPIA* (1516)).