

บทความวิชาการ (Academic Article)

กฎหมาย จริยธรรมและแนวคิดทางศาสนาเกี่ยวกับสัตว์เลี้ยงใน ประเทศอิตาลี

MADE FOR EACH OTHER

Legal, Ethical, and Theoretical Perspectives on Companion
Animals in Italy

ฟาบีโอ แคลโซลารี*

อาจารย์ประจำสำนักวิชานวัตกรรมสังคม มหาวิทยาลัยแม่ฟ้าหลวง

Fabio Calzolari

Lecturer, School of Social Innovation, Mae Fah Luang University

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* Bachelor of Arts in Cultural Anthropology, Master of Arts in Cultural Anthropology and Ethnology, University of Bologna, Italy; Email fabio.cal@mfu.ac.th

บทคัดย่อ

สัตว์เลื้อยมีบทบาทสำคัญในสังคมปัจจุบัน แต่การจัดประเภททางกฎหมายและสิทธิของสัตว์เลื้อยมักขาดความสอดคล้องกัน บทความนี้วิเคราะห์กรอบกฎหมายของประเทศอิตาลีเกี่ยวกับสวัสดิภาพสัตว์ ซึ่งประกอบด้วยแนวทางการดูแลสัตว์เลื้อยและมาตรการลงโทษ เช่น การปรับเงินและจำคุกสำหรับการทารุณสัตว์ การปฏิรูปกฎหมายเมื่อไม่นานมานี้เน้นการเพิ่มการกำกับดูแลของรัฐ การตรวจสอบจากสาธารณะและการควบคุมดูแลสถานสงเคราะห์สัตว์ให้มีประสิทธิภาพมากขึ้น กฎหมายอิตาลีรับรองผลประโยชน์ของสัตว์ผ่านการคุ้มครองในรัฐธรรมนูญ โดยถือว่าสวัสดิภาพของสัตว์มีคุณค่าในตัวเอง ไม่ใช่เพียงแค่เพื่อประโยชน์ของมนุษย์ แม้จะมีความก้าวหน้าด้านกฎหมายเหล่านี้ แต่กฎหมายอิตาลีก็ยังไม่ยอมรับสถานะของสัตว์อย่างเป็นทางการว่าเป็นสิ่งมีชีวิตที่มีความรู้สึกนึกคิด ซึ่งเป็นมาตรฐานที่บางประเทศในยุโรปนำมาใช้แล้ว อย่างไรก็ตาม บทความนี้ยังได้ประเมินอิทธิพลของคำสอนทางศาสนาคริสต์นิกายโรมันคาทอลิกที่มีต่อทัศนคติของประชาชนเกี่ยวกับสวัสดิภาพสัตว์ในอิตาลี นอกจากนี้ยังเสนอแนวทางการปฏิรูปกฎหมาย 2 ข้อ ข้อเสนอแรก คือ ควรมี “ข้อตกลงการดูแลและสวัสดิภาพสัตว์เลื้อย” เพื่อคุ้มครองสัตว์ในกรณีที่เจ้าของแยกทางหรือหย่าร้าง และข้อเสนอที่สอง คือ ควรกำหนดให้มีการประเมินทางจิตวิทยาและให้คำปรึกษาแก่ผู้ที่ถูกตัดสินว่ามีความผิดฐานทารุณสัตว์ เพื่อลดความเสี่ยงในการกระทำผิดซ้ำอีกในอนาคต

คำสำคัญ: สัตว์เลื้อยเพื่อเป็นเพื่อน; อิตาลี; กฎหมายสวัสดิภาพสัตว์; บุคคลตามกฎหมาย; จริยธรรมคาทอลิก; การปฏิรูปนโยบาย

Abstract

Companion animals or pets hold an important place in Western society, yet their normative classification often lacks consistency and clarity. Therefore, this paper assesses Italy's legal framework governing animal welfare. The latter includes statutory provisions on companion animal care and punitive measures such as fines and imprisonment for abuse. It adopts a doctrinal and normative approach to trace inconsistencies in legal classification and enforcement. It underlines that recent reforms have focused on stronger state supervision and public oversight. For instance, a recent constitutional amendment explicitly acknowledged animal interests, deeming their well-being inherently valuable rather than solely instrumental to human needs. Regrettably, despite these improvements, national jurisprudence still does not accept animals as sentient beings, a standard already endorsed by other European nations. The study also evaluates the influence of Catholic teachings on popular attitudes about animal welfare in Italy. Finally, it proposes two legislative reforms: the first is a "Pet Custody and Welfare Covenant" to protect animals in instances of separation or divorce. The goal is to assist courts that currently lack clear guidance on the post-separation status of pets. The second stipulates psychological assessments and counselling for individuals convicted of animal cruelty. This adjustment fills a legislative shortcoming in Italy, where recidivism is under-addressed and institutional rehabilitation mechanisms are weak in this area.

Keywords: Companion Animals; Italy; Animal Welfare Law; Legal Personhood; Catholic Ethics; Policy Reform

1. Introduction

For many, pets or companion animals hold an essential place in their lives. Bardina¹ and Fox² observe that people name them, respond to their needs, welcome their presence, and mourn their passing³⁴. Haraway⁵ argues that these bonds transcend the divide between “us” and “them”, humans and non-humans. Yamasue et al.⁶ trace these connections to early survival strategies, where people observed other species’ behaviour in hunting. Over time, wildlife domestication altered human communities and reshaped

¹ Svetlana Bardina, **Social Functions of a Pet Graveyard: Analysis of Gravestone Records at the Metropolitan Pet Cemetery in Moscow**, *Anthrozoös*, Volume 30 Issue 3 (August 2017), pp. 415-427.

² Rebekah Fox, **Animal Behaviours, Post-human Lives: Everyday Negotiations of the Animal-human Divide in Pet-keeping**, *Social & Cultural Geography*, Volume 7 Issue 4 (November 2006), pp. 525-537.

³ James A. Serpell, **Evidence for an Association Between Pet Behaviour and Owner Attachment Levels**, *Applied Animal Behaviour Science*, Volume 47 Issues 1-2 (April 1996), pp. 49-60,

⁴ James A. Serpell, **Anthropomorphism and Anthropomorphic Selection—beyond the “Cute Response”**, *Society & Animals*, Volume 11 Issue 1 (January 2003), pp. 83-100.

⁵ Donna Haraway, **The Companion Species Manifesto: Dogs, People, and Significant Otherness**, (Chicago: Prickly Paradigm Press, 2003).

⁶ Hidenori Yamasue and others, **Integrative Approaches Utilising Oxytocin to Enhance Prosocial Behaviour: from Animal and Human Social Behaviour to Autistic Social Dysfunction**, *Journal of Neuroscience*, Volume 32 Issue 41 (October 2012), pp.14109-14117a.

animals' social standing within them⁷. In this context, Clement⁸ distinguishes between two approaches: the ethic of care and the ethic of justice. The first centres on pets, promoting attention to their overall well-being, covering physical, emotional, and psychological aspects. The second applies to livestock and wildlife, focusing on preventing harm but offering minimal regard for their quality of life. For example, cattle are typically considered commodities to exploit rather than sentient beings deserving of compassion⁹. Consequently, this paper examines how Italy approaches pets from a juro-religious perspective and whether they should be legally acknowledged as free right-holders rather than property¹⁰. A central theme in this debate is the term “subject of law”, defined by the Italian Civil Code article 11 as comprising natural persons and non-human entities like corporations. On the other hand, companion animals exist in a juridical limbo. They are not *mere things*, but neither are they full *legal persons*. Their welfare is protected *functionally*—as a matter of public morality, environmental concern, or social ethics—but not because the animal possesses enforceable interests¹¹. In this framework, sentience serves as a regulatory trigger—not a

⁷ Johannes S. J. Odendaal and Roy Alec Meintjes, **Neurophysiological Correlates of Affiliative Behaviour Between Humans and Dog**, The Veterinary Journal, Volume 165 Issue 3 (May 2003), pp. 296-301.

⁸ Grace Clement, “**Pets or Meat?**” **Ethics and Domestic Animals**, Journal of Animal Ethics, Volume 1 Issue 1 (April 2011), pp. 46-57.

⁹ Wendy A. Adams, “**Human Subjects and Animal Objects: Animals as 'Other' in Law**,” *Journal of Animal Law and Ethics*, Volume 3 (May 2009), pp. 29-51

¹⁰ Andreas Rahmatian, **Friedrich Carl von Savigny's Beruf and Volksgeistlehre**, The Journal of Legal History, Volume 28 Issue 1 (April 2007), pp. 1-29

¹¹ Enzo Maria Incutti, Ettore Battelli, Giuseppe Spoto and Micaela Lottini (eds), **Nuovi orizzonti sulla tutela degli animali**, Volume 39 (Roma TrE-Press, 2022).

source of subjective rights because the Penal Code relies on human responsibility rather than animal entitlement. Law No. 189/2004 and Law No. 201/2010 exemplify this model: criminalising maltreatment and trafficking without displacing the underlying proprietary structure. This circumstance raises two issues: the emotional bonds pets develop with their caregivers and their intrinsic interest in avoiding harm. It will be argued that these considerations should take precedence and might override proprietary claims, as Rook¹² noted. Therefore, two proposals will be made: a “Pet Custody and Welfare Covenant” for protecting pets during separation and a psychological evaluation mandate for offenders convicted of animal cruelty. This manuscript employs doctrinal and normative legal analysis, complemented by comparative and theological perspectives, to identify unresolved tensions in classification and enforcement.

2. Italian Jurisprudence and Animal Welfare

This section examines how Italian legal instruments and judicial interpretations mediate the friction between anthropocentric ownership doctrines and recent conceptions of animal sentience. Italian regulations provide several definitions of pets or companion animals. The President of the Council of Ministers (DPCM) decree of 28 February 2003 defines them as animals kept or intended to be kept by humans for companionship or affection, excluding any productive or food-related purpose. This includes service animals but excludes wild species (Art. 1, para. 2). Law No. 281/1991, concerning companion animals and the prevention of stray populations,

¹² Deborah Rook, **Who Gets Charlie? The Emergence of Pet Custody Disputes in Family Law: Adapting Theoretical Tools from Child Law**, *International Journal of Law, Policy and The Family*, Volume 28 Issue 2 (June 2014), pp. 177-193

refers to dogs, cats, or any animal kept in the household (Art. 5). Furthermore, law No. 201/2010, which ratifies the European Convention for the Protection of Pet Animals, defines them as animals kept or intended to be kept by humans in their home for enjoyment and companionship (Art. 1). Italy also complies with Regulation (EC) No 1069/2009, which defines companion animals as species typically cared for by humans for non-farming purposes and not intended for consumption (Title I, Chapter I, Section 1, Art. 3, point 8)¹³. This regulation further classifies them under Category 1 materials, including zoo and circus species (Title I, Chapter I, Section 4, Art. 8, letter A, point iii). In parallel, it outlines disposal protocols in Art. 12 to ensure consistency with EU normative.

Public concern for companion animals in Italy is reflected in the judiciary's increasing efforts to promote animal welfare. However, exceptions persist—for instance, medical procedures where animal well-being is subordinate to necessity. In Cass. Pen., sez. III, n. 46291/2003, the court held that maltreatment encompasses not only physical abuse but also psychological and emotional harm. The crime of animal cruelty is codified in Article 544 of the Penal Code, which is prosecutable ex officio. This means

¹³ European Parliament and Council of the European Union, **Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 Laying Down Health Rules as Regards Animal By-products and Derived Products not Intended for Human Consumption and Repealing Regulation (EC) No 1774/2002**, Official Journal of the European Union [Online], 8 February 2025. Source: <https://eur-lex.europa.eu/eli/reg/2009/1069/oj/eng>

that misdeeds allow legal action without a complaint from the injured party¹⁴. Core legislation includes: (1) Law No. 281/1991; (2) the 2003 Agreement; (3) Law No. 189/2004; and (4) Law No. 201/2010. Law No. 189/2004 also criminalises cat and dog fur production and sale. Law No. 201/2010 introduced new Penal Code provisions, establishing fines and imprisonment for illegal pet trafficking. Since the enactment of the Condominium Reform Law (Law No. 220/2012), it has been unlawful for bylaws to impose general bans on pet ownership in apartment buildings. However, the law still permits reasonable restrictions on pet behaviour in shared spaces, including the requirement that animals be leashed while passing through common areas. Some lawyers and scholars have argued that Article 1138, in its final paragraph, applies only to future regulations, leaving pre-existing rules intact. Others have asserted that restrictions were rendered void by the reform, resulting in a supervening nullity of conflicting clauses.¹⁵

Cats' presence in Italian households is historically prevalent¹⁶, attributable to their perceived utility in vermin control and autonomous disposition¹⁷. Italy promotes a no-kill approach concerning feral types.

¹⁴ Diritto Consenso, **Maltrattamento di animali nel codice penale** [Online], 4 January 2025. Source: <https://www.dirittoconsenso.it/2020/07/29/maltrattamento-di-animali-nel-codice-penale/>

¹⁵ Paola Fossati, **Protecting Interests of Animals in Custody Disputes: Italian Caselaw Outpaces Italian and European Union Legislation**, *Society & Animals*, Volume 30 Issue 4 (February 2020), pp. 461-478.

¹⁶ Emanuele Bonini, **Europei ed italiani sono gattari** [Online], 8 February 2025. Source: <https://www.eunews.it/2023/07/31/europei-ed-italiani-sono-gattari/>

¹⁷ Laura Menchetti and others, **Cats and Dogs: Best Friends or Deadly Enemies? What do the Owners of Cats and Dogs Living in the Same Household Think**

Through trap-neuter-return (TNR) programmes launched under Law No. 281/1991, free-roaming felines cannot be disturbed or harassed by individuals within their established colonies. In those areas, the duty to implement sterilisation measures falls to Veterinary Public Services (VPS)¹⁸.

Under Law No. 1069/2009, cremation may occur individually—with ashes stored in biodegradable urns—or collectively for cost efficiency. Burial is permitted in private areas, such as pet cemeteries, subject to regulation. Burial on public land is prohibited. Legislative Decree No. 186/2012, Art. 3, para. 3, establishes penalties ranging from €10,000 to €70,000 for unauthorised interments. Non-biodegradable burial materials, including plastic bags, are banned. Acceptable materials include untreated wood, cardboard, or cotton cloth. At the same time, burial sites must be at least 1.5 metres deep and covered with quicklime. If unavailable, depth must increase by one metre¹⁹. Animal abuse can be reported via local police stations or their online portals. Complaints are more effective when accompanied by supporting evidence, such as photographs or video recordings. Penalties for abuse may include fines or custodial sentences of up to three years, with more severe consequences when the offence involves minors, group participation, or occurs in a public setting. Nevertheless, prosecutions of violators are relatively rare. Resource constraints and excessive caseloads

about Their Relationship with People and Other Pets, PLoS One, Volume 15 Issue 8 (August 2020), pp. 1-21

¹⁸ Eugenia Natoli and others, **Management of Feral Domestic Cats in the Urban Environment of Rome (Italy)**, Preventive veterinary medicine, Volume 77 Issues 3-4 (December 2006), pp. 180-185.

¹⁹ Marco Zincani, Gardi Valentino and Panattoni Glauco, **Manuale di diritto degli animali: Disciplina civile**, (Bologna: Formazione Giuridica, 2024).

often compel prosecutors to prioritise cases with higher prospects of conviction. Where animal welfare ranks low, abuse cases may be disregarded. Political considerations and prevailing utilitarian portrayal in some jurisdictions, particularly rural ones, further guide choices. Furthermore, an absence of specialised training also contributes to inconsistent enforcement across Italy.

In common law systems, animals are subsumed under proprietary regimes, a stance based on Lockean theories of dominion²⁰ and reaffirmed in Blackstonian doctrines of exclusive control²¹. Judicial precedents reinforce ownership-based reasoning, thereby subordinating welfare concerns to property rights. Within this *modus operandi*, animals are treated not as beings with independent moral or legal status but as objects of entitlement—their welfare contingent upon the owner's discretion rather than enforceable claims held by the animal itself. Judicial precedents in these jurisdictions consistently uphold ownership-based rationales, with courts reluctant to interfere in the treatment of animals unless statutory provisions impose clear limits. This reinforces a hierarchical logic where welfare protections remain subordinate to proprietary claims, chiefly in agricultural, biomedical, or commercial contexts. However, civil law jurisdictions, inspired by ancient Roman law, are increasingly revising statutory definitions to accommodate sentientist paradigms. Germany, though the Civil Code (*Bürgerliches Gesetzbuch*) (amended 2002) acknowledges that "animals are not things"

²⁰ Karl Olivecrona, **Locke's Theory of Appropriation**. *The Philosophical Quarterly*, Volume 24 Issue 96 (July 1974), pp. 220-234

²¹ Robert Willman, **Blackstone and the 'Theoretical Perfection' of English Law in the Reign of Charles II**, *The Historical Journal*, Volume 26 Issue 1 (February 2009), pp. 39-70.

(because they are capable of reasons) and are hence protected by specific statutes, though they are still governed by provisions applicable to objects, with necessary modification²². It also implicitly acknowledges animal sentience through its 2002 amendment to § 90a BGB and other statutes—especially the Tierschutzgesetz (Animal Protection Act)²³. Likewise, France considers animals sentient living beings (*êtres vivants doués de sensibilité*), as initially proposed in Amendment No. 59, published on the National Assembly's official website on 11 April 2014²⁴, and subsequently codified in Article 515-14 of the French Civil Code through Law No. 2015-177 of 16 February 2015. However, in the US, animal sentience is not accepted in federal statutory law. For the American courts, welfare should be enforced via human responsibility, not via rights²⁵. Italy reveals a juridical rift between codified welfare protections and the persistence of property-based legal taxonomies. The table below presents selected national legal provisions that regulate the treatment and status of companion animals in the Mediterranean

²² Federal Republic of Germany, **German Civil Code (Bürgerliches Gesetzbuch - BGB)**, Bundesministerium der Justiz [Online] 22 March 2025 Source: https://www.gesetze-im-internet.de/englisch_bgb/

²³ Federal Republic of Germany, **Animal Welfare Act (Tierschutzgesetz)**, Bundesministerium der Justiz [Online] 29 March 2025 Source: <https://www.gesetze-im-internet.de/tierschg/BJNR012770972.html>

²⁴ French Republic, **French Civil Code (Code civil)**, Article 515-14, Légifrance [Online] 29 March 2025 Source: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000030250342

²⁵ United States Department of Agriculture, **National Agricultural Library**, "Animal Welfare Act" [Online] 29 March 2025 Source: <https://www.nal.usda.gov/animal-health-and-welfare/animal-welfare-act>

countries. It showcases the interplay of criminal, civil, and administrative measures.

STATUTORY INSTRUMENTS REGULATING ANIMAL WELFARE IN ITALY²⁶

| Law / Regulation | Description |
|-----------------------------------|---|
| Criminal Law | |
| Article 544-bis of the Penal Code | Criminalises the intentional killing of animals "without necessity," punishable by four months to two years in prison. |
| Article 544-ter of the Penal Code | Establishes penalties for animal mistreatment causing injury or suffering, with imprisonment from three to eighteen months or fines from €5,000 to €30,000. |
| Law No. 189/2004 | Expands criminal penalties for animal cruelty, including mistreatment, abandonment, unauthorised competitions, and illegal pet fur production and sale. |

²⁶ Gazzetta Ufficiale della Repubblica Italiana, *Portale Ufficiale della Gazzetta Ufficiale*, Gazzettaufficiale.it [Online] 22 March 2025
Source: <https://www.gazzettaufficiale.it>

| Law / Regulation | Description |
|---|---|
| Law No. 201/2010 | Ratifies the European Convention for the Protection of Pet Animals, strengthening penalties for illegal pet trafficking. |
| Civil Law | |
| Article 1138 of the Civil Code | Ensures condominium rules cannot restrict pet ownership in private residences. |
| Article 1321 of the Civil Code | Defines the legal structure and obligations of contracts, including potential agreements related to pet custody. |
| Law No. 220/2012 | Prevents condominium regulations from banning pets in private residences and regulates pet access to common areas. |
| Administrative and Environmental Law | |
| DPCM of February 28, 2003 | Defines pets as animals kept for companionship or affection, excluding those intended for production or food-related purposes. |
| Law No. 281/1991 | Focuses on the protection of companion animals and the prevention of stray animals. Prohibits killing stray dogs and cats unless they |

| Law / Regulation | Description |
|-----------------------------|---|
| | are incurably ill or proven dangerous. Mandates registration and sterilisation programs. |
| Legislative Decree 186/2012 | Establishes penalties for the improper disposal or burial of animals, primarily under waste management regulations. |

3. The Position of the Roman Catholic Church

Christian theology presents a dynamic and often inconsistent position on animals, between symbolic reverence and doctrinal exclusion. This section details this ambivalence via hagiographical traditions, canon law, and doctrinal teachings. Marcheschi and Mazza²⁷, Gilhus²⁸, and Eduati²⁹ assert that in Catholic Christian theology, animals signify divine intent and purpose. This belief aligns with the covenant in Genesis 9:9-10, where God bestows His promise to Noah and all living creatures. The motif surfaces again in Isaiah 11:6-9, where the prophet foresees a world where enemies can leave behind hatred and live together in harmony. Ecclesiastes 3:19 echoes a similar theme, contending that all beings share the same peaceful fate—undermining

²⁷ Graziano Marcheschi and Biagio Mazza, **The Catholic Bible**, (Oxford: Oxford University Press, 2022).

²⁸ Ingvild Sælid Gilhus, **Animals, Gods and Humans: Changing Attitudes to Animals in Greek, Roman and Early Christian Thought**, (New York: Routledge, 2006).

²⁹ Laura Eduati, **Gli animali correggono la teologia**. *L'Osservatore Romano* [Online], 8 February 2025. Source: <https://www.osservatoreromano.va/it/news/2022-03/dcm-004/gli-animali-correggono-la-teologia.html>

human-centred perspectives. Clough³⁰ argues that animals have always factored into God's redemptive plan. However, the Vatican has maintained that they do not have immortal souls. This view is informed by Aristotelian classifications that define them as a-logoi—beings without rational and, thus, moral capacity³¹. Pope Francis, the leader of the Catholic Church and sovereign of the Vatican City State, rejects this stance in *Laudato Si'*, proclaiming that each earthling bears inherent value as an embodiment of divine wisdom and love³². Paolo De Benedetti even suggests that one might perceive Christ in the gaze of a dying dog³³. Such an argument converges with that of many Catholic saints³⁴. Saint Francis of Assisi and Saint Anthony of Padua have been honoured for centuries for their solidarity with animals, regarding them as part of God's family (Romans 8:29). Saint Francis's mythical encounter with the wolf of Gubbio coupled with his *Canticle of the Creatures* exemplifies a vision of love between humans, non-humans and the divine

³⁰ David L. Clough, **On Animals: Volume II: Theological Ethics**, (New York: Bloomsbury Publishing, 2018).

³¹ Callum David Scott and Yolandi Marié Coetser, *Rewriting Aquinas' Animal Ethics: The Primacy of Reason in the Determination of Moral Status*, South African Journal of Philosophy, Volume 34 Issue 3 (September 2015), pp. 289–303.

³² Calvin B. DeWitt, III, **Earth Stewardship and Laudato Si**, The Quarterly Review of Biology, Volume 91 Issue 3 (September 2016), pp. 271–284.

³³ Alma Massaro, **Paolo De Benedetti: For an Animal Theology**, Animality in Contemporary Italian Philosophy, (Cham: Palgrave Macmillan (Springer Nature), 2020), pp. 203–220.

³⁴ Edward A. Armstrong, *Saint Francis: Nature Mystic. The Derivation and Significance of the Nature Stories in the Franciscan Legend*, No. 1 (Berkeley: University of California Press, 1973).

Word³⁵. Saint Anthony of Padua is said to have referred to fishes in his sermons, and devotional accounts recount that a mule bowed in reverence as he passed³⁶. Hagiographic sources also recall that Clare of Assisi confided in a cat, while Colette of Corbie sheltered a lamb who- we are told- joined her in prayer³⁷.

The Church's attitude vis-à-vis animals has often changed over time, vacillating between reverence and disregard, affected by scientific advancements and societal development. In early Christianity, animal sacrifices were undertaken as a sign of covenant with God. These practices waned over centuries, chiefly during the Enlightenment when thinkers like René Descartes and Denis Diderot characterised animals as mechanical entities devoid of spiritual relevance³⁸. Throughout history, Canon Law has alluded to them indirectly through regulations on sacred spaces and penitential acts³⁹. Canons 1210 and 1220 stipulate restrictions on the presence of animals in places of worship unless they serve a specific function, such as aiding disabled individuals. Canons 1250–1253 govern fasting and abstinence practices, accommodating prohibitions on consuming animal flesh on Fridays and during Lent. Historically, these guidelines encompassed other

³⁵ Gilbert Keith Chesterton, *Orthodoxy*, (Chicago: Moody Publishers, 2013).

³⁶ Paul Severn, **The Christology of St Anthony of Padua: Content and Method**, *International Journal for the Study of the Christian Church*, Volume 19 Issue 1 (March 2019), pp. 3-16.

³⁷ Dominic Alexander, *Saints and Animals in the Middle Ages* (Woodbridge: Boydell & Brewer, 2008).

³⁸ Peter Harrison, **Descartes on Animals**, *The Philosophical Quarterly*, Volume 42 Issue 167 (April 1992), pp. 219-227.

³⁹ Carlo Fantappiè, **Storia del diritto Canonico e Delle Istituzioni della Chiesa**, (Bologna: Il Mulino, Volume 1, 2011), pp. 1-354.

animal products like milk, eggs, and fats, though modern observances have moderated these restrictions.⁴⁰ Canon 1176 reserves ecclesiastical funerals for baptised Christians since animals are not recognised as members of the Church (ecclesia)⁴¹. The Catechism of the Catholic Church, in articles 2416 to 2418, affirms that all creatures glorify God simply by existing. Article 2417 authorises animals' exploitation for sustenance, labour, or recreation, provided such use adheres to ethical standards and advances human welfare. Article 2418 forbids causing unnecessary suffering or death, deeming such acts contrary to divine purpose. The hope that non-humans might partake in eternal life resonates with many Italian believers. The Book of Job proclaims, "In God's hand is the soul of every living thing" (Job 12:7-10). Isaiah's prophecy depicts a future of peace under divine grace (Is 11:6-7). In the Book of Revelation, St. John describes Christ arriving on a white horse (Revelation 19:11-14), which some interpret as implying the inclusion of animals in the afterlife. In *Laudato Si'* (On Care for Our Common Home), Pope Francis describes eternal life as a collective state where everyone is reunited under God (No. 243).

Although Italy's Constitution affirms laicity, the Catholic Church has a privileged position within its legal and political apparatuses⁴². Guerzoni defines a secular state as one built on institutional neutrality and

⁴⁰ Keith Beaumont, **John Henry Newman and St Philip Neri: Two Spiritual Reformers of the Church**, International Journal for the Study of the Christian Church, Volume 18 Issues 2-3 (January 2019), pp. 200-218.

⁴¹ Libero Gerosa, **Canon Law**, (Münster: LIT Verlag, 2002).

⁴² Giovanni Landi, "La laicità dello Stato italiano: un percorso storico." *Diritto.it*, 17 May 2018. <https://www.diritto.it/la-laicita-dello-italiano-un-percorso-storico/>

independence from religious authority⁴³. However, Italy's legal system is ambiguous. Catholicism's influence is not merely historical—it is embedded and culturally pervasive. The 1929 Patti Lateranensi, constitutionalised through Article 7 of the 1948 Constitution, laid the basis for bilateral Church-State relations. In comparison, the 1984 Accordi di Villa Madama removed Catholicism's formal status as the state religion⁴⁴. The new Concordat preserved privileges such as tax benefits and Catholic religious instruction in public schools. It also permits religion to undergird public ethics debates⁴⁵. The blueprint sustains what scholars describe as an informal but operational confessionalism. The Constitutional Court's 1989 ruling affirmed laicity as a supreme principle derived from Articles 2, 3, 7, 8, 19, and 20. Nonetheless, Italian ecclesiastical law still relies on bilateral agreements, favouring Catholicism and limiting equal treatment of other confessions. This is evident in legislation on reproductive rights (e.g., Law 40/2004), euthanasia, and family models, where Church doctrine impacts both policy and debate⁴⁶.

⁴³ Mario Tedeschi (ed.), *Il principio di laicità nello stato democratico* (Torino: Rubbettino, 1996).

⁴⁴ Salvatore Prisco, *Laicità, un percorso di riflessione* (Torino: Giappichelli, 2009).

⁴⁵ Nicola Fiorita and Donato Loprieno (eds.), *La libertà di manifestazione del pensiero e la libertà religiosa nelle società multiculturali* (Firenze: Firenze University Press, 2009).

⁴⁶ Stefano Sicardi, *Il principio di laicità nella giurisprudenza della Corte costituzionale (e rispetto alle posizioni dei giudici comuni)*, *Diritto pubblico*, Volume 13 Issue 2 (May-August 2007), pp. 501–570.

4. *Hominum Causa Omne Ius Constitutum Sit* or All law is established for the sake of humans.

The possibility that animals may acquire the status of legal persons continues to provoke jurisprudential unease. This section outlines the conceptual stumbling blocks behind their current classification and considers whether a shift from object status toward partial subjectivity is plausible within existing confines. Kurki⁴⁷, Bilchitz,⁴⁸ Kurki and Pietrzykowski⁴⁹ argue that Western legal systems gradually empower pets and other animals. However, a barrier persists: animals lack legal personhood. Without this status, they cannot bring their cases to court, which limits national and international bodies to intervene in their welfare only when people report abuse or injury. Strategic litigation has attempted to change this by presenting cases where animals appear as claimants⁵⁰. Despite compelling arguments, most courts have rejected these petitions, reasoning that legal personhood requires a reciprocal capacity to fulfil societal obligations—an attribute generally considered lacking in animals⁵¹. In essence: “*Hominum Causa Omne Ius Constitutum Sit*”—All law is established for the sake of humans. To

⁴⁷ Visa A. J. Kurki, **Legal Personhood and Animal Rights**, *Journal of Animal Ethics*, Volume 11 Issue 1 (April 2021), pp. 47-62.

⁴⁸ David Bilchitz, **Moving Beyond Arbitrariness: The Legal Personhood and Dignity of Non-human Animal**, *South African Journal on Human Rights*, Volume 25 Issue 1 (April 2017), pp. 38-72.

⁴⁹ Visa A. J. Kurki and Tomasz Pietrzykowski, **Legal Personhood: Animals, Artificial Intelligence and the Unborn**, (New York: Springer, 2017).

⁵⁰ Federico Dalpane and Maria Baideldinova (eds), ***Animal Law Worldwide: Key Issues and Main Trends Across 27 Jurisdictions*** (Springer, 2024).

⁵¹ Stefanie S. Pearlman and Melissa M. Serfass, ***Animal Welfare Laws: A Legal Research Guide***, *Legal Research Guides*, vol. 98 (William S. Hein & Co., Inc., 2023).

understand this impasse, it is necessary to revisit the foundations of Western law. Juridical humanism underpins a dualistic concept in which entities are categorised strictly as either persons who hold rights and duties or things—objects of legal relations without rights. This distinction, situated in Roman law, classifies non-humans as “res” (things) intended for human use⁵². This division is reinforced not only because individuals create laws but also because each one is regarded as having inherent moral worth, seen as an end in itself.

In Italy, Articles 923 to 926 of the Civil Code define animals as objects of original acquisition through occupancy or discovery. Moreover, Article 812 interprets animals as moveable property. Law No. 221 of 28 December 2015 established that pets and animals used for therapeutic purposes are protected from seizure, as they hold moral and emotional value. Their exemption is not due to their status as subjects of rights; instead, the legal rationale reflects their classification as property. In cases of veterinary malpractice, courts often limit recovery to an animal’s market value rather than acknowledging the emotional significance the animal might hold for its owner. If a pet dies due to negligence, the owner may only receive compensation for its economic worth, not emotional distress. Nevertheless, Italian legislation is not entirely adversarial. It forbids xenotransplantation (Article 5, Paragraph 2), testing on great apes (Article 7, Paragraph 3), and animal experimentation as a teaching method in primary and secondary schools, universities, and vocational training. Furthermore, experiments on animals that have been intentionally silenced are outlawed (Article 14).

⁵² Raymond Wacks, *Animal Lives Matter: The Continuing Quest for Justice* (Abingdon, Oxon; New York: Routledge, 2024).

There has never been a definitive definition of what constitutes a "person"; instead, its meaning has changed according to varied judicial contexts, both within and beyond Europe. This flexibility is notably illustrated in the Canadian case of *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2⁵³, which concerned the illegal possession of child pornography and raised questions about the interpretive boundaries of the notion of "person" within the Canadian Criminal Code. The accused faced charges under s. 163.1(4) of the Criminal Code for child pornography possession, and s. 163.1(3) for possession intended for distribution or sale. Under s. 163.1(1), "child pornography" encompasses visual depictions of persons under 18 engaged in explicit sexual activity or exposing sexual organs or anal areas for a sexual purpose. It also includes materials that advocate or counsel unlawful sexual acts involving minors. Before trial, the accused challenged the constitutionality of s. 163.1(4), citing a violation of the right to freedom of expression under s. 2(b) of the Canadian Charter. The Crown admitted infringement but argued justification under s. 1 of the Charter. For the court, for material to qualify as illicit, it must depict or promote sexual activity involving a person. The court considered whether the term "person" should apply only to actual individuals or fictional representations. The judges concluded that the definition encompassed both real and imagined figures, as modern technology has made it increasingly difficult, if not impossible, to distinguish between them. Just as the Canadian Supreme Court accepted fictional depictions within the "person" category, animals might similarly benefit from a malleable definition. The discussion

⁵³ *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2, Supreme Court of Canada [Online] 10 March 2025 Source: <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1837/index.do> .

will now turn to legal personhood as a theoretical or jurisprudential concept. To clarify this point, we will consider the characteristics of corporations. The latter entities comprise individuals united by a shared objective or aggregates of assets dedicated to a common purpose (the latter applies primarily to foundations). They retain juridical capacity as legal subjects, enabling them to hold rights, obligations, and legal relations. However, such organisations cannot hold liberties and duties that inherently require human attributes, such as familial rights or the right to physical integrity. Nonetheless, they may possess other rights related to their name, commercial image, or legal capacity to act. Corporations engage in legal transactions through designated organs—individuals empowered by their roles to make assessments, decisions, and conduct legal acts on behalf of the organisation. These organs may function individually or collectively, acting internally or externally with third parties. These organisations may operate for profit—with financial benefits directed toward their members—or as non-profit entities with idealistic, political, religious, or recreational goals. Profit-oriented entities are called companies, while non-profit entities include associations, foundations, and committees. The concept of legal personhood for these entities raises the question of whether similar flexibility could extend to animals. Nevertheless, strong legal and institutional resistance highlights the conflict between traditional legal schemata and the push for reforms in animal rights law.

5. From Liminal to Mainstream: Changing Opinion Regarding Animals in Italian Society

In recent years, several European nations have redefined the legal status of animals, removing them from the category of mere objects and

affirming their sentience and capacity to suffer. Austria and Germany pioneered this development, implementing “dereification” provisions in their civil codes⁵⁴. Switzerland further enshrines these principles in Article 641a of its Civil Code, imposing some of the continent’s most stringent welfare regulations⁵⁵. These laws mandate not only adequate space, sustenance, and healthcare but also mental and physical enrichment, emphasising the importance of animal well-being. As mentioned earlier, France’s 2015 amendment to the Civil Code, which reclassified animals as sentient beings with sensitivity, also demonstrates a European commitment to characterising animal sentience as a societal and legal priority⁵⁶. In contrast, Italy’s course of action for animal welfare continues to underlie anti-cruelty statutes aimed at penalising abuse and neglect. Although these laws ostensibly protect animals, they frequently prioritise human interests over genuine welfare considerations. The interpretation of “unnecessary suffering” typically excludes cases involving economic benefit, thereby allowing practices such as some forms of factory farming and animal experimentation to continue despite the harm inflicted. Italy has yet to amend its Civil Code to fully separate animals from the property category. A promising legal advancement might be the adoption of a non-personal subject of law classification, as

⁵⁴ **Federal Republic of Germany, German Civil Code (Bürgerliches Gesetzbuch - BGB)**, Bundesministerium der Justiz [Online] 22 March 2025 Source: https://www.gesetze-im-internet.de/englisch_bgb/

⁵⁵ **Swiss Confederation, Swiss Civil Code (Zivilgesetzbuch – ZGB)**, Fedlex [Online] 22 March 2025 Source: <https://www.fedlex.admin.ch/en/search?text=Article%20641a¤tPage=1&field=relevance&order=desc&itemsPerPage=20>

⁵⁶ **French Republic, French Civil Code (Code civil)**, Légifrance [Online] 22 March 2025 Source: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/

championed by Pietrzykowski⁵⁷. He contends that the law need not treat all entities it recognises as legal subjects as persons, whether natural or juridical. Instead, the law can assign a form of legal subjectivity to certain non-personal entities—such as animals—based on functional or normative grounds, without invoking metaphysical or anthropocentric assumptions. This enables the legal system to acknowledge the normative relevance of beings whose moral or sentient status demands protection or recognition without conflating them with human or corporate legal persons. Pietrzykowski treats legal subjectivity as a construct of legal decision-making, not as an ontological category, thereby allowing for varying degrees and types of legal recognition. Thus, his position offers a third category beyond the classical binary of person and object, which is already latent in legal practice, especially in jurisdictions that afford animals or AI systems a quasi-subjective legal position.

Pietrzykowski's schemata would confer legal standing based on animals' capacity to experience suffering and pleasure without granting full personhood. It would accord specific rights—primarily the right to be considered in decisions affecting their welfare—compelling courts and legislators to incorporate animal interests in cases involving harm, exploitation, or neglect. This strategy could enable animals to be regarded as victims in cruelty cases without imposing upon them the obligations typically associated with full legal personhood. This blueprint can ameliorate societal perspectives more effectively than a sweeping mandate for universal rights, fostering a nuanced reassessment of the human-animal continuum. Furthermore, as the author suggests, this transition could lay the groundwork for future discourse on granting protections to other sentient beings. The

⁵⁷ Tomasz Pietrzykowski, **Personhood Beyond Humanism: Animals, Chimeras, Autonomous Agents and the Law**, (New York: Springer, 2018).

author of this paper is optimistic, noting that ideas once radical—such as granting rights to corporations—have since become integral to contemporary jurisprudence. Kurki⁵⁸ recommends a more nuanced concept of legal personhood that he refers to as “cluster property”. He admits that entities may hold varying levels or “clusters”, enabling a spectrum of acknowledgements rather than a strict dichotomy. These include what he identifies as “passive incidents” and “active incidents” of legal personhood. The first are rights and protections that do not require the active agency or autonomy of the entity. Passive incidents might encompass the right to bodily integrity, protection from harm, or the right to own property in a fiduciary or trustee arrangement. Under his model, animals could hold passive incidents of personhood, affording them protections as legal rights without requiring them to fulfil duties or engage in complex decision-making. Trustees could be appointed to represent animals in legal matters, similar to how minors or those with cognitive impairments are described in the current legal system. Pietrzykowski’s non-personal subject of law creates a separate legal category for animals with welfare-based rights. At the same time, Kurki’s⁵⁹ doctrine outlines a legal arena where animals could hold aspects of personhood without fulfilling its requirements.

Pets and Divorce or Separation: A Normative Proposal

Based on contractual and fiduciary principles of Italian commercial law, the author argues for a "Pet Custody and Welfare Covenant" absent specific legislation to control the custody prerogatives over companion animals during marriage dissolution. The cardinal goal is to enshrine pet welfare by reinterpreting their legal status through an ad hoc contractual structure that

⁵⁸ Ibid.

⁵⁹ Ibid.

emphasises their sentient needs, therefore transcending crude proprietary boundaries.

Legally, dogs would be reinterpreted as a *sui generis* category of "special property," fulfilling a fiduciary obligation stressing their well-being above ownership rights alone. Resonant with co-ownership models in partnership law, this covenant firmly rests on Article 1321 of the Italian Civil Code, which outlines the architecture of contracts, including specific custodial and financial obligations. Such a structure would assign unique rights and responsibilities to every participant, placing the pet's well-being as a top priority comparable to the custodial responsibilities connected with common assets in business partnerships. Echoing the standard of diligence ingrained in Article 1176, which mandates conscientiousness in carrying out contractual obligations, the Pet Custody and Welfare Covenant would commit to the pet's physiological, psychological, and social needs. The covenant creates a dual custodial model with primary and secondary rights, under which a carefully set routine protects stability and reduces disturbance in the pet's everyday environment, therefore preempting dispute. Legislative Decree No. 28/2010 states that in a conflict over care protocols, health choices, or relocation, the parties must participate in mandatory mediation as the best course of action in civil conflicts.

6. Financial Responsibilities

The plan assigns financial responsibilities and specifies a cost-sharing system evocative of Article 1298, which controls the distribution of liabilities among joint owners. An escrow account could be a financial protection, saving money for veterinary and exigency costs. This can safeguard pet care independent of any financial default by either side. Moreover, the financial

schema considers possible tax allowances similar to deductions for family expenses as per Article 15 of the Italian Tax Code (TUIR), encouraging pet care and guaranteeing financial equality.

Well-being Clause

Acknowledging the pet's affective sensitivity to separation, the plan includes a Well-being Clause so that every party can keep a stable and caring environment. This clause speaks to Article 1375 of the Civil Code, which requires participants to maintain integrity and fairness in their contractual performance. Compliance would be subject to frequent veterinary assessments, with data available to both sides possibly under the control of an impartial welfare auditor.

7. Judicial Intervention

Under Article 337-quater, which gives the pet's best interests top priority in cases of legal separation—where consensual agreement proves elusive—judicial involvement may be justified.

This is like custody rulings for adolescents. As part of the separation decree, judges could compel the adoption of a Pet Custody and Welfare Covenant, rendering decisions based on conditions most favourable to the overall welfare of the pet.

8. Killing an Animal and Mandatory Psychological Evaluation: A Normative Proposal

Under Italian law, the intentional killing of an animal is punishable by imprisonment for four months to two years if committed with cruelty or without necessity, as specified in Article 544-bis of the Penal Code. For an act to constitute an offence, intent (*dolo*) must be present. The applicable legislation requires that mental intent be expressed either in the form of

deliberate cruelty—causing undue suffering—or in the absence of any legitimate reason. In this scenario, “necessity” is strictly limited to unavoidable situations, such as preventing immediate harm. Further, Article 544-ter manages instances where mistreatment leads to an animal’s death. It imposes penalties of three to 18 months in prison or fines ranging from €5,000 to €30,000, which increase by half if the abuse results in death. When an animal is killed by another, the owner typically incurs no criminal liability unless there is evidence of intentional harm. In traffic accidents involving animals, there is no criminal liability unless there is an intention to harm. However, the guilty party must aid the injured animal. Failure to do so results in administrative fines ranging from €421 to €1,691. Euthanasia is also tightly regulated, permitted only when the subject is incurably ill or poses a significant danger, and must be conducted in line with strict protocols.

9. Further Penalties

Other forms of mistreatment attract additional penalties. Organising events that exploit animals in distressing spectacles, such as those that induce suffering, is punishable by imprisonment for four months to two years, along with fines between €3,000 and €15,000, with elevated penalties where illegal betting or an animal’s death is involved. Article 544-quinquies, which forbids organised fighting, prescribes sentences of one to three years of imprisonment and fines of €50,000 to €160,000 for those who promote or coordinate such activities.

10. Amendments

The author proposes an amendment to Article 544-bis, mandating psychological evaluations for individuals found guilty of killing animals for personal enjoyment or entertainment.

This addition would build on Italy's protection laws by requiring such offenders to undergo psychological testing conducted by licensed mental health professionals. The goal is to evaluate empathy, impulse control, and any underlying psychological or behavioural issues, with an emphasis on identifying potential risks for recidivism or escalation. The judge could mandate counselling, therapy, or educational programmes on animal welfare when deemed necessary. Moreover, assessments could be linked to probation or conditional release terms, with regular follow-ups to ensure compliance and monitor progress. In cases involving repeat violations, the law would empower courts to implement stricter oversight and prolonged therapeutic intervention under Article 544-bis, prioritising rehabilitation to reduce future risk.

11. Animal Property Rights

Hadley⁶⁰ goes beyond the diatribe of whether non-humans should be accounted for as property and sets forth a proposal to offer animals property rights in the form of entitlements to habitat. At the heart of the model is the idea that landholders must speak with an appointed animal property rights guardian when they intend to alter habitats. The latter would act similarly to

⁶⁰ John Hadley, *Animal Property Rights: A Theory of Habitat Rights for Wild Animals*, (Lanham: Lexington Books, 2015)

representatives of Indigenous groups under the Native Title Act 1993⁶¹ in Australia, affording animals a form of negotiated representation. In this context, he proposes indirect justifications, implying these added entitlements could be tools for conservation—granted selectively to protect ecosystems or endangered species. An ethical division in the international literature concerns whether these liberties should form part of a broader animal rights framework. He refuses such a merger, perhaps to make it more palatable to policymakers and conservationists who might otherwise object, fearing that the law could threaten economic and social sustainability. His context-specific logic is valid, and the author believes that it can concur to ameliorate Italian legislation. Italy could mimic this incremental strategy to ease legal and public acceptance of stronger protections, preparing the ground for transforming animals into "special property." The Italian judiciary, already demonstrating sensitivity, could exploit Hadley's blueprint in legal disputes (e.g., pet custody and wildlife protection cases, as elucidated by the author). On top of that, Hadley's conceptual architecture complements and operationalises the theories of Kurki and Pietrzykowski on legal personhood and non-personal legal subjectivity.

⁶¹ **Commonwealth of Australia**, Native Title Act 1993 (Cth), Australasian Legal Information Institute [Online] 29 March 2025 Source: https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/nta1993147/

12. Conclusion

Though still classified as property under Italian law, pets are increasingly recognised as sentient beings with distinct welfare needs, producing normative tension within the legal system. This article has tackled three core questions. First, regarding juridical classification, companion animals remain suspended between object and person, lacking full legal subjectivity but enjoying limited protections under penal, civil, and administrative statutes. Italian law, as shown through Articles 544-bis and 544-ter of the Penal Code, acknowledges suffering yet stops short of granting enforceable rights to animals. Nevertheless, we must highlight that the continued treatment of animals as *res* (things) under Articles 812 and 923–926 of the Civil Code prevents the development of a coherent legal status consistent with their acknowledged sentience. Second, regarding the Catholic doctrine, the article shows how ecclesiastical teachings move between symbolic reverence and doctrinal exclusion. Despite the Catechism’s ethical prohibitions against unnecessary suffering (Arts. 2416–2418), Catholic theology does not approach animals as moral subjects with souls or salvific destinies. Nevertheless, papal encyclicals such as *Laudato Si’* and the enduring cultural reverence for saints like Francis of Assisi and Anthony of Padua have nourished a moral imaginary where animal life is worthy of respect. Third, the article presents readers with two normative interventions to redress shortcomings. The proposed Pet Custody and Welfare Covenant responds to a 2016 decision by the Tribunale di Sciacca, which confirmed that pet custody issues must be treated distinctly from property division, even absent codified standards. Building on this precedent, the new guidelines offer better pet rights and protections. The second proposal—mandating psychological evaluation and therapeutic oversight for individuals convicted of cruelty—expands on ideas articulated

by Deborah Rook, who argues that emotional bonds between humans and pets should factor into legal determinations. This reform would strengthen rehabilitation by embedding animal welfare concerns within sentencing, probation, and behavioural interventions. The article has demonstrated that Italian law is at a doctrinal crossroads: it can either continue to subordinate animal welfare to property rights or adopt functional legal models, like those of Pietrzykowski and Kurki, which enable incremental recognition without altering personhood's core definition. This path does not demand constitutional rupture but conceptual flexibility.

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