

Animal Law in France: Positive law, prospective law and learning the law of the living¹

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Abstract

In the Anthropocene era, humans have become the main force of change (not to say constraint) on the Earth's evolution. At the very least, our relationship with living things needs to be rethought, and the law could be the best vehicle for such reflections. For our part, we believe that legal anthropocentrism is currently being undermined, and that we are at the beginning of a movement that will grow and develop in the future, particularly in view of the current advances in zoocentrism and biocentrism, with rights granted to animals and/or (elements of) Nature. Our contribution will focus more specifically on animal law in France, where we'll be looking at positive law texts, some of which we'll include in the work on legal personality, a French university research program and a major issue for the protection of animals and all natural entities.

Keywords

Animal law, Law of the living, Legal personality, Non-human natural person, *Corpus iuris vitalis* (body of the law of the living)

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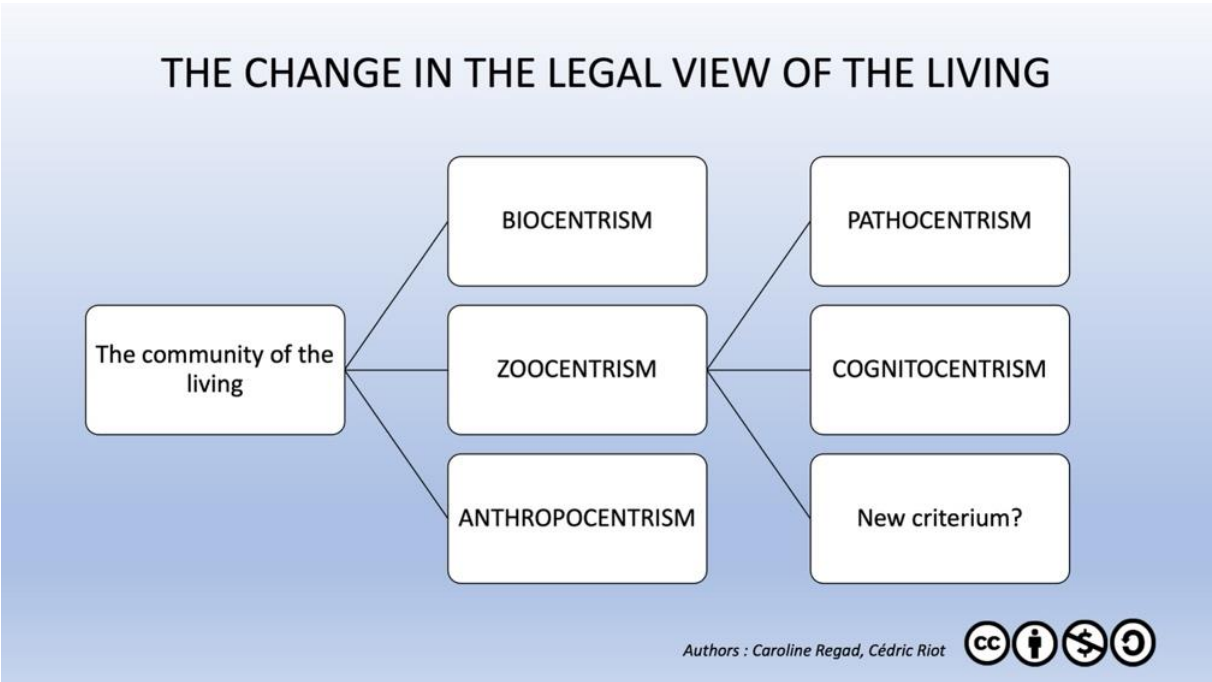
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I. Introduction

In the Anthropocene era, humans have become the main force of change (not to say constraint) on the Earth’s evolution. At the very least, our relationship with living things needs to be rethought, and the law could be the best vehicle for such reflections.



Thus, the law could consider man alone, in a form of anthropocentrism that now seems to be showing its limits: legal anthropocentrism. The law could also consider animals (zoocentrism), in which case the question arises as to which criterion should be taken into account: sensitivity (pathocentrism), intelligence (cognitocentrism), or other criteria such as consciousness or proximity to man? Biocentrism could also be a path to follow. Strictly speaking, biocentrism refers to the rights of Nature in its

dimension, while in a broader sense, it refers to all living things (animal and plant) and therefore to the law of the living.

For our part, we believe that legal anthropocentrism is currently being undermined, and that we are at the beginning of a movement that will grow and develop in the future, particularly in view of the current advances in zoocentrism and biocentrism, with rights granted to animals and/or (elements of) nature.²

Our contribution will focus more specifically on animal law in France, where we'll be looking at positive law texts, some of which we'll include in our work on legal personality, a major issue for the protection of animals and all natural entities.

II. A few terminological clarifications

In French, we find several expressions to designate animal law: “droit animal”, “droit animalier”, “droit de l’animal”, “droit des animaux”... However, these expressions are not all equivalent and have semantic consequences. Animal law, derived from the *ius animalium*, is the subject of seemingly random translations into French: droit animal, droit animalier, droit de l’animal, droit des animaux. Les droits des animaux, in the plural, which derives from animal rights and is associated with militancy, should be discarded from the outset. For the rest, a few observations can be made. Firstly, it has been pointed out that “droit animal” could pose a few problems from a grammatical point of view: the expression “seems, in fact, to refer either to a character of the law that would be animal, as it could be cruel, lymphatic, soft or vague, or to the law that certain animal societies sometimes give the impression of forging”.³

Secondly, the “droit animalier” is a recent occurrence that is justified, among other things, by an anthropological approach to law. However, all law necessarily implies an anthropological dimension. This is the profound meaning of the maxim *ubi societas, ibi ius*. Law is in a permanent relationship with society. In addition, some commentators point out that this choice of terminology would “chosifier l’animal”,⁴ which is unsatisfactory. In these circumstances, the expression “droit de l’animal” would seem to be more appropriate. However, the general idea of “the animal” clashes with a reality based not only on the plurality of species, but also on the diversity of ethograms and needs.

To take just one example, the right to freedom is not understood in the same way for wild animals as for companion animals:

“For the former, the right to freedom is understood as the right not to be detained, or at least not in undignified conditions, and for the latter as the possibility of exploring the environment, linked in particular to walking for the dog, sufficient space, interaction with fellow animals, etc.”⁵

Historically, the expression *ius animalium* is clearly marked by the genitive plural. From this point onwards, “droit des animaux” expresses a concern to adapt to the legal categories envisaged. Like the law of persons (natural or moral) or the law of property (movable or immovable), the droit des animaux is capable of branching out according to need. It could be argued that there is a “civil law”, “criminal law”, “social law” and so on. In this sense, “droit animal” would be more logical, although it should be

² Regad, C., 2021 L'ébranlement d'un droit anthropocentré, signe d'une nouvelle ère?. *La Semaine Juridique – édition générale* 27: 1309-1307.

³ Marguenaud, J.-P., 2013 L'animal en droit français. *Derecho Animal*, 4/2: 1.

⁴ Le Bot, O., 2018, *Introduction au droit de l'animal*, Independently Published: 10.

⁵ Riot, C., 2018, La personnalité juridique de l'animal : carences d'aujourd'hui, force de demain. *La personnalité juridique de l'animal (I) – L'animal de compagnie*, Paris, LexisNexis.

discarded for the reasons of French grammar mentioned above. The aim is to analyze the various workings of this particular kind of law, which concerns different categories of animals.

Consequently, we prefer the term “droit des animaux”, in line with the multidisciplinary approach that is essential in this field.”⁶

With these terminological clarifications in mind, we will proceed in two stages, firstly outlining the current state of positive law, and then looking at possible path of prospective law to follow. Summarizing the situation is a challenge, but we’ll have to get straight to the point.

III. Positive law: the shortcomings of hard law versus the advances of soft law

In French law, there is a difference between hard law (binding law) and soft law (non-binding law). French hard law is marked by numerous shortcomings. However, in terms of soft law, major international texts have been created and/or proclaimed in France in favor of animals and, more broadly, all living things.

1. The inadequacies of hard law

We are going to focus on developing the limitations of certain recent provisions of French law. In France, the legal status of animals has evolved over the last few decades, and particularly since the law of February 16, 2015, introducing an article 515-14 into the Civil Code, which states that “Les animaux sont des êtres vivants doués de sensibilité. Sous réserve des lois qui les protègent, les animaux sont soumis au régime des biens”. Animals are now defined in the Napoleonic Code as sentient beings but are still subject to the property regime.

Several European countries had already modified the provisions of their civil codes. The Swiss Civil Code, like the Austrian Civil Code, considers that animals are not things, but unless otherwise stipulated, the provisions applying to things also apply to animals. German law includes identical provisions in its Civil Code.

With regard to French law, if we take a step back from these new provisions, if we reason from the point of view of legal theory, specifying today that animals are “subject” to the property regime means that they are no longer considered “intrinsically” as property. For example, the former article 528 of the French Civil Code provided: “Sont meubles par leur nature les animaux et les corps qui peuvent se transporter (...)”. The reference to animals was removed by the 2015 law. Other similar provisions have been amended. A new category of living, sentient being is recognized. This is a significant development.

But beyond this reflection, there is no a priori interest in providing for a separate category, sentient living beings, without a dedicated legal regime. The French legislator’s 2015 reform is therefore incomplete and ambiguous. The same is true of the Swiss and German reforms.

In France, the Civil Code lays the foundations for the law of persons and property. Its provisions should not open to interpretation, because it is the legislator’s primary responsibility to ensure that the law is clear, accessible, and intelligible.

Can case law help? While the French Court of Cassation has been able to define the pet as an “être vivant, unique et irremplaçable”⁷ distancing it from the thing, French judicial systems do not offer judges the same latitude as their counterparts enjoy in other legal systems. Some court rulings from

⁶ From Regad, C., Riot C., 2020 *Les animaux liés à un fonds, vers une nouvelle catégorie de personnes physiques non-humaines. La personnalité juridique de l’animal (II) – Les animaux liés à un fonds (les animaux de rente, de divertissement, d’expérimentation)*, Paris, LexisNexis: 3-4.

⁷ Cf. Delgado ruling handed down by the Court of Cassation, 1st Civil Chamber, on December 9, 2015.

across the Atlantic have demonstrated this, recognizing that "(...) based on a dynamic and not static legal interpretation, it is necessary to recognize the character of the animal as a subject of rights (...)"⁸.

Are the same difficulties encountered with wild animals? Generally speaking, French law does not refer to "wild animals", but to "non-domestic animal species" that have not been modified by human selection, as opposed to domestic animal species. The provisions applicable to the latter are essentially governed by the "Code rural et de la pêche maritime", while those applicable to non-domestic animals are governed by the "Code de l'environnement". French law generally bases the protection of wild animals on the notion of natural heritage as defined by environmental law, a notion that is open to interpretation.

The law n°2021-1539 of November 30, 2021, aimed at combating animal mistreatment and strengthening the bond between animals and humans has reformed certain provisions of French criminal law. For example, the act, publicly or otherwise, of seriously abusing or committing an act of cruelty against a domestic, tame, or captive animal is punishable by three years' imprisonment and a fine of 45,000 euros, compared with two years' imprisonment and a fine of 30,000 euros previously.

Similarly, since the introduction of the said law, sexual offenses against animals have been the subject of a separate offence. The legislator's intention is to prosecute all types of zoophilic behavior, which has been exacerbated by social networks and the Internet. Sexual abuse of a domestic, tame, or captive animal is punishable by three years' imprisonment and a fine of 45,000 euros. In addition, knowingly recording, images relating to the commission of these offences, by any means whatsoever and on any medium whatsoever, constitutes an act of complicity. It is also a punishable offence to post such recordings on the Internet.

Other provisions resulting from this law are designed to complete the list of compulsory information that must be included in any offer to sell pets or are aimed at a specific obligation incumbent on the purchaser. As a result, any individual acquiring for the first time, whether for money or free of charge, a dog, cat or any other pet specified by decree, is required to sign a certificate of commitment and knowledge of the specific needs of the species to which the animal belongs.

The revised law does not, however, make any changes to the legal status of animals. An amendment proposing to make a clear distinction between animals and property was adopted, but not retained.

In France, as in other European countries, the legislative shortcomings in the understanding of the animal now call for reflection on a new legal person to be defined.

It is to the French overseas territories, which are subject to administrative regimes different from those of metropolitan France, that we should turn for non-anthropocentric advances.⁹ New Caledonia, an overseas territory with special status, enjoys partial autonomy and can pass "lois du pays". The Environmental Code for the Loyalty Islands, 90% of which are inhabited by the Kanak people, was adopted in 2016. It stipulates that "certain elements of Nature may be granted a legal personality with rights of their own".

In 2023, the first beneficiaries were identified: sea turtles and sharks are now recognized as legal subjects by the Loyalty Islands Environmental Code. Article 242-16 specifies that these natural entities do

⁸ Cf. the Sandra case in Argentina in 2014, repeated in the Cécilia case in 2016 and the Coco case in 2021. Also see Regad, C., Riot, C., 2023 Sandra, Cécilia et maintenant Coco, des affaires judiciaires qui révèlent les avancées de la personnalité juridique de l'animal en Argentine – Note sur la décision du 22 décembre 2021 du Tribunal de première instance en matière d'infractions pénales de la Cité de Buenos Aires (n° IPP 246466/2021-0). *Droit & Animal*, PEERS Press.

⁹ Regad, C., Riot, C., 2023 Les avancées de la personnalité juridique de l'animal dans les Iles Loyauté (Nouvelle-Calédonie, France). *Droit & Animal*, PEERS Press.

not have any duties, and states that “Chaque entité naturelle sujet de droit dispose d’un intérêt à agir, exercé en son nom par le Président de la province des îles Loyauté, par un ou plusieurs porte-paroles (...) par les associations agréées pour la protection de l’environnement et les groupements particuliers de droit local à vocation environnementale (...)”.

The list of fundamental rights of natural entities subject to law is set out in the aforementioned environmental code (e.g., “droit de n’être la propriété de quelque État, province, groupe humain ou individu”; “droit à exister naturellement, à s’épanouir, à se régénérer dans le respect de leur cycle de vie et à évoluer naturellement”).

While the Loyalty Islands have made some headway in terms of legal consideration for animals,¹⁰ overall, French *hard law* is still marked by shortcomings that can be offset by advances in *soft law*.

2. Advances in soft law

France, the “fatherland of human rights” (due to the universal vocation of the 1789 Declaration of Human Rights), is also the country in which a number of texts in favor of animal rights have been drafted and/or proclaimed, and which now have an international impact.

These texts are part of the *soft law* (non-binding law) and inspire the necessary reforms. Three texts stand out.

The first is the Universal Declaration of Animal Rights, proclaimed in 1978 at UNESCO headquarters in Paris, and co-drafted by animal protection associations and eminent scientists, including several Frenchmen (such as Alfred Kastler, winner of the Nobel Prize for Physics). The 1978 text comprises fourteen articles and aims to set out fundamental rights, such as the right to existence, the right to respect, the right to attention, care, and protection. In 1989, a new version of the Declaration was drafted, which was published in 1990. It now comprises ten articles. According to some observers, this version of the Declaration contrasts with the first and is more in line with deep ecology. In 2018, the LFDA (Fondation Droit Animal, Ethique et Sciences), some of whose members were involved in the previous project, proposed a new, revised version, la Déclaration des droits de l’animal (deletion of the word “universal”). We would point out that it is the Declaration in its first version that is currently in use around the world.

The second (intangible) text is the Declaration on the Legal Personality of the Animal, known as the Toulon Declaration. It is a response to the so-called Cambridge Declaration of 2012.¹¹ At that time, renowned scientists, including Stephen Hawking, gathered in Cambridge to proclaim that animals have the neurological substrates of consciousness. Animals are therefore living, sentient, intelligent and conscious beings. It had consequences in the legal arena: In 2019, the Toulon Declaration was proclaimed.¹² The Toulon Declaration affirms that, in the eyes of the law, animals must be universally considered as persons and not things. The switch to the category of persons is essential to give coherence to the law and to bring animals, with the mask of the person, into the great legal theater.¹³ The Toulon Declaration proves that this theater has no borders; it is a subject with a universal dimension. And it gives rise to other considerations.

Following on from the Toulon Declaration, which focused on the future of animal rights, the Charte du droit du vivant (the third text, Charter on the law of the living)¹⁴ calls for a balance between the

¹⁰ However, see: Avis Conseil d’Etat, 31 mai 2024, n°492621.

¹¹ The Cambridge Declaration (2012), available on <https://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>.

¹² The Toulon Declaration (2019), available on <https://www.univ-tln.fr/Declaration-de-Toulon.html>.

¹³ Regad, C., Riot, C., 2020 Los Desafíos de la Declaración de Toulon. *Chilean Animal Law Magazine*, 1: 21-28.

¹⁴ The Charter on the law of the living, available on <https://www.univ-tln.fr/Charte-du-droit-du-vivant.html>.

interests of humans, animals and Nature. The Charter was proclaimed in 2021 in connection with the United Nations' "Harmony with Nature" program. It invites every legal system to broaden the notion of natural person to include non-human persons.

These three texts – the Universal Declaration on the Rights of the Animal, proclaimed in France, the Toulon Declaration, proclaimed in France, and the Charter on the law of the living, proclaimed simultaneously in the USA, France and Argentina – are now being mobilized worldwide by all those who wish to change the legal status of animals (e.g., senators, deputies, lawyers, associations, researchers) and/or elements of Nature.¹⁵

To make just a few examples: in 2021, a group of Mexican senators, drawing on the Toulon Declaration and the Charter on the law of the living, submitted two reform proposals, one to amend the Constitution,¹⁶ the other to overhaul the Civil Code,¹⁷ making animals subjects of law. That same year, Coco, a monkey, was designated as a subject of law before Argentine courts,¹⁸ based on the Charter on the law of the living and the Universal Declaration of Animal Rights (1978 version). In 2022, the Toulon Declaration was mobilized in support of advances in animal rights before Chile's constituent assembly, which designated animals as subjects of special protection.¹⁹ Although the project was subsequently postponed, it proves that paradigms are changing. For example, in 2023, the Supreme Court of Justice of Mexico agreed to examine the appeal lodged on behalf of the elephant Ely.²⁰ The legal foundations of this appeal include the Universal Declaration of Animal Rights (1978 version), the Toulon Declaration and the Charter on the law of the living. We could multiply the examples.

The Universal Declaration of the Rights of the Animal, the Toulon Declaration and the Charter on the Law of the living must continue to be invoked by all players, whether they come from a Common Law, Civil Law, or any other legal tradition. Similarly, the charters of multinational companies, which can be highly effective, should also be applied to these texts.²¹

IV. Prospective law

1. Recasting the notion of legal person

In our view, the greatest flaw lies in the fact that animals have no legal personality. It is in this spirit of guaranteeing legal certainty and cohesion that we are proposing a new approach. It is in this spirit of guaranteeing legal certainty and consistency that we have formulated our proposals to elevate animals to the status of legal subjects.

The problem is this: can animals be holders of rights?

¹⁵ Regad, C., Riot, C., 2022 La Déclaration de Toulon et la Charte du Droit du Vivant: Fondements juridiques des changements de paradigme non-anthropocentrés et soutiens de la jurisprudence de la Terre. *Implementing a new paradigm in the post-covid 19 world: Earth jurisprudence and Latin America's rights of Nature*, Seoul National University Publication: 813-820.

¹⁶ *Iniciativa con proyecto de decreto por el que se reforma el artículo 4° de la Constitución política de los Estados Unidos Mexicanos, en materia de reconocimiento de los derechos de los animales no humanos*, 2021.

¹⁷ *Iniciativa con proyecto de decreto por el que se modifica el Código civil federal, en materia de reconocimiento de los derechos de los animales no humanos*, 2021.

¹⁸ *Poder Judicial de la Ciudad de Buenos Aires, n°IPP 246466/2021-0*.

¹⁹ Constituent Assembly of Chile, Initiative n°3 694 on the rights of Nature and the life of non-humans presented to the Constituent Assembly of Chile, 2021-2022.

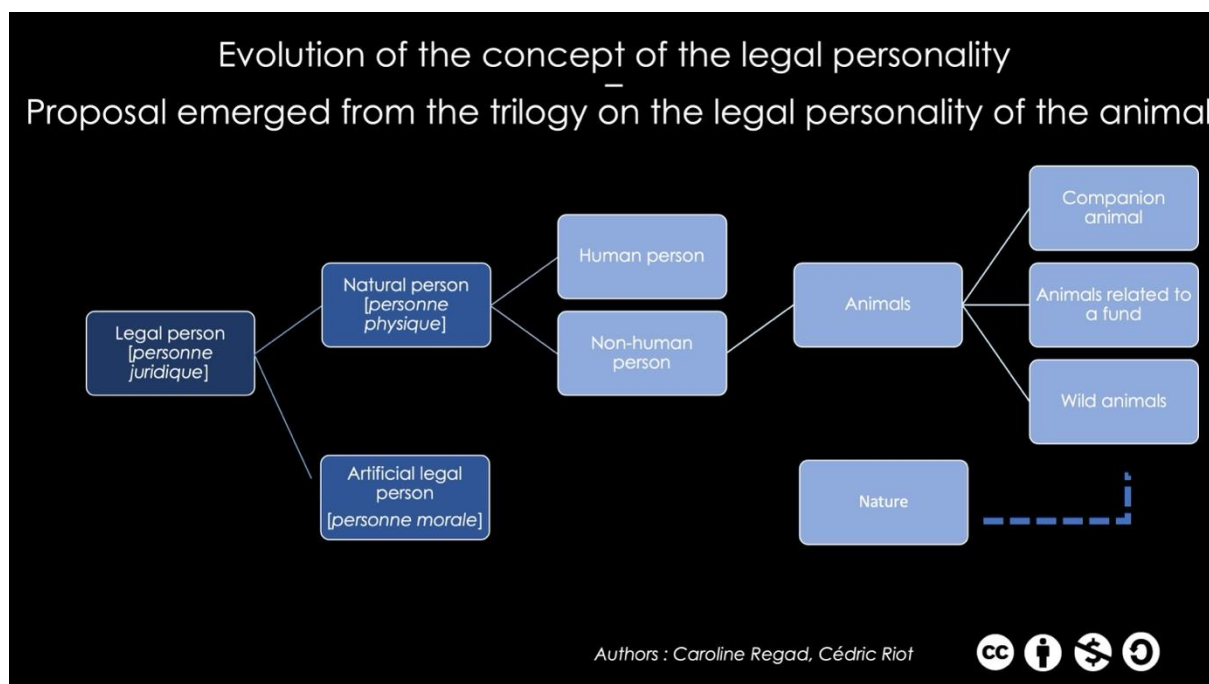
²⁰ *Amparo en revisión: 590/2022; expediente principal: 1092/2021*.

²¹ Riot, C., 2024 La personnalité juridique des animaux sauvages en droit interne: un défi du XXI^e siècle. *La personnalité juridique de l'animal (III) – Les animaux sauvages*, Paris, Mare & Martin: 111-147.

Lacking legal personality, animals as things cannot, strictly speaking, be holders of rights. For legal personality means, among other things, the ability to hold rights. To talk of reforms aimed at guaranteeing rights for animals without giving them legal personality is to add extra floors to a building whose foundations are unstable. In our view, conferring legal personality on animals is a more coherent solution than multiplying the duties of human beings towards them.

Our doctrinal proposal is to remove the animal from this hybrid category²² by offering it legal personality²³ and by attaching it to the category of non-human natural persons, enjoying – and we emphasize this immediately to avoid any misunderstanding – rights different from those of the human person (cf. the trilogy on legal personality of the animal).²⁴

We can represent the proposed evolution of the concept of legal personality in the form of this diagram:



In this scenario, a title of the Civil Code could be devoted to non-human persons, with a distinction between three categories of animals (companion animals, animals related to a fund, e.g. farmed animals, experimental animals, entertainment animals; wild animals), each benefiting from its own legal regime. Differentiated rights would be defined to ensure that the law is adapted to the evolution of each species. This legal personality would make it possible to take into account the animal’s own interests.

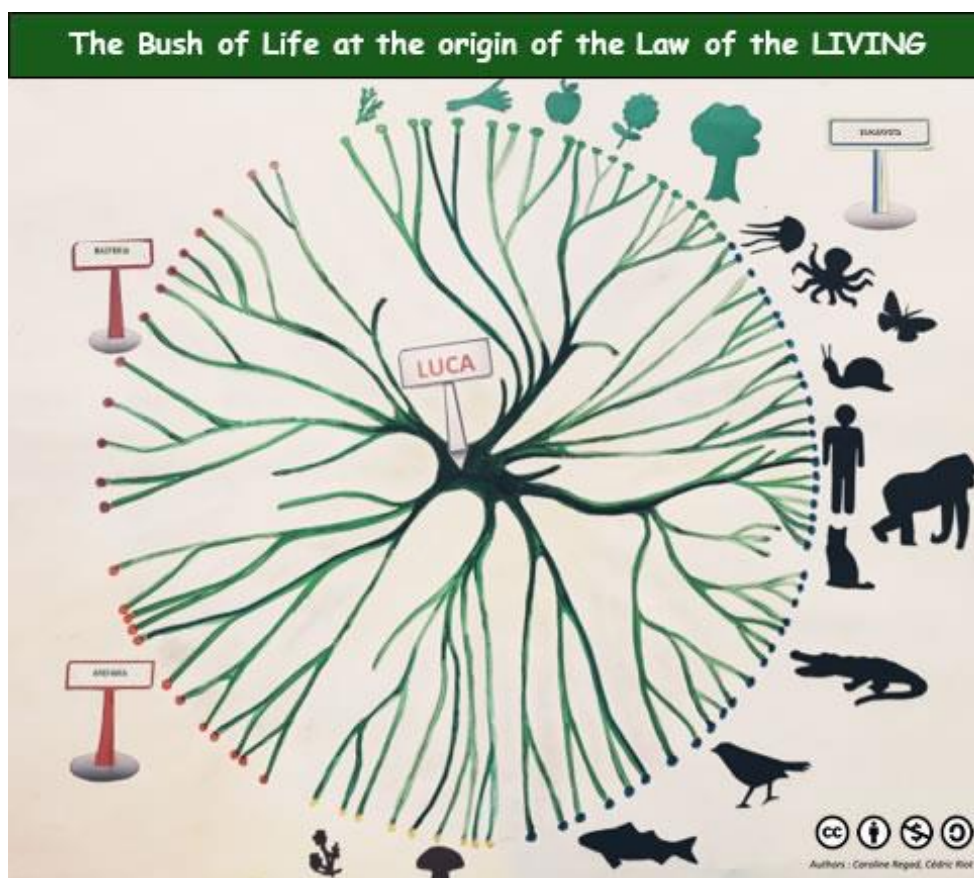
²² See *supra* the French reform of 2015 and the Swiss Civil Code, which states that animals are not things, but that the provisions applying to things are also valid for animals.

²³ Riot, C., 2018 Legal Personhood of Animals (I): The case for the legal personhood of companion animals. Synthesis of doctrinal developments, *Derecho Animal*, 9/2: 56-60.

²⁴ The trilogy on the legal personality of the animal directed by C. Regad & C. Riot: 2018 *La personnalité juridique de l’animal (I) – L’animal de compagnie*, Paris, LexisNexis; 2020 *La personnalité juridique de l’animal (II) – Les animaux liés à un fonds (les animaux de rente, de divertissement, d’expérimentation)*, Paris, LexisNexis; 2024 *La personnalité juridique de l’animal (III) – Les animaux sauvages*, Paris, Mare & Martin.

2. The law of the living and the bush of life

To this end, the law of the living as developed in our work is based on the bush of life.



The bush of life is inspired by phylogenetics, the science that classifies living things. Previously, living things were represented in a pyramid shape, with man at the top. From now on, it's a form of arborescence, of bush that prevails. The paradigm is changing, as humans are only one branch among many in this community of living beings. From that point on, we need to identify which branches of the bush of life will be able to benefit from a non-human legal personality, and therefore from rights.²⁵ Under these conditions, it is easy to understand the need for a law of its own that captures the arborescence of life: the law of the living. In this way, we will be able to move on from a law on the living to a genuine law of the living, which refers to, but is not limited to, the rights of animals and Nature.²⁶

This is the purpose of the *corpus iuris vitalis*, at the heart of our research's work.

3. Thinking about tomorrow's law: the *corpus iuris vitalis*

In the 6th century, the *corpus iuris civilis* (the body of civil law, as it came to be known) referred, in a nutshell, to the state of Roman law. It was made up of four elements: Justinian's Code (containing all the imperial constitutions); the Digest (or Pandects), which included fragments of doctrine; the

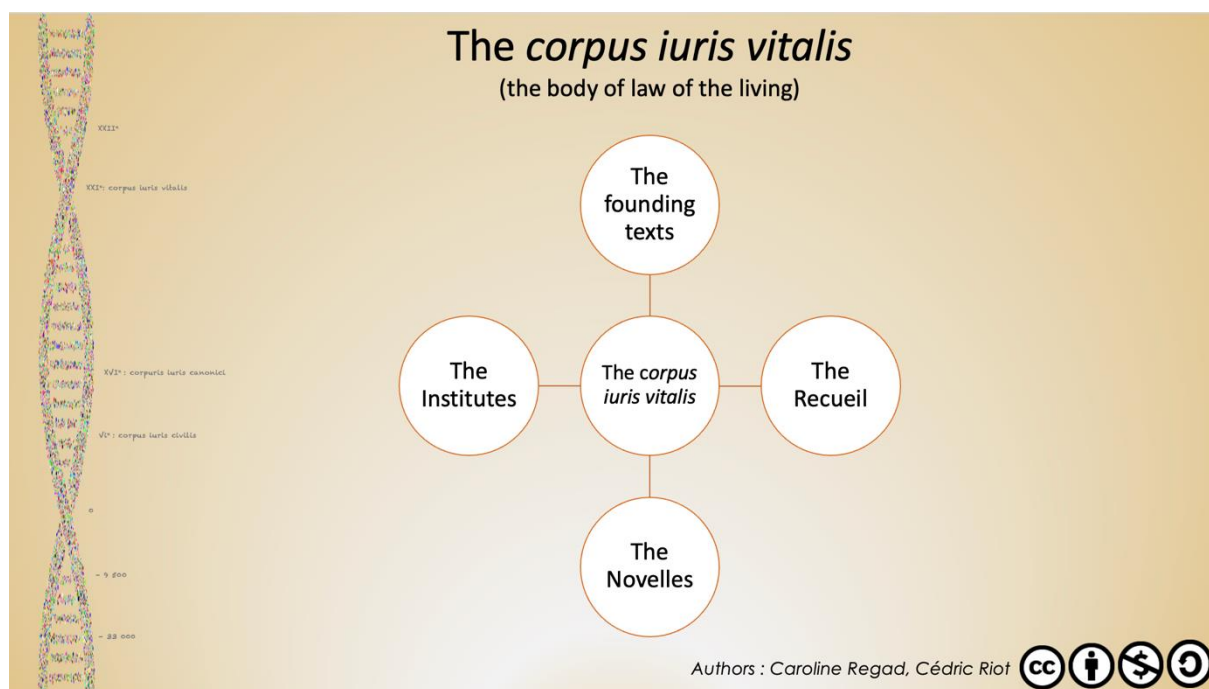
²⁵ Regad, C., Riot, C., 2021 La personnalité juridique de l'animal. *Droit & Patrimoine*, 311: 18-46.

²⁶ Regad, C., 2023 La personnalité juridique des fleuves, reflet de la progression du droit du vivant. *La Semaine Juridique – Edition générale*, 19: 938.

Institutes, i.e. a textbook for students; and the *Novelles*, intended as a repository for future normative texts. In the 16th century, the *corpus iuris canonici* (the body of canon law) crystallized current canon law for centuries.

The *corpus iuris vitalis* (body of law of the living) is based on these models and aims to create and/or mobilize new concepts to determine the legal balance between humans, animals, and nature.

This being the case, while previous corpora were intended to compile rules, the *corpus iuris vitalis* is a new body of law that must be built for the future. The contemporary *corpus iuris vitalis* draws on the backbone of the ancient corpus (*corpus iuris civilis*) and the durability of the modern corpus (*corpus iuris canonici*).²⁷



Starting from the ancient reference, the *corpus iuris vitalis* is made up of its founding texts – the Toulon Declaration and the Charter on the Law of the Living – which will be supplemented by new texts where necessary. This body of work is analyzed in the light of the scientific trilogy on the legal personality of the animal, and those that have continued in numerous subsequent publications. This doctrinal part is subsumed under what may be called, echoing the Roman Digest, the “Recueil”. The body of the law of the living is completed by a pedagogical literature that refers back to the Institutes. On the one hand, they will include a proposed teaching method entitled *Arcadia*. They will also include a multi-part treatise on the law of the living.²⁸ The *Novelles* of the *corpus iuris civilis* will be adapted to the *corpus iuris vitalis*. They will incorporate the advances of the years to come, but above all they will be oriented towards communication with the general public, with a view to scientific mediation.

²⁷ Regad, C., Riot, C. (to be published) *Le corpus iuris vitalis* (corps du droit du vivant): fondements et perspectives. *Derecho do lo Viviente*, Mexico; Regad, C., Riot, C., (to be published) *The body of the law of the living (corpus iuris vitalis)* in support of the Earth Jurisprudence. *Transitioning to an Ecological Civilization through the Rights of Nature and Ecological Economics*, Seoul National University Publication.

²⁸ For example: Regad, C., 2023 *Droit des Animaux – Approche historique et anthropologique Intégrant les développements sur le droit du vivant et la jurisprudence de la Terre*, Les Institutes, Animal Law & Earth Jurisprudence, Independently Published.

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The *corpus iuris vitalis* aims to meet the legitimate expectations expressed by civil society and international institutions. It refers to the future of our planet and the need to provide a legal framework for human activities in their relationship with living organisms.²⁹ The solution could lie in balancing the interests of humans, animals, and Nature.

²⁹ Regad-Riot C., 2023 Le droit du vivant, un droit en devenir. *Revue de la prospective et de l'innovation*, LexisNexis, 7/2: 27-30.