

Imagining the Unimaginable: An International Convention for Animal Rights

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1 Introduction

In Romain Gary's 1953 novel "Roots of Heaven,"¹ Morel is a French national in despair over the plight of elephants in Africa. He resolves to promote an international convention that will ban all hunting of elephants. The setting is colonial Chad in French Equatorial Africa where the story relates that 30,000 elephants were killed in that year alone. The use of international law to protect elephants weaves thematically throughout the narrative. Morel is obsessed with gathering signatures on his petition for a new treaty, to counter "notoriously insufficient laws for the protection of African fauna."² The specific intention was to replace the 1933 Convention Relative to the Preservation of Fauna and Flora in their Natural State. It had been adopted at the urging of scientists anxious over the decimation of elephant and other wildlife populations by colonial governments more concerned with the implications for the ivory trade than with the cruelty of the trade for long-suffering elephants. The convention regulated hunting for trade and for trophies, as well as subsistence hunting, providing a management plan for this very lucrative colonial business.

Morel's determination to replace the 1933 treaty³ with one that banned elephant hunting altogether constitutes a motif for this article, which proposes an Earth law approach to international animal law making. Going beyond an anthropocentric welfare approach that views animals as property for human exploitation, the article calls for a non-human animal rights approach that recognizes animals as our fellow members in the Earth community, entwined in an interconnected and interdependent need to survive and thrive. Within the frame of current international conventions, and drawing on principles of Earth jurisprudence,⁴ the article argues that these conventions cannot effectively protect animals:

¹ Romain Gary. *Roots of Heaven*, (Simon and Schuster 1958).

² *ibid.*

³ I use the terms treaties, conventions and agreements interchangeably. See the Vienna Convention on the Law of Treaties: "treaty" means an international agreement concluded between States in written form and governed by international law..." at Art.2(a), Vienna Convention on the Law of Treaties, 23 May 1969 entered into force 27 January 1980 United Nations Treaty Series vol.1155, 331.

⁴ For the origins of the term Earth Jurisprudence see Michelle Maloney and Patricia Siemen, 'Responding to the Great Work: The Role of Earth Jurisprudence and Wild Law in the 21st Century' (2015) *Environmental*

as anthropocentric treaties, many with roots in colonialism, they entrench human superiority over animals and legitimize their exploitation.⁵ They also fail to recognize animals as sentient beings with inherent rights to exist, thrive and flourish. And they do not ban human activities that kill and harm animals both physically and mentally, in agriculture, hunting, fishing, commerce and trade, entertainment, and myriad other human enterprises. Rather, they *regulate* these activities, establishing complex compliance and enforcement systems in an attempt to make regulation work. The expansion of human activities around the world and the accelerating loss of individual animals, populations and species⁶ cast a long shadow on the efficacy of these regulatory treaties.

As an alternative, this article proposes an Earth law approach to the incorporation of animal rights in an international convention. It is inspired by human rights regimes and draws on the concept of the rights of nature, a core element of Earth law. Earth law holds that, since we are all inherently interconnected, the needs of all species must be taken into consideration when drafting laws and policy. Thus, the animal's perspective is morally critical to defining human relationships with animals.

Earth law calls for a paradigmatic shift towards biocentric conventions in which relationships of co-existence between people and animals are the basis for compassion and moral consideration, legally embodied as rights of nature. The rights of nature concept is, thus, both an approach to Earth law and a means of implementing it.⁷ The rights in question are those of animals; the right to exist and to thrive, the right to habitat, the right to be treated with kindness, dignity, compassion, and respect, the right to well-being, and the right to be free from suffering or cruel treatment by humans. Earth law seeks to protect these rights, and one way is by giving animals standing to be represented in court to enforce their rights. Given that legal systems can recognize corporations as persons who can protect their rights,⁸ it seems equitable from an Earth law perspective to recognize the rights of animals

and Earth Law Journal 6, 6,8. In differentiating between Earth jurisprudence and Earth law, the former is the philosophy, the principles, and the beliefs, while the latter is their practical application.

⁵ E.g., see Cormac Cullinan, *Wild Law, A Manifesto for Earth Justice* (Chelsea Green Publishing 2011) 29.

⁶ See WWF Living Planet Report, <https://livingplanet.panda.org/>.

⁷ Rights of nature is one of a diverse range of approaches to Earth law and its implementation that include the public trust doctrine, legal personality for natural entities, indigenous legalities, ecocide, and non-human rights that include animal rights. Zelle, Wilson, Adam, Greene (eds). *Earth Law, Emerging Ecocentric Law – A Guide for Practitioners*, (Wolters Kluwer 2021) 44 [hereinafter Earth Law].

⁸ Nina Totenburg, 'When did companies become people? Excavating the legal revolution' NPR (28 May, 2014) <https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution>> accessed 2 February 2022.

in the same way. It levels out the legal playing field,⁹ instead of leaving animals rights-less and at the mercy of the rights-holding persons who exploit them, often cruelly.

Thomas Berry taught that “[a]ll rights have been bestowed on human beings. The other than human modes of being are seen as having no rights. ... In this context the other than human becomes totally vulnerable to exploitation by the human.”¹⁰ And, as noted by Cormac Cullinan:

The issue is not ... deciding whether or not we humans should deign to grant rights to other species or to the environment (they already have them, but they are invisible to our legal system because it cannot conceive of them). The challenge is rather to re-conceptualise ... the philosophical basis on which we ... regulate our [own] species so that it accords more closely with the reality of an interconnected universe of subjects.¹¹

There is a *caveat* to this. There are serious obstacles to promoting a biocentric animal rights treaty. It is impractical to assume, for example, that a draft convention declaring the rights of animals and obligating contracting parties to incorporate those rights in their domestic laws will proceed smoothly through the negotiation and adoption process with minimal objections to final ratification. Indeed, it would be Quixotic to imagine that in a world where existing treaties have proven hapless in reversing biodiversity loss, a new convention that challenges some of the most deeply rooted norms and beliefs of modern civilization will easily garner support and approval. But words matter and, if the law starts to move away from thinking of animals as mere resources and property, and begins to recognize them as our biological kin,¹² we might be on the way to a substantial reshaping in a legal sense of human-animal relationships.

⁹ Barbara Fraser, ‘Is a river a person? Advocates for the legal rights of nature say yes’ *Earthbeat* (24 January 2014). <https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution>> accessed 31 January 2022.

¹⁰ As quoted in P. Burdon, ‘The Jurisprudence of Thomas Berry’ (2011) 15 *Worldviews: Global Religions, Culture, and Ecology* 153.

¹¹ *Wild Law* (n. 5) 108.

¹² From a quote by David Suzuki “The way we see the world shapes the way we treat it. If a mountain is a deity, not a pile of ore; if a river is one of the veins of the land, not potential irrigation water; if a forest is a sacred grove, not timber; if other species are biological kin, not resources; or if the planet is our mother, not an opportunity -- then we will treat each other with greater respect. Thus is the challenge, to look at the world from a different perspective/”. <https://www.azquotes.com/quote/1044989>> accessed 13 March 2022.

Section two introduces Earth law principles and concepts, using them as a lens through which to view both our current relationship with animals and one that embodies respect, reciprocity, and compassion. The article frames the discussion within the Earth law concept of non-human rights, and specifically, animal rights. Section three reviews current international wildlife and animal conventions through an Earth law lens, as well as two draft conventions for animal welfare and protection. Section four imagines the basic contours of an animal rights treaty based on Earth jurisprudence. The final section concludes by discussing both the practical and heuristic value of a convention on non-human animal rights.

The dreadful record of human abuse of animals is inseparable from the human abuse of the natural world. At this point in time just about every human being on the planet has experience of some aspect of the ecological and climatic changes that are pushing Earth beyond its physical limits and out of the habitable zone.¹³ But technology and an arrogant pride in the unique wisdom of *Homo sapiens* cannot buffer us from super-storms, fires, floods and ecological decline. Legal change is needed, too, because existing international conventions are fixated on the objective of increasing economic growth and make minimal provision at best for environmental health and animal wellbeing. Arguably, tweaking these conventions by adding stronger welfare provisions or even adopting a new and specific animal welfare treaty will not fundamentally change our legal relationship to animals. The analysis and discussion that follows rests, therefore, on the assumption that business as usual under the international legal regimes we already have in place will simply not be good enough to deal effectively with the problems we face. This is a call, then, to explore a more ambitious and radical alternative.

¹³ See David Wallace-Wells, 'The Uninhabitable Earth, Famine, economic collapse, a sun that cooks us: What climate change could wreak — sooner than you think', *New York Magazine* (New York, 10 July 2017) <https://nymag.com/intelligencer/2017/07/climate-change-earth-too-hot-for-humans.html> accessed 13 March 2022.

2 An Earth Law Approach to International Animal Law

Earth law is “the emerging body of law for protecting, restoring and stabilizing the functional interdependency of Earth’s life and life-support systems at the local, bioregional, national, and global levels.”¹⁴ It maintains as a key principle that humans must know, respect and abide by the laws of nature. Those laws can be contrasted with and distinguished from the substantial corpus of modern environmental law in which nature is objectified in terms of its usefulness to people and has no inherent value worthy of legal consideration. Earth jurisprudence posits instead that the welfare of humans, as members of the Earth community, is dependent on the health and welfare of Earth as a whole. The survival of human society hinges on its ability to restore ecosystems, reduce carbon emissions and draw down our carbon legacy so that we respect planetary boundaries.¹⁵

Earth law reflects increasing recognition of the interconnectedness and interdependence of all members of the living community and denies human superiority over other species and the natural world more generally. Specifically with respect to animals, advocates for Earth law are in sympathy with Thomas Berry, who re-imagined the law and policy consequences of what science has taught us about animal sentience and intelligence.¹⁶ Berry’s twelve principles of Earth jurisprudence taught that “[t]he universe is composed of subjects to commune with, not objects to be used. As a subject, each component of the universe has three fundamental rights: the right to be, the right to habitat or a place to be, and the right to fulfill its role in the ever-renewing processes of the Earth community.”¹⁷ He emphasized that not all rights are similar, but each is unique to the bearer of the right: “All rights in nonliving form are role-specific; rights in living form are species-specific and limited. Rivers have river rights. Birds have bird rights. Insects have insect rights. Humans have human rights. Difference in rights is qualitative, not quantitative. The rights of an insect would be of no value to a tree or a fish.”¹⁸

¹⁴ Earth Law (n. 7) 43.

¹⁵ Johan Rockstrom and others, ‘Planetary Boundaries: Exploring the Safe Operating Space for Humanity’ (2009) 14(2) Ecology and Society 32.

¹⁶ Carolyn W. Toben, *Recovering A Sense of The Sacred, Conversations with Thomas Berry*, (Timberlake Earth Sanctuary Press 2012).

¹⁷ Thomas Berry, *Evening Thoughts: Reflecting on Earth as a Sacred Community, On the Origin, Differentiation and Role of Rights* (Sierra Club Books, 2006) 149-150.

¹⁸ *ibid.*

Berry also stressed the individual nature of rights. Because species exist only in the form of individuals, recognized legal rights have to attach to individual animals, and not just to an animal species as a whole. And while Earth law tends to focus on rights of nature for ecological systems, such as rivers, and for species, such as polar bears, these can be little more than abstractions if the rights are not justiciable by the individuals who comprise the whole. Each individual animal, Earth law maintains, has a role to play in Earth's living community and, as a consequence, has legally defensible rights.¹⁹

Pursuing this critical role of individual animals, the normative stance of Earth law, then, is that current international regimes should be reimagined and reformed as legal frameworks that assert the freedom of animals from humans and provide mechanisms to assert their rights. By displacing the long-entrenched principle that animals are property, Earth law revokes the power that humans and corporations hold over animals, freeing them from servitude in industrial farming, international trade, entertainment, biomedical experiments, and an array of other forms of exploitation. Earth law encourages us to rethink laws that have for millennia cast us in the role of oppressors of animals and replace them with laws that mandate justice for animals. "It takes imagination and spirit to be an Earth lawyer,"²⁰ one advocate opined, because animals will be allowed to sue their captors, demanding better living conditions and, if they so desire, their freedom. Animals will be able to lodge complaints with the police against people who torment and abuse them. Animals in zoos will have standing to sue their zookeepers for inhumane living conditions. And animals forced to perform for humans in marine entertainment parks will take the owners to court on charges of kidnapping and enslavement.

"Can you imagine a world where a gorilla can sue a zoo? Where whales can sue for lack of krill? Where children can claim the right to a habitable planet? Where rivers are given legal personhood? Where all ecosystems have legal guardians? Where constitutions recognize and protect the rights of nature? ..."²¹

We begin by reviewing current international wildlife and animal conventions and two new proposals for conventions on animal wellbeing.

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ Earth Law (n.7) 2.

3 Existing and Proposed Laws and Their Limitations

"Justice!" exclaimed Ox. He shouted again and again, "Justice! Justice! We deserve justice!" And the beasts began to chant together. A slow rumble turned into a towering thunder of voices, "Justice! Justice! Justice!" Their hearts began to rise as they felt the solidarity of their purpose; hope began to ascend in their eyes, and they ventured off to the King's Court together....

Mule arose and said: "My Lord, I will refute her words. This human has not offered a single proof to support the notion that they are our masters and we are their slaves. God created humans from dust and ashes and put them on earth to dwell on it, but not to destroy it; to coexist with us, the other living creatures, and to obtain benefit from us, but not to oppress us — and certainly not to kill us!"²²

Perhaps the earliest known publication on animal rights is the 10th century Muslim Sufi fable, *The Animals Lawsuit against Humanity*. The fable relates the suffering of animals at the hands of their human captors, and the complaint they brought before the king, entreating him to free them from the abuse of their captors. The same issues more recently reached the international agenda with the proclamation of the 1978 UNESCO Universal Declaration of Animal Rights.²³ Its Preamble declares that all animals have rights, that humans have committed crimes against animals, and have even caused some to become extinct. The Declaration recites a detailed list of animal rights together with acts comprising infringements of those rights: that all animals are entitled to respect; that man as an animal species shall not arrogate to himself the right to exterminate or inhumanely exploit other animals; that no animal shall be ill-treated or be subject to cruel acts; that if an animal has to be killed this must be instantaneous and without distress; that all wild animals have the right to liberty in their natural environment, whether land, air or water, and should be allowed to procreate; that abandonment of an animal is a cruel and degrading act; that no

²² Anson Laytner and Dan Bridge (Trans. and adaptors) *The Animals' Lawsuit Against Humanity*, a Modern Adaptation of an Ancient Animal Rig. (Fons Vitae 2005).

²³ Universal Declaration of Animal Rights (15 October 1978) proclaimed in Paris on 15 October 1978 at the UNESCO headquarters, <https://constitutii.files.wordpress.com/2016/06/file-id-607.pdf>

animal shall be exploited for the amusement of man; that exhibitions and spectacles involving animals are incompatible with their dignity; that any act involving the wanton killing of an animal is biocide, that is, a crime against life; and that any act involving mass killing of wild animals is genocide, that is, a crime against the species.²⁴

Why didn't this visionary recitation of animal rights launch in its wake an international initiative to adopt an instrument for the protection of animal rights? In various parts of the world courts have recently issued sympathetic judgments, including some that touch on the rights of animals.²⁵ So, why has the reform of global governance institutions proved to be so difficult? The following section reviews biodiversity and wildlife conventions with these questions in mind.

3.1 International biodiversity and wildlife conventions

Many species of wildlife are given at least some protection under conventions that list them as deserving of special treatment. The Convention on International Trade in Endangered Species (CITES), for example, lists approximately 5,600 animal species as endangered or threatened species in three lists annexed to the convention. Different levels of protection are provided for each list. The Convention on Migratory Species (CMS) lists species in two appendices as either endangered or as species that need to be the subject of specific sub-agreements. Regional biodiversity conventions also use lists to try to protect species, including the African Convention on the Conservation of Nature and Natural Resources; the Berne Convention on the Conservation of European Wildlife and Natural Habitats; the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere; and the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean under the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean.

As conventions expressly created to protect wildlife, all these instruments grant protection to listed species and thus presumably protect individuals of the species as well.

In fact, they embody an inherent conflict. So, while the CMS, for example, recognizes that wild animals in their many forms are an irreplaceable part of the earth's natural system, it

²⁴ Ibid

²⁵ See David Boyd, *Rights of Nature, A Legal Revolution that could save the World*. (ECW 2017) .

also proclaims that wild animals need to be conserved for the good of mankind.²⁶ Biodiversity and wildlife are, thus, imagined as commodities to be used sustainably, as long as they can be supplied. The welfare of the commodities is ignored.²⁷ And existing conventions have, of course, nothing at all to say about what ought to be done legally to protect the many species that they do **not** list.

The colonial roots of many of these conventions shed light on this void, stretching back to the Convention for the Preservation of Wild Animals, Birds, and Fish in Africa (1900), and the Convention Relative to the Preservation of Flora and Fauna in their Natural State (1933). Although Africans had used their fauna for millennia without provoking a crisis of extinction, Europeans wreaked havoc on African wildlife within a few decades of their colonization of the continent, with a marked, subsequent downward spiral in the numbers of animals that were hunted. Colonialism led to further biodiversity losses as European demand for raw materials for trade and industry depleted other colonial resources.²⁸

The use of law both to exploit and to conserve nature was a core element of colonial resource policy.²⁹ Europeans used international law, cloaked with a civilizing mission, to justify their invasion, conquest, and rule of non-European peoples and their lands in Africa. Present day global conservation regimes are the descendants of these colonial treaties.³⁰ And, despite some postcolonial reshaping, they still tolerate and even foster the exploitation of biological diversity, albeit now in the language of sustainable development. The ethical implications of this exploitation for animals go almost entirely unaddressed.³¹

3.1.1 The Convention on Biological Diversity

The objectives of the Convention on Biological Diversity (CBD) are:

“...the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of

²⁶ CMS, Preamble.

²⁷ See Werner Scholtz, 'Injecting Compassion into International Wildlife Law: From Conservation to Protection?' (2017) 6 TEL 463; J. Purdy, 'Our Place in the World: A New Relationship for Environmental Ethics and Law' 62(4) Duke Law Journal (2013) 857.

²⁸ Rachelle Adam. Elephant Treaties, the colonial legacy of the biodiversity crisis, (UPNE2014) (Hereinafter 'Elephant Treaties') 27-29.

²⁹ Ibid; J. Mackenzie. The Empire of Nature: Hunting, Conservation and British Imperialism, (MUP 1988) 202.

³⁰ Elephant Treaties (n. 28) 8-9,125.

³¹ See Scholtz, 'Injecting Compassion', (n. 27) 469-471; Purdy, (n. 27), 860.

genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.”

The CBD’s Preamble emphasizes that states have sovereign rights over their own biological resources, but it leaves biodiversity itself right-less. It prioritizes human needs and economic growth and treats biodiversity, including animals, simply as a resource needed to advance these purposes.

The text of the CBD, for example, is mute on the question of whether treating biodiversity as a resource raises ethical issues, particularly about the impact it will have on individual animals. A 2004 elaboration of the CBD in the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity did call for biodiversity resources to be used humanely.³² In 2016, the thirteenth CBD Conference of the Parties (COP) adopted decisions under the rubric of Living in Harmony with Nature that can be seen as an attempt to move away from anthropocentric conservation and towards the embrace of ethically based philosophies, such as Earth jurisprudence.³³ It is a move in keeping with the Harmony with Nature Program established by the United Nations(UN) in 2009 and supported by other, subsequent initiatives³⁴ and a network of experts.³⁵

An interactive dialogue session on “Living in Harmony with Nature” was held, for example, at the CBD’s 2016 COP, on “different visions, approaches and tools for the conservation and sustainable use of biodiversity.”³⁶ A similar dialogue was held at the COP in 2018,³⁷ where a 2050 vision for biodiversity spoke about biodiversity being valued, conserved, restored and

³² ‘Promote more efficient, ethical and humane use of components of biodiversity ...’ <https://www.cbd.int/doc/publications/addis-gdl-en.pdf>> accessed 14 March 2022.

³³ See n.34.

³⁴ United Nations, Harmony with Nature, Chronology <http://www.harmonywithnatureun.org/chronology/>> accessed 13 March 2022.

³⁵ Earth Law (n.7) 418.

³⁶ Report of the Conference of the Parties to the Convention on Biological Diversity on its Thirteenth Meeting, Cancun, Mexico, 4-17, 367-371 <https://www.cbd.int/doc/c/ccf8/86e1/258e841f696315c3212d9259/cop-13-25-en.pdf>> accessed 13 March 2022.

³⁷ “An interactive dialogue moderated by the Executive Secretary of the Convention on Biological Diversity was held during the 3rd plenary session of the meeting, on 20 November 2018, on the theme “Approaches to living in harmony with nature”” Report of the Conference of the Parties to the Convention on Biological Diversity on its Fourteenth Meeting, Sharm El-Sheikh, Egypt, 17-29 November 2018 Annex III (1) 293, <https://www.cbd.int/doc/c/1081/32db/e26e7d13794f5f011cc621ef/cop-14-14-en.pdf>. Accessed 13 March 2022. Background information for the dialogue was contained in document CBD/COP/14/9/Add.2, *ibid*

wisely used, to maintain ecosystem services, sustain a healthy planet and deliver benefits essential for all people.³⁸

It could be that these recent decisions by the CBD are indicative of a paradigm shift towards living in harmony with nature and a genuinely ecocentric approach to managing biodiversity. The language of the 2050 CBD vision statement strongly suggests, however, that that is not really the case.³⁹ The CBD remains very much an anthropocentric treaty which continues to frame the importance of biodiversity for humans rather than for all species. Moreover, the Harmony with Nature initiative stops well short of endorsing the rights of nature approach that characterizes Earth law.

3.1.2 Annex II to the 1991 Antarctic Environmental Protocol

Another vivid illustration of the anthropocentrism in existing international conventions meant to protect animals appears in Annex II to the 1991 Antarctic Environmental Protocol. Article 3 on the “Protection of Native Fauna and Flora” prohibits the taking of or harmful interference with native fauna and flora, except with a permit. Permits may be issued to collect specimens for scientific research, for museums or educational institutions or uses, and for zoos. The taking of specimens is somewhat constrained by welfare considerations. Article 3.11 of the Annex says that “All taking of native mammals and birds shall be done in the manner that involves the least degree of pain and suffering practicable.” If Antarctic seals and birds had enforceable rights, however, the treatment of them as mere specimens might very well be contested and a whole range of considerations would come into play before permits could be issued for practicable takings.

3.1.3 CITES

Like other biodiversity conventions with roots in the European colonialization of Africa,⁴⁰ CITES was designed both to prevent wildlife extinctions and to safeguard the wildlife trade. Trade causes animals misery, injury and death, but these adverse impacts are essentially

³⁸ *ibid.* Annex to Decision 14/2 “Scenarios for the 2050 Vision for Biodiversity”¹².

³⁹ Sophie Riley, “Wildlife Law and Animal Welfare: competing interests and ethics,” in Werner Scholtz (ed.) *Animal Welfare and International Environmental Law: from Conservation to Compassion*, (Edward Elgar Publishing 2019) 173.

⁴⁰ *Elephant Treaties* (n. 14) 74-77, 80-82.

overlooked as long as the trade can be declared to be sustainable and avoids unnecessary cruelty.⁴¹

Much has been made of the fact that CITES contains some welfare provisions.⁴² Articles III, IV, and V, for example, require exporting states to be satisfied before issuing a permit that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment. Article VIII.3 requires the same safeguards for animals in transit. Importing countries also have to be satisfied under Article III.3 that the recipients of imported specimens can suitably house and care for them. These provisions are drafted too generally, however, to allow for their effective implementation.

While resolutions brought before the CITES CoP have been used to try to promote animal welfare,⁴³ they show how contracting parties avoid these issues. The 18th COP, for example, adopted a resolution on a strategic vision for 2021-2030 which declares that CITES stands at the intersection between trade, the environment and development. It affirms a continuing focus on species conservation and sustainable trade to advance the sustainable use of biodiversity. It talks of providing benefits to indigenous peoples and local communities.⁴⁴ But it says not a word about animals themselves or what perspective they might offer on being traded for the benefits of humans.

In substance, then, CITES is a trade agreement. It is *not* a mandate to prevent or even mitigate animal cruelty and ensure appropriate animal care, even though the wildlife trade is cruelly conducted and can cause grievous harm to individual animals. Passing animal

⁴¹See also Scholtz (n. 27) 465.

⁴² E.g., Werner Scholtz 'Animal Welfare and International Environmental Law' in Kurt Deketelaere and Zen Makuch (eds.) *New Horizons in Environmental and Energy Law*, (EEP 2019) 245; Scholtz (n. 27); Werner Scholtz, (2017) 'Killing Them Softly? Animal Welfare and the Inhumanity of Whale Killing', (2017) 20 (1) *Journal of International Wildlife Law & Policy*, 18-37, 19-21 (hereinafter 'Killing Them Softly'); Michael Bowman, Peter Davies and Catherine Redgwell (eds.), *Lyster's International Wildlife Law*, (2cd edn. CUP 2011) 484; S.R. Harrop, 'Climate Change, Conservation and the Place for Wild Animal Welfare in International Law', (2011) (23(3) *Journal of Environmental Law* 441, 449; Michael Bowman, 'Conflict or Compatibility – The Trade, Conservation and Animal Welfare Dimensions of CITES', (1998) 1(1) 9, *Journal of International Wildlife Law and Policy* 10-20; 6-20; Francesca Nyilas, 'CITES and Animal Welfare: The Legal Void for Individual Animal Protection', (2021) 9 *Global Journal of Animal Law* 1.

⁴³ E.g., 'Implementation of Resolution Conf. 9.23, Mortality of Live Specimens During Transport', Geneva 18 April 1995; Resolution Conf. 11.20 (Rev. CoP18) on Definition of the term 'appropriate and acceptable destinations', Para II.c) iii <https://cites.org/sites/default/files/eng/notif/1995/848.txt> accessed 13 March 2022.

⁴⁴ Conf. Res. 18.3 CITES 'Strategic Vision: 2021-2030' https://cites.org/sites/default/files/document/E-Res-18-03_0.pdf..accessed 13 March 2022.

welfare resolutions at the CITES CoP is a poor substitute for acting on a fundamentally different view of relationships between people and animals.

3.1.4 The ICRW

While CITES regulates the trade in various wildlife species listed in its appendices, the 1946 International Convention for the Regulation of Whaling (ICRW) was expressly adopted to sustain trade and industry in whales. It subsequently evolved into an animal welfare convention when it adopted a 1986 moratorium on all commercial whale hunting. The moratorium was meant to be temporary to allow certain whale species to recover, but it is still in force despite the opposition of the remaining whaling states.⁴⁵ Pro-whaling countries have traditionally objected to welfare considerations being entertained under the ICRW on the basis that they are outside the remit of the convention. Anti-whaling countries have argued that the ICRW has a moral obligation to weigh the ethical implications of the whale hunt.⁴⁶ Given a broad scientific consensus that whales cannot be killed humanely, the ICRW would appear to be ethically obligated to make the ban on the commercial killing of whales permanent.⁴⁷ Yet the opposition of whaling states have prevented this and undoubtedly will continue to do so. Scholze argues that “[t]he establishment of a customary international norm or a global international agreement that unconditionally prohibits whaling would be the only way in which whale killing would finally be brought to an end.”⁴⁸

3.1.5 The WTO and the EU Seal Products Case

In 2014, when the World Trade Organization’s (WTO) Appellate Body issued its decision in the EU seals case, it appeared to affirm a state’s right to restrict trade in seal products based on a public morals exception to free trade principles. Canada and Norway had earlier filed a complaint against EU legislation banning the importation of products derived from the cruel hunting and killing of seals. The Appellate Body’s decision to allow states to restrict trade in seal products under certain conditions has been hailed as a groundbreaking decision in international animal law, because it elevates moral and ethical considerations in WTO

⁴⁵ Ibid, Killing Them Softly (n. 42).

⁴⁶ Ibid; Michael Bowman and others s (n. 42) 683.

⁴⁷ ibid. 685; Killing them softly (n.42) 27. ibid.

⁴⁸ Killing them softly 35.

decision making.⁴⁹ In Fitzgerald's view, however, "while the public morals defense is a useful tool toward providing greater protection for wildlife well-being in the trade area, [more] fundamental reform, including adding an animal welfare protocol to the WTO, is needed."

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3.1.6 Agreement on Humane Trapping Standards

An Agreement on Humane Trapping Standards was made between the EU, Canada, and Russia as a compromise and under threat of a WTO trade dispute, following the latter two countries' derailing of the EU's efforts to impose a ban on the import of products from animals caught in steel jaw traps. The agreement was not meant to ban trapping altogether but rather to regulate it, by setting international standards that would mitigate the suffering endured by trapped animals, and in particular to stop the use of steel-jaw leg-hold traps, a step which failed.⁵¹ The agreement's objectives are to "establish standards on humane trapping methods," to "improve cooperation between the Parties to develop the standards," and to "facilitate trade between the Parties." The basic purpose of the agreement, then, is to sustain the trade in products from trapped animals, provided the trapping is humane. And as with the endangered species and whaling conventions there is no real departure from treating animals as mere commodities, while it is clearly doubtful if any trapping of animals for their fur can be conducted humanely

The preceding review of existing international conventions pertaining to animals shows that, except for the 1978 UNESCO Declaration, they are bereft of acknowledgements that animals have rights as well as of principles recognizing animal sentience and their intrinsic value. Moreover, their animal welfare provisions are minimal. While there is some evidence that the CBD might be starting to recognize principles of Earth jurisprudence and endorse living in harmony with nature in its every day work, this stops far short of recognizing rights of nature, particularly animal rights.

⁴⁹ Katie Sykes, 'Sealing Animal Welfare into the GATT Exceptions: The International Dimension of Animal Welfare in WTO Disputes', (2014) 13 World Trade Rev. 471; Rachele Adam & Joan Schaffner, 'International Law and Wildlife Well-Being: Moving from Theory to Action', (2017) 20(1) Journal of International Wildlife Law & Policy, 2, 9-10, 16.

⁵⁰Adam and Schaffner. *ibid.*, 10.

⁵¹ Tara Zuardo, 'How the United States Was Able to Dodge International Reforms Designed to Make Wildlife Trapping Less Cruel' (2017) 20(1) Journal of International Wildlife Law & Policy; *ibid.*, Adam and Schaffner 4; Bowman and others (n. 42) 687-688.

Other conventions, most notably CITES, might even be said to have stubbornly ignored the suffering and cruelty inflicted on animals by the activities they regulate.⁵² The ICRW could be an exception, because it has meanwhile succeeded in banning whale hunting. But from an Earth law and animal rights perspective the whaling moratorium is a slender reed. Pro-whaling countries already out of compliance with the moratorium on taking might be able to muster the votes needed to overturn it and have come close to doing so.⁵³ The WTO Appellate Body's recognition in the EU seal products case that public morals might be able to triumph over free trade was inspiring, but it most certainly does not translate into an accepted principle of international law.

Do proposed new agreements on international animal law come closer to realizing substantive legal rights for animals, as advocates of an Earth law jurisprudence have imagined them?

3.2 Initiatives for new conventions

3.2.1 CAP

The drafters of a proposal advanced in 2021 as a Convention on Animal Protection for Public Health, Animal Welfare, and the Environment (CAP)⁵⁴ have in mind a treaty “that establishes standards for the proper care and treatment of all animals to protect public health, the environment, and animal wellbeing,”⁵⁵ particularly in the light of the world's recent experience with the “emergence and transmission of zoonotic viruses and other pathogens, such as COVID-19.”⁵⁶ The basic aspiration, expressed in the last clause of the preamble, is “to provide leadership for the better protection of animals with consequent benefits to the natural environment and public health, including minimizing the risk of future zoonotic viruses... .”

⁵² Bowman, ‘Conflict or Compatibility’(n. 42) 58-60.

⁵³ See notes and accompanying texts 45-47.

⁵⁴ See text of the draft convention at: [https://assets.website-files.com/60fe75aa41780d45cc7a2453/6172dd95130cae658b074c56_Convention%20on%20Animal%20Protection%20\(Draft%2010.20.2021\)%20V3.pdf](https://assets.website-files.com/60fe75aa41780d45cc7a2453/6172dd95130cae658b074c56_Convention%20on%20Animal%20Protection%20(Draft%2010.20.2021)%20V3.pdf)> accessed 13 March 2022.

⁵⁵ American Bar Association Resolution adopted by the House of Delegates February 22, 2021, ‘Further Resolved that the American Bar Association encourages the U.S. State Department to initiate and take a leadership role in such negotiations.’ <https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2021/101c-midyear-2021.pdf><https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2021/101c-midyear-2021.pdf>> accessed 13 March 2022.

⁵⁶ CAP, Preamble (n.54).

The draft lists its “Fundamental Principles” in Article 1. They recognize *inter alia* that “[h]umans and animals co-exist within an interdependent ecosystem” and that “[h]umans have an ethical obligation to act responsibly toward animals.” The draft further recognizes in Art. 1.2 that “[a]s sentient beings, animals have intrinsic value. No animal should be killed unnecessarily or be subjected to cruel acts or to unnecessary suffering,” although there is no definition of what is unnecessary. Art. 1.3 further declares that “[w]hen humans have control over specific animals, they have a positive obligation to ensure their well-being by providing them with a suitable environment and care appropriate for their species.”

The fundamental principles articulated in the draft convention are related to human health and require stronger regulation of human contact with animals primarily to prevent the spread of zoonotic viruses and diseases.⁵⁷ They recall the link between subjecting animals to stress and the transmission of diseases.⁵⁸ The relationships between the protection of animals and their habitats and much broader goals of “environmental protection and conservation”⁵⁹ are also highlighted.

The CAP draft calls on contracting parties to “...identify species susceptible to being reservoirs or hosts of viruses and other pathogens that may spill over to humankind, and regulate interaction amongst those species, humans, and other animals.”⁶⁰ Contracting parties would commit to submitting lists of these species to future conferences of the parties⁶¹ with a view to listing them in an annex to the treaty.⁶² Parties whose territories serve as habitat to the listed species would then report on their location and proximity to human settlements, and identify risk-mitigation measures.⁶³ Parties would also commit to prohibiting “the capture of wildlife listed in Annex I, and the keeping, sale, purchase, farming, consumption, import and export of wild-caught animals of species ... listed in Annex I.”⁶⁴ Wet markets, a source of suffering and misery for a great many animals, would be regulated but not banned.⁶⁵

⁵⁷ *ibid.*, Art.1.4.

⁵⁸ *ibid.* Art. 1.5

⁵⁹ *ibid.*Art.1.6. “Animals are an integral part of the natural environment, and the protection of animals and their habitat is an integral component of the broader concepts of environmental protection and conservation.”

⁶⁰ Art. 3

⁶¹ Art. 4.1.

⁶² Art. 4.1.

⁶³ Art. 4.2.

⁶⁴ Art. 3.a.

⁶⁵ Art. 3.b.

The effectiveness of these provisions would obviously depend greatly on the willingness of contracting parties to make substantial investments in inspection and enforcement.

Beyond the measures for identifying zoonotic species, listing them in a treaty annex, and minimizing the risk of human contact with them, CAP addresses the obligations signatory states would have to ensure the humane treatment of animals across various categories of human use: “Wildlife Management and Habitat” and “Captive Wildlife care;”⁶⁶ companion animals;⁶⁷ “commercial animals;”⁶⁸ animals used in scientific research;⁶⁹ “animals used in entertainment”;⁷⁰ “domestic animals;” and the transportation of animals.⁷¹ The draft identifies the obligations animal owners or keepers would have in each category of use to prevent zoonotic diseases and protect animal welfare.

CAP as drafted and if adopted would clearly belong to the family of regulatory conventions. It goes much further with regulation than other, earlier conventions have ventured to go. CAP would move international animal welfare law in useful new directions. Moreover, its emphasis on human health and the prevention of future zoonotic pandemics may enhance its chances of adoption.

But there is no way to see it as a proposal that fundamentally transforms the way international law conceives of animals or of the ways in which people would be able, subject to modest restraints, to use animals.

CAP does not embrace or endorse the vision that Earth law advocates have in mind. It does not, for example, tackle head on a revision of the legal status of animals as property and it would not, therefore, substantially diminish the use of animals in commerce and entertainment, as companions, and for scientific experiments. In that sense CAP does not herald a radical new regime for animal protection. The incorporation of welfare provisions to protect animals from unnecessary suffering will not have much impact in a world where understandings of how much suffering is necessary are highly variable across countries and cultures.

⁶⁶ Arts.7 and 8.

⁶⁷ Art.10.

⁶⁸ Art. 11

⁶⁹ Art. 12.

⁷⁰ Art. 13.

⁷¹ Art. 9.

3.2.2 UNCAHP

The proposed United Nations Convention on Animal Health and Protection (UNCAHP) can be seen as an alternative to CAP. And, on the face of it, it is more in tune than CAP with Earth law thinking.⁷²

Proposed Article 2, for example, sets as guiding principles the five freedoms (freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; freedom to express normal patterns of behavior), and the three Rs (reduction in numbers of animals, refinement of experimental methods and replacement of animals with non-animal techniques).⁷³

Article 3 says it is a fundamental objective of the proposed convention to acknowledge and respect animal sentience, the precautionary principle, and the intrinsic value and dignity of animals. And, perhaps of most interest to advocates of Earth law, Article 5 declares that all animals have a fundamental interest in living and not to be killed, that they have a reasonable expectation not to be confined or contained if alternatives are available, and that they should be unharmed and well treated unless human life is at risk.

Even more fundamentally from an Earth law perspective, Article 5 recognizes a right of animals to be legally represented, given their inability otherwise to defend themselves. This clearly aligns with the Earth law view that animals should have standing in court. And Article 6 comes even closer when it anticipates the challenge of finding alternatives to animal-based industries and technologies. Every national government, it proclaims, “should ... promote current alternatives to the use of animals and develop research on future alternatives to existing animals’ products and exploitation.”

UNCAHP presents itself as a set of guidelines for changing human-animal relationships around the world. Contracting parties are responsible for implementation and that will undoubtedly lead to some variation, perhaps even to substantial variation, from country to country in the ways in which UNCAHP’s goals are substantially incorporated into and implemented through domestic legislation and policy. The clear focus on what is best for

⁷² UNCAHP, Preamble [file:///C:/Users/Rachelle%20Adam/Downloads/Folder-UNCAHP%20\(2\).pdf](file:///C:/Users/Rachelle%20Adam/Downloads/Folder-UNCAHP%20(2).pdf) accessed 13 March 2022.

⁷³ *ibid.*, Art.2. 1., 2.

animals marks UNCAHP, however, as the most promising foreshadowing of what an Earth law convention for the protection of animals would contain.

CAP, by contrast, does not sufficiently separate itself from the anthropocentric approach to animal protection now embodied in international law. It shies away from limiting economic activity that thrives on animal exploitation, which is from an Earth law perspective the ultimate challenge reformers have to face. In very simple terms, the message of CAP is to be kind to animals but keep the economy going. The alternative view, articulated by David Boyd, is that “... protecting the fundamental interests of all individual animals can only be assured through the systemic recognition of animal rights, just as protecting fundamental human interests requires recognizing the rights of all humans,”⁷⁴

Boyd in “The Rights of Nature” points to three underlying and inter-related reasons for the continued abuse of animals, species, and nature by humans:

“The first is anthropocentrism - the widespread human belief that we are separate from, and superior to, the rest of the natural world.... The second is that everything in nature ... constitutes our property, which we have the right to use as we see fit. The third idea is that we can and should pursue limitless economic growth as the paramount objective of modern society.”⁷⁵

My argument is that proposed conservation and animal welfare conventions have been designed and are implemented with these three concepts in mind, and that this accounts for their failure to reverse species loss, mitigate animal cruelty, and improve animal welfare. Attempts to tweak these conventions by adding welfare provisions, or to draft new conventions focused exclusively on animal welfare, cannot succeed in stopping human abuse of animals, because the abuse is rooted systemically in our beliefs that we are superior to animals, that they are our property to exploit, and that it is imperative we continue to grow the global economy.

Moreover, is animal welfare even an appropriate approach to protecting animals? In an anthropocentric balancing act meant to minimize the harm that humans cause animals,

⁷⁴ N. 25,58.

⁷⁵ *ibid.* xxiii.

welfare legislation embodies the concept of humane treatment of animals, the test being whether animal pain and suffering is necessary, which in turn leads to discussions about avoidable suffering and unnecessary killing. But what does this really mean?

Although CITES has a specific provision intended to alleviate the suffering of individual animals during transit, it is more generally the case that the trade in wildlife entails various forms of cruelty against which animals are powerless to resist.

In terms of the 'welfare' model, human beings are morally superior to animals, which are regarded as property. Welfare legislation regulates the 'humane' treatment of non-human animals in order to mitigate animal suffering, while condoning the full exploitation of non-human animals in favour of human interests. ... Scholars who oppose welfarism favour granting rights to animals in order to give recognition to their inherent value. For example, Anne Peters has recently argued for the utility of a (modified) transposition of the international human rights framework to provide animals with some form of subjective rights in order to further their interests.⁷⁶

Conventions that provide welfare for animals certainly reflect a broad international consensus that cruelty to animals is wrong and that we have an obligation to treat them humanely. They do not, however, venture beyond conventional views of animals as property or embrace more radical approaches to our relationships with animals. They pass over the legal developments that have occurred in a growing number of countries in recent years to recognize animal rights and even to grant animals legal personhood.

To explore another approach the next section asks what a convention that incorporates Earth law principles would look like.

⁷⁶ Scholtz (n.42) 465

4 Imagining the Unimaginable⁷⁷: An International Convention for Animal Rights

The baseline assumption of Earth law is that animals are sentient beings and members, together with us, of an Earth community. Animal welfare will, of course, be a component of a new approach to animal rights but the overarching concern is to treat animals with dignity and respect and to show them compassion, in line with the injunction in the Indian Constitution “to have compassion for all living creatures”⁷⁸

UNCAHP offers a promising starting point for an Earth law convention. It incorporates the five freedoms and the three Rs,⁷⁹ it explicitly recognizes as fundamental principles⁸⁰ animal sentience, precaution, intrinsic value and dignity,⁸¹ and its overall endorsement of non-cruelty and good treatment⁸² also reflect Earth law principles and values. While UNCAHP does not explicitly recognize that animals have judicially cognizable and enforceable rights, its recognition of fundamental principles serve the same goals. The UNESCO Declaration and the Ecuadorian Constitution are both sources of legal language for rights of nature that could be adapted to animal rights. Ecuador’s Constitution, for example, both confers rights on nature and imposes on the state the duty and responsibility to uphold these rights.⁸³

An animal rights treaty could also draw on Bolivia’s Law on the Rights of Mother Earth, which grants rights to nature and imposes a corresponding responsibility to respect and protect those rights on the government, corporations and individuals. The law itemizes seven rights of Mother Earth: the right to life, the right to a diversity of life; and rights to water, clean air, ecological equilibrium, restoration of environmental damage, and a pollution-free existence. The government’s responsibilities to protect these rights include preventing extinctions and the disruption of natural cycles, promoting production and consumption models in balance with nature rather than exploiting nature, and addressing

⁷⁷ Inspired by the iconic essay by Christopher Stone, ‘Should Trees Have Standing? Towards Legal rights for Nature Objects’ (1972) 45 Southern California Law Review “throughout legal history, each successive extension of rights to some new entity has been, a bit unthinkable” 453.

⁷⁸ Boyd (n.74) 55.

⁷⁹ UNCAHP, Art.2. 1., 2.

⁸⁰ *ibid.* Art.3.

⁸¹ *ibid.* Art. 4.

⁸³ Art.83(6).

climate change.⁸⁴ Bolivians can initiate legal action to protect these rights.⁸⁵ An animal rights convention should obligate each contracting party to incorporate these same principles and rights, as appropriate and relevant for animals, in their own national legislation.

An Earth law convention should also adopt the concept of legal personhood for animals, meaning that animals like corporations will be recognized as legal persons who enjoy specific rights that are legally enforceable.⁸⁶ There is precedent for this in New Zealand's recognition of the Whanganui River as a legal person in a 2011 treaty settlement between the government and the Māori,⁸⁷ and in the 2014 statute that recognizes the Te Urewera ecosystem as a legal entity "possessing all the rights, powers, duties and liabilities of a legal person."⁸⁸ By declaring the ecosystem a legal person the government dissolved public and private ownership over the land, and the ecosystem effectively now owns itself.⁸⁹

An Earth law convention would also adopt the model of planetary boundaries as the basis for imposing limits on human activities that impact animals, the objective being to use such models to reduce the impact economic growth has on animals.⁹⁰ The convention would also create institutions for implementation and enforcement, including a commission on animal rights similar to the UN Commission on Human Rights and an International Animal Court empowered to adjudicate alleged violations of the treaty. Contracting parties would be further obligated to establish animal courts under their domestic laws.

To represent voiceless animals and ensure that their rights are respected, the treaty would provide for the Commission on Animal Rights to appoint animal guardians, authorized under corresponding domestic legislation to represent animals both in the courts and before the other governmental institutions.

An Earth law animal rights treaty offers a point of convergence for conservationists, animal welfarists, and animal rightists. It would incorporate ethical values and moral

⁸⁴ Boyd (n.25) 194.

⁸⁵ *ibid.*

⁸⁶ *ibid.* 48

⁸⁷ *ibid.* 134

⁸⁸ *ibid.* 150.

⁸⁹ *ibid.* 55.

⁹⁰ Rob Dietz and Dan O'Neill, *Enough is Enough, building a sustainable economy in a world of finite resources* Routledge (Berrett Koehler Publishers 2013) 17-29

considerations for protecting animals that are widely shared and can be the basis for future work. On a practical level, the convention would address animal welfare issues either by imposing bans on activities, such as factory farming, which violate rights of nature as well as the rights of animals, or it would address them through subsequent protocols.

5 Conclusion

Isaac Bashevis Singer, the Nobel Laureate whose writings were profoundly shaped by the Holocaust and the destruction of European Jewry, was born in Poland and migrated to the United States in 1935. He wove a unique perspective on human-animal relationships throughout his work. In one short story, “The Letter Writer,” Singer said that “In relation to [animals], all people are Nazis. For animals, [life] is an eternal Treblinka.”⁹¹ And in “Enemies: A Love Story,” a novel, he wrote:

“As often as Herman had witnessed the slaughter of animals and fish, he always had the same thought: in their behavior towards creatures, all men were Nazis. The smugness with which man could do with other species as he pleased exemplified the most extreme racist theories, the principle that might is right.”⁹²

In similar vein, Romain Gary in the “Roots of Heaven” makes one of the characters, Morel, a concentration camp survivor. Both Gary and Singer, then, let their characters’ relationships with animals play out against their knowledge and experience of crimes against humanity and genocide. Revulsion against that experience brought the Universal Declaration of Human Rights into being in 1948, as well as the Convention on the Prevention and Punishment of the Crime of Genocide. Despite their drawbacks and ongoing violations, these human rights conventions mark a major milestone in the evolution of human morality. Governments can no longer argue that the mistreatment of people living within their own borders is their own business, and that national sovereignty allows them to do to their citizens whatever they please.

⁹¹ Isaac Bashevis Singer. “The Letter Writer”, *The New Yorker* (13 Jan.1968) <https://www.newyorker.com/magazine/1968/01/13/the-letter-writer#:~:text=Isaac%20Bashevis%20Singer%2C%20the%20Nobel,children's%20books%2C%20died%20in%201991.>> accessed 13 March 2022

⁹² Isaac Bashevis Singer, *Enemies: A Love Story*.(Farrar, Straus & Giroux 1972), 257.

The human rights paradigm has not yet been extended to animals. Animal cruelty remains an accepted part of our daily lives. National and international laws to protect animals still evince traces of the colonial treaties that preceded them, albeit now under the rubric of sustainable use.

The biodiversity and wildlife conventions discussed earlier have never taken seriously the ethics of compassion and morality. But it might make a difference if elephants, for example, had a right to exist, a right to thrive in their own natural environment, a right to their tusks, and a right to be represented in courts of law. It would not then be so easy to kill them for ivory and sell it as a luxury consumer good. In the case of cows, pigs, chickens and the other animals humans eat it's hard to imagine that humans would give them up entirely. But if they had rights to humane living conditions and compassionate care before slaughter, these animals' short existence would be more bearable. And that might tide us over until technologies such as 3D printed meat can bring an end to the habit of eating animal meats.

Legal rights are powerful both symbolically and politically, as the history of the civil rights, women's rights, Indigenous rights, and gay rights movements all demonstrate, and they have a proven track record as game-changers.⁹³ Rights have been successfully used by these social movements as a tool to achieve their ends. This may not be the right time to change the game for animals by adopting an animal rights treaty. But it is the right time to radically alter the global conversation about animals, to make discussions and debates about legal rights and personhood for animals not only imaginable but also familiar. Such discussions are certainly aspirational. But they may become inspirational, too.

Most importantly, perhaps, the launch of a campaign for an Earth law treaty for animals might summon up and bring to the fore the most admirable characteristics of our own species: our ability to empathize with the suffering of other species; our sense that the infliction of cruelty and suffering is wrong; our recognition that treating sentient beings as mere property is supremely unjust; and our vision of a hope that we can replace the deeply ingrained culture of human superiority over animals with ethical laws that will redefine our relationships with animals.

⁹³ Boyd (n. 25) xxxiii.