

Elie Verniers – Winner of the 1st place

A New Era on the Horizon: From Anthropocene To Symbiocene

In 50 years a lot can happen: two devastating World Wars, the virtual extinction of paper books, self-driving cars, a global pandemic and so on. But are 50 years enough time for a radical change in human behavior towards other animals? Will we exit the Anthropocene and enter the Symbiocene, an era where we truly live in harmony with nature? We will discover soon enough as we make a trip down memory lane. Through four milestone events, we will explore where we stand on the eve of marking 2073.

JULY 23, 2032: Brisbane kicks off the first Olympic Games without equestrian disciplines

A fast rewind to the extraordinary 2020 Tokyo Olympic Games which in fact took place in 2021 due to the Covid-19 pandemic. Annika Schleu, first in ranking to win gold at the women's modern pentathlon, encountered problems when her horse refused to jump. Her coach, Kim Raisner, punched the horse out of frustration while the whole world was watching and thus caused a public outcry. Subsequently, the Union Internationale de Pentathlon Moderne decided to remove horse riding from the modern pentathlon and replaced it with cycling. Despite extensive lobbying by animal rights organisations, the Olympic equestrian disciplines of Dressage, Eventing and Jumping remained unaffected. Yet, a historic change occurred when Brisbane, with support of the International Olympic Committee, announced that as of the XXXV Olympiad, equestrian disciplines will no longer be part of the Olympic Programme. The Australian Olympic Committee clarifies that the use of animals in (Olympic) sports no longer fits in with the Olympic core values of excellence, friendship and respect. Furthermore, they point out that, just as shooting pigeons was excluded from the Games, the spirit of the times requires us to reevaluate the use of animals in sports and for recreational purposes. In the build-up to Brisbane 2032, the Australian parliament passes numerous animal welfare acts prohibiting any use of animals in circuses, recreational fishing, marine mammal parks, etc. In presenting itself as the most animal friendly Olympic Games ever, the organizers have made sure that no animal products are converted in the infrastructure or sports accessories. Worldwide sports brand have been urged, for instance, to not use kangaroo leather in football shoes, a trend which also continues after the Games. Also the restaurants in the Olympic Village only provide vegetarian and vegan dishes. Notwithstanding all these efforts, Australia also receives a lot of criticism for greenwashing. On the one hand, the protection of animals used in sports and for recreational purposes is enhanced, but on the other hand Australia's treatment of animals within the agricultural sector is filled with controversies over broiler chickens, pigs, dairy calves, sheep, etc.¹ Nonetheless, this case demonstrates that seemingly unrelated fields, such as sports, can nevertheless meaningfully contribute to advancing animal welfare. Brisbane 2032 has indeed ignited a(n Olympic) flame which will eventually spark a conflagration of change.

¹ Jed Goodfellow, 'Regulatory capture and the welfare of farm animals in Australia' in D Cao and S White (eds) (ed), *Animal law and welfare-international perspectives* (Springer 2016).

APRIL 22, 2041: The African Union incorporates the intrinsic value of animals in its constitution

At the 58th Ordinary Session of the Assembly of Heads of State and Government of the African Union, a new objective is added to the African Union's Constitutive Act. In accordance with the new Article 3 (o) the objective of the Union shall be to "establish the necessary conditions which enable the consideration of animals as sentient beings with intrinsic value". Although the EU was the first to acknowledge animals as sentient beings in Article 13 of the Lisbon Treaty, the intrinsic value of animals was almost completely overlooked until the solemn recognition by the African Union. This recognition causes a revolutionary chain reaction in the adoption of animal protection legislation in the 55 AU Member States. No less than three quarters of the Member States decide to insert the intrinsic value of animals in their national constitution. In contrast to the constitutional provisions of some European countries,² the animal welfare constitutionalisation in Africa does result in profound changes regarding animal-unfriendly practices. Not only is a particular ban enacted against trophy hunting, but the end of the international trade in (African) wildlife in general also comes to the fore. The Constitutional Court of South Africa upholds a ban on trophy hunting referring to their new constitutional provision on animal dignity as well as to Article 3 (o) of the AU's Constitutive Act. Like Brisbane, Johannesburg wants to set an example and give the global community a strong message of empowerment and responsibility when hosting the XXXVIII Olympiad. Other AU Member States such as Botswana, Namibia, Tanzania, Zambia and Zimbabwe have quickly followed the South-African example in fighting trophy hunting. A bold move, since trophy hunters contributed 0.76 percent of overall tourism jobs and that the US imported 1.26 million wildlife trophies between 2005 and 2014,³ which tripled in 2040. Furthermore, this trophy hunting ban has paved the way for an even bigger achievement as, in the run-up to the 2050 Vision for "Living in harmony with nature", the so-called 'Nairobi Protocol' has been installed, introducing the ethical and humane use of components of biodiversity, paying particular attention to the intrinsic value of animals.⁴ Whereas wildlife welfare was long absent from international environmental law,⁵ a cross-pollination between animal welfare and conservation finally has resulted in compassionate conservation. By analogy with CITES and building on the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, the Protocol calls for safeguarding against the over-exploitation of animals and respect for individual animal dignity. Yet, not only endangered species but all wildlife are considered because of their intrinsic value. As a practical consequence, African countries refuse exchange requests from zoos all over the world. Hence, it also strengthens the existing trophy hunting ban as this ban cannot be circumvented, for instance, by exporting an African lion to a Texas ranch for trophy hunting. It is important to note that the ban on international wildlife trade does not cover

² See for Germany: Elien Verniers, 'The impact of including animals in the constitution—Lessons learned from the German animal welfare state objective' (2020) 8 *Global Journal of Animal Law* 1.

³ Charlotte Blattner, 'Trophy Hunting, the Race to the Bottom, and the Law of Jurisdiction' in Anne Peters (ed), *Studies in Global Animal Law* (Springer Nature 2020).

⁴ The underlying idea is derived from: Werner Scholtz, 'Ethical and humane use', intrinsic value and the Convention on Biological Diversity: Towards the reconfiguration of sustainable development and use' (2021) 30 *Review of European, Comparative & International Environmental Law* 73.

⁵ Guillaume Futhazar, 'Biodiversity, Species Protection, and Animal Welfare Under International Law' in A Peters (ed) (ed), *Studies in Global Animal Law* (Springer 2020).

livestock, which was undeniable a missed opportunity at that time. However, in view of the socioeconomic context it seems that also targeting animal husbandry was just not politically feasible. One last remark concerns the surprisingly lenient attitude of the WTO Member States. Although the Nairobi Protocol undeniably interferes with international trade, not a single case has been brought before the WTO's Appellate Body, opposed to what happened with the EU's 'Eat No Meat Regulation', which I will briefly elaborate on later.

What at first sight seems like a symbolic move by the African Union, has set in motion a series of animal dignity successes, which will be copied and even advanced in another significant part of the Global South.

DECEMBER 10, 2054: The Inter-American Court of Human Rights accepts fundamental animal rights for animals with practical autonomy

The case of *Las Ballestas Comunidad en nombre del Tursiops truncatus vs. República del Perú* (the 'Flipper case') should without doubt be hailed as a landmark decision in animal rights history. It has triggered a worldwide (r)evolution in the use of animals in research. While previous cases, such as the ones of Sandra⁶ and Cecilia⁷, increasingly evolved into the incipient legal recognition of fundamental rights for individualized great primates, a collective attribution of fundamental rights to animal species was lacking. Before delving deeper into the specifics of the case and its repercussions, we will first explain what should be understood by fundamental animal rights. To be labelled as a 'legal fundamental animal right', two cumulative conditions should be fulfilled: the right should protect a primary interest (substantive fundamentality) which may not be easily overridden due to a high threshold of infrangibility (normative robustness).⁸ A typical example is the right to life, in contradistinction to the right not to be killed without prior stunning, the latter qualifying as a 'legal simple animal right'.⁹ Turning to the Flipper case, at least three extraordinary novelties could be identified. The IACtHR was the first regional human rights tribunal to endorse animal rights within a human rights framework. Four decades before, in 2010, the European Court of Human Rights dismissed the 'Matthew Pan' case regarding chimpanzee Hiasl because of inadmissibility in view of the European Convention's personal scope.¹⁰ Secondly, as already mentioned, the case involved not one individual animal, but attributed fundamental animal rights to an animal species in general. Thirdly, the IACtHR turned down the argumentation of the Peruvian government, which argued that while ambiguity exists on whether or not great apes should receive fundamental rights, this was definitely not the case for other animals. According to the IACtHR, "in light of the latest scientific evidence, a teleological interpretation should be applied to Article 1 (2) of the American Convention on Human Rights insofar as 'person' means every animal with practical autonomy". In addition, the IACtHR extensively substantiated its

⁶ Cámara Federal de Casación Penal (Argentina), *Orangutana Sandra*, Judgment of 18 December 2014, LEX No. CCC 68831/2014/CFC1.

⁷ Tercer Juzgado de Garantías de Mendoza (Argentina), *Chimpanzee Cecilia*, Judgment of 3 November 2016, No. P-72.254/15.

⁸ Saskia Stucki, 'Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights' (2020) 40 *Oxford Journal of Legal Studies* 533.

⁹ *ibid.*

¹⁰ *Balluch v Austria* App no 26180/08 (ECtHR, 22 January 2010); *Stibbe v Austria* App no 26188/08 (ECtHR, 22 January 2010).

judgement on the remake of Steven Wise’s original book ‘Drawing the Line: Science and the Case for Animal Rights’¹¹ and also took into account the changing social attitudes towards animals referring to the African Union’s recognition of animal dignity in 2041. Although this ruling has been severely criticized for creating speciesism and ableism¹², it has nevertheless established an unseen paradigm shift in the use of animals in experiments. The atrocities which the dolphins endured in a Jurassic Park-like laboratory near Ballestas Norte which was especially set up for all sorts of medical experiments, caused a monumental shock wave around the world. Consequently, many foreign pharmaceutical companies who had outsourced their animal research to South American countries in order to evade national animal welfare legislation went bankrupt or were forced to rethink their animal research programme. This ultimately led to their replacement with highly innovative AI simulations and thus to an exponential worldwide decrease in animal experiments, including experiments with animals without practical autonomy.

Animal research and factory farming were perceived as two of the key conundrums in the animal rights discourse. This groundbreaking IACtHR judgement has settled the first question, and the second one is about to be addressed too ...

OCTOBER 4, 2068: Landslide victory for the Dutch Party for the Animals

With 57.2% of the vote at the 2068 general election, the Dutch Party for the Animals (PvdD) conquers as many as 90 of the 150 House of Representative’s seats. This landslide victory unleashes an unprecedented political and societal revolution at both the national and European level. One of the first major achievements encompasses the incorporation of a standard representation for the ‘unconsenting’¹³, not only including animals but also, for example, future generations. Translating this into policy, the Dutch Senate or ‘First Chamber’ is reformed in order to allocate a fixed number of seats to members from different political parties, yet charged with the sole purpose of representing the interests of and giving a voice to the voiceless. The underlying idea could be understood as a reflection of a simplified version of ‘Zoopolis’ in that it recognizes animals as full members of human-animal mixed communities.¹⁴ The PvdD’s dominance in the political landscape has also led to a breakthrough in the deadlocked talks regarding the EU’s animal rights approach. As more and more EU countries follow the Dutch animal rights’ wave, similar political parties penetrate the EU and carry much weight in the European Parliament. After decades of stagnating EU policy, with only minor triumphs, such as the ‘End the Cage Age’ regulation, a poor revision of animal welfare legislation and a shift from live to meat-and-carcass transport, a real transformation comes into force. A complete overhaul of both the Treaty of the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU) has been undertaken. A non-exhaustive list of examples of the modifications includes the inclusion of animal interests as a core EU value in Article 2 TEU, the striking out of the derogation regarding religious rites, cultural traditions and regional

¹¹ Steven Wise, *Drawing the line: science and the case for animal rights* (Perseus books 2002).

¹² Anne Peters, *Animals in International Law* (BRILL 2021) 367-371.

¹³ See Katharina Braun, ‘Consent, Animals, and the Other’, 2021, <https://static1.squarespace.com/static/5909d26117bffc90f0ec2f18/t/606c8b2faef828155b85d4e8/1617726260651/Katharina_Braun.pdf> accessed 17 February 2022.

¹⁴ Sue Donaldson and Will Kymlicka, *Zoopolis: A political theory of animal rights* (Oxford University Press 2011).

heritage in Article 13 TFEU, the removal of the notion ‘agricultural products’ from Article 38 TFEU, which associated farm animals and fish with a mere property status and perhaps most importantly, the addition of “(1) the welfare and rights of animals” to Article 4 (2) TFEU, creating an autonomous competence ground for the EU to regulate and promote the interests of animals. This competence is used, for instance, to install a courtroom animal advocate programme, obliging EU Member States to maintain a list of legal practitioners who are eligible to be appointed as an advocate for the interests of an animal in both civil and criminal court cases. In line with these revisions, the launch of an EU Action Plan regarding the phasing out of animal husbandry is probably the most fundamental policy decision. The newly elected EU commissioner for veganic agriculture and animal affairs claims that this exceptional transition is “one small step for the EU, one giant leap for ‘animal kind’”. *“The ‘new’ common agricultural policy in light of the European Green Deal did not bring the results one had hoped for [...]. Studies fifty years ago already underscored that only the phaseout of animal agriculture has the potential to stabilize greenhouse gas levels.¹⁵ Now the EU has finally decided to take its responsibility and to no longer support animal agriculture but instead we will only subsidize plant-based and environmental and sustainable sound farming. This drastic metamorphosis fits in with the Zeitgeist where climate change and even more so the interests of animals are just inevitably the primary driving forces,”* said the EU commissioner. The EU has made a come-back and a real tour de force. Even though it implemented equivalent reforms following the examples of Australia, Africa and South America, the EU was more of a copycat than a catalyst. With this agriculture transition, one may argue that the EU has indeed retaken its frontrunner position.

Conclusion

The standard representation of animals in the Dutch Senate almost externalizes Banksy’s famous painting ‘Devolved Parliament’ which replaces British politicians in the House of Commons with chimpanzees and orangutans. To reach this point that once seemed impossible or ridiculous is the result of a juncture of several divergent impetuses, both at micro and macro level. I’ve delved deeper into only four vital anchor points, but indeed they are many more. This overview reveals some striking findings. For a start, Covid-19 has not been included in this narrative, as it did not really lead to progress for animals, notwithstanding the promising words of UN Secretary-General Guterres in 2020, who referred to Covid as a unique steppingstone for a global Earth-centred transition, in which the lives of all human and non-human species matter.¹⁶ Secondly, it seems that the secret to this progress lays in a multidisciplinary approach, which integrates animal interests into the environmental policy, research, agriculture and even sports. A third observation relates to the geographical dissemination of the animal revolution which has its roots mostly in the global South. A concern, however, is the vast amount of blind spots which cover important regions such as North America, the Middle East and three out of four BRIC countries. It is not yet clear which

¹⁵ Michael B Eisen and Patrick O Brown, 'Rapid global phaseout of animal agriculture has the potential to stabilize greenhouse gas levels for 30 years and offset 68 percent of CO2 emissions this century' (2022) 2 PLOS Climate 1.

¹⁶ UNGA ‘Harmony with Nature, Report of the Secretary-General’ UN Doc. A/75/266 (28 July 2020) at 94 and 95.

direction they are heading and reforms are getting off to a slow start. Finally, what other developments may we expect in the future? A lot will in fact depend on the outcome of the ongoing WTO case regarding the EU's 'Eat No Meat Regulation', a measure promulgated as part of the new regulatory framework concerning the veganic agriculture transition. The *EC-Seals* case¹⁷ already illustrated the extraterritorial potential of EU policy.¹⁸ If the WTO would likewise accept the ban on the import of animal agriculture products on animal welfare grounds as part of public morality (Article XX(a) GATT), a new era may indeed await us, one that is characterized by harmonious interactions between humans and all other living beings. To be continued...

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¹⁷ *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products* (Appellate Body Report) WT/DS400/AB/R, WT/DS401/AB/R (22 May 2014).

¹⁸ Sabine Brels, *Le droit du bien-être animal dans le monde* (Harmattan 2017) 206-221.