

From Beast to Ward:

Removing the Injustice to Animals from the American Criminal System

*Samantha Castranova

I. Introduction

Imagine yourself sitting in your backyard on your favorite chair, petting your dog. You stroke each hair without thought as you stare off into space, pondering the day. The peaceful chirp of the birds in a distant tree puts your mind at ease and you smile as you see a beautiful butterfly stop by your flowering bush for a late-day snack. All of the sudden, you are finally able to forget all the worries of your day as you become one with an animal world that does not care about your recent successes or failures. Your dog will love you unconditionally no matter what, the bird will continue to sing its beautiful melody day in and day out, and the butterfly will always value you for the succulent flowers you provide her with. Every day, we, as humans, benefit so much from the animals around us, and we seek to thank them through love. Unfortunately, though, we often forget that animals need the protections of our laws just as much as they need love. Thus, as we sit in our solace, enjoying the great outdoors, we often feel guilty.

We live in a country where we place the value of a human life over the value of an animal life as if animals have less of a right to their own pursuit of happiness than we do. We continually tolerate crimes on animals by punishing people less for crimes done to animal victims than human victims. Then, to make it even worse, we punish animals more severely than humans for the same crime even though animals have lower mental capacities to understand their actions.

* I am a graduate of the University of Florida with a B.A. in political science and a third year law student at Dwayne O. Andreas School of Law, class of 2015. I would like to thank my parents, sisters, and family for supporting my law school career. I would especially like to thank my sister, Stephanie, for her invaluable proofreading and my professors, Jane Durocher and Michelle Maloney, for their supervision of this article.

All of this causes animals to be excluded from the only mechanism that provides protection in our modern world – the legal system. Unfortunately, the American criminal system does not value the inalienable, intrinsic rights of animals to exist, evidenced by a penal code of laws that under-punish crimes against animals and over-punish crimes by animals. We owe it to animals to fix this injustice in the same manner we provide protection to our children – through the guardian ad litem program.

This paper will analyze through an Earth jurisprudence lens the anthropocentric nature of the American criminal system. It will first discuss in general how the American criminal system works and the expectations Earth jurisprudence would have broadly for a criminal system. Then, it will discuss how people in America are punished less for crimes against animals than for crimes against humans. From there, it will discuss how animals are punished more severely than humans in America for the same crime even though they have lower mental capacities to form intent. Then, finally, this paper will move onto a discussion of practical analysis of how our criminal system can incorporate the ideals of Earth jurisprudence to facilitate a more nature-centered criminal system through a guardian ad litem system.

II. Background

To understand the need for guardians ad litem for animals, it is important to understand the American criminal system. The American criminal system is based on the relationship between “criminal conduct” and “victims.” “Criminal Conduct” is defined as “conduct that causes social harm and is defined and punished by law.”¹ “Victim” is defined as a person harmed by a crime, tort, or other wrong.”² What is important to notice is the use of the word “human” in

¹ CRIMINAL BEHAVIOR, BLACK'S LAW DICTIONARY (9th ed. 2009).

² VICTIM, BLACK'S LAW DICTIONARY (9th ed. 2009).

this definition of victim. Our legal system does not consider animals as potential victims of criminal conduct. This poses a problem to the goal of Earth jurisprudence.

Earth jurisprudence is a lens for looking at this anthropocentric definition of “victim.” “Earth Jurisprudence suggests that the core failure of modern human governance systems is that they regulate human behaviour [sic] based on the fallacy that we are separate from nature and can operate outside the boundaries imposed by natural systems.”³ This means that we, as humans, falsely convince ourselves that the animal world needs us more than we need it, which means we have the right to dominate it. This is unfair. The point of this paper is not to argue that animals should have greater rights than humans, but merely equal rights to do what they do – eat, sleep, find shelter, and just be. Thomas Berry proposed that “[e]very component of the Earth community has three rights: the right to be, the right to habitat, and the right to fulfill its role in the ever-renewing processes of the Earth community.”⁴ We owe animals the protection of these three fundamental rights just as we owe it to all living things. As Glen Wright suggests, “Animals are not accorded any rights in Earth Jurisprudence over and above those granted to all other components of the Earth system. Rather, all natural subjects hold the same basic ‘rights.’”⁵

The idea that all living things have an equal, inherent right to be is best illustrated by the following story from Cormac Cullinan.⁶ Cullinan tells the story of the killing of a pregnant zebra mare by a hunter out for the profit of her pelt.⁷ This is a violation of the rights of “zebrakind” to

³ Glen Wright, *Animal Law and Earth Jurisprudence: A Comparative Analysis of the Status of Animals in Two Emerging Critical Legal Theories*, <http://www.glenwright.net/files/Animal%20Law%20and%20Earth%20Jurisprudence.pdf> (last visited Mar. 25, 2015).

⁴ THOMAS BERRY, *EVENING THOUGHTS* 110 (2006).

⁵ Wright, *supra* note 3.

⁶ Cormac Cullinan is a practicing environmental lawyer in Cape Town, South Africa. He is known for his work in creating a legal philosophy that advocates that the Earth should be granted intrinsic rights. *Cormac Cullinan*, THE GREEN INTERVIEW, <http://www.thegreeninterview.com/bio/cormac-cullinan> (last visited Mar. 17, 2015).

⁷ Robert Lee, *A Walk on the Wild Side: Wild Law in Practice*, 18 *ELM* 7 (2006), also available at <http://gnhre.org/wp-content/uploads/2014/01/lee-a-walk-on-the-wild-side.pdf>.

live, he says.⁸ In a much more complex way, this is the same type of violation going on in American society when we continually over-punish and under-protect animals in our criminal system.

In order to reverse this injustice, things must change. For our criminal laws to recognize laws and respect animal's rights, they must become what Begonia Filgueira and Ian Mason termed as "wild laws."⁹ To be considered a wild law, a law must meet three criteria: 1) it must be centered on the Earth as a whole, not just humans, 2) it must provide mutually enhancing relations to promote the well-being of all members of the Earth, and 3) it must be based on community ecological governance, meaning it must involve those with the most interest in the lawmaking.¹⁰ This paper will recommend a criminal law system that fits this mold.

III. Crimes on animals are punished less than crimes on humans.

Now that the principles of Earth jurisprudence have been explained, we can use those principles to better explain the problems facing the animal world. In the modern American legal framework, we tolerate crimes on animals by punishing people less for crimes to animals than to humans. Today, every state in this country has an anti-cruelty statute.¹¹ However, as of now, only thirty-one states actually make animal cruelty a felony while any type of human cruelty – from battery to murder – is considered a felony in all fifty states.¹² This is a result of society's view that animals are merely the property of humans and nothing more.¹³

Even in the thirty-one states where animal cruelty is considered a felony crime, these laws are still not as protective as they could be. Many of these laws impose an almost-

⁸ *Id.*

⁹ BEGONIA FILGUEIRA & IAN MASON, *WILD LAW: IS THERE ANY EVIDENCE OF EARTH JURISPRUDENCE IN EXISTING LAW AND PRACTICE?* 5 (2009).

¹⁰ *Id.*

¹¹ Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans*, 6 *ANIMAL L.* 1, 7 (2000).

¹² *Id.*

¹³ *See id.*

insurmountable burden on prosecutors in order to obtain a conviction under the statute.¹⁴ For example, many current statutes require prosecutors to prove the difficult element(s) of “cruelty,” “torture,” “intentional,” “willful,” or “malice.”¹⁵ Accepted practices of farming and scientific experimentation on animals typically do not meet this intent requirement.¹⁶ Further, to prove an element such as malice is very difficult. When we say that something is done maliciously, we mean one of two things — either that it was done intentionally or that it was done with some wrongful motive.¹⁷ “Malice . . . is an elusive, abstract concept, hard to prove and hard to disprove.”¹⁸ With so many requirements, animal cruelty is hard to prove.

To make it even harder to gain a conviction for animal cruelty, many of these statutes also provide defenses of “necessity” and “justification.”¹⁹ A defense of necessity to kill an animal would mean that the person acted “in an emergency that he or she did not create and [committed] a harm that is less severe than the harm that would have occurred but for the person's actions.”²⁰ It is pretty easy to imagine a scenario where a human defendant would claim that they were afraid the animal was going to attack them, so they harmed the animal.

This lax attitude toward animal cruelty is uncalled for as many crimes on animals come with unspeakable, premeditated acts. For example, in March of 1991, a Minnesota resident decided to pick up five innocent puppies, carry them into the freezing winter weather, and dump them into a trash bin.²¹ For this disgusting act on helpless puppies, the defendant was only fined \$1.00.²² Another example can be found in 1996 when an Orlando art student chose to dip forty

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Thomas G. Kelch, *Toward A Non-Property Status for Animals*, 6 N.Y.U. ENVTL. L.J. 531, 540 (1998).

¹⁷ MALICE, BLACK'S LAW DICTIONARY (10th ed. 2014).

¹⁸ *New York Times Co. v. Sullivan*, 376 U.S. 254, 293 (1964) (Black, J., concurring).

¹⁹ Sauder, *supra* note 11, at 7.

²⁰ NECESSITY, BLACK'S LAW DICTIONARY (10th ed. 2014)

²¹ Sauder, *supra* note 11, at 7.

²² *Id.*

live mice into a heated polyester resin, wait for the resin to harden, and then slice the resin into little blocks.²³ When asked about what he had done, the defendant said he was “not ashamed of what [he] did [but] of how people reacted.”²⁴ For this unremorseful and heinous act, the defendant was only ordered to pay a measly \$500.00 to the Humane Society, perform fifty hours of community service, and write a letter of apology.²⁵ The punishment hardly seemed to fit the gravity of the crime.

Another example of how little we criminalize crimes against animals is the mandatory reporter requirement. Since 1967, all fifty states have required health care professionals to report any suspicion of child abuse.²⁶ On the other hand, only two states – Minnesota and West Virginia – require veterinarians to report animal cruelty.²⁷ This disproportionate protection is unfairly anthropocentric. All living beings – both humans and animals – have the right to live free from abuse. The idea behind the belief that human children need the protection of mandatory reporting is that they often are too young or too frightened to speak for themselves. Well, aren’t animals also unable to speak for themselves? Then, why do not all fifty states require mandatory reporting of animal abuse by veterinarians just as all fifty states require mandatory reporting of child abuse by doctors?

Finally, yet another example can be found of the undervaluing of animal lives by looking at our tolerance of the use of animals in scientific research. As Lorna A. Walker points out, “[w]hile many animals suffer and die in scientific research, many human lives are saved because of the research.”²⁸ As anthropocentrists, we look at this as a balancing act of the saved human

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Sauder, *supra* note 11, at 7.

²⁸ Lorna A. Walker, *Cages and Codes: The Debate over the Use of Laboratory Animals*, 11 J. ENERGY NAT. RESOURCES & ENVTL. L. 319, 321 (1991).

lives versus the lost animal lives. We artificially assign animal lives a lesser weight than we assign human lives, thus, often resulting in an excuse for animal testing.²⁹

With so much protection provided for the value placed on a human life, why is there very little protection placed on the value of an animal life? After all, as you sit in your backyard surrounded by the peace of nature, what gives you more right to be happily in that yard than the animals? Nothing.

IV. Animals are punished more severely than humans for the same crime.

At common law, “criminal intent” is defined as “[t]he intent to accomplish the precise criminal act that one is later charged with.”³⁰ In our criminal system, not only do we under-punish crimes against animals, we also over-punish crimes done by animals by ignoring their lack of intent. Often animals are punished more severely than humans for the same crime even though they have lower mental capacities to form intent.

Let us look at the treatment of children in our criminal system. Under the age of six, it is said that a child cannot form criminal intent, and as such, cannot be held responsible for criminal conduct.³¹ There are biosocial, cognitive, and psychosocial reasons for the theory that a child cannot act with intent.³² The biosocial factors include the inability of a young child “to control emotional impulses and injury controls; cognitively, children are unable to view the world outside their own perspectives; and psychosocial factors include emotional regulation and media influence.”³³ Animals are much the same way. To prove this point, a study was performed on a variety of animals – mice, rats, and cats – using conditional reflex and evoked potential

²⁹ *See id.*

³⁰ INTENT, BLACK'S LAW DICTIONARY (10th ed. 2014).

³¹ Angela Bonin, *Can a Child Commit a Crime with Criminal Intent?*, EXAMINER.COM (Feb. 3, 2012), <http://www.examiner.com/article/can-a-child-commit-a-crime-with-criminal-intent>.

³² *Id.*

³³ *Id.*

techniques.³⁴ The results show that most animals' brains are divided into two hemispheres.³⁵ The right hemisphere is in charge of spatial analysis while the left hemisphere is for motor control and time perception.³⁶ In contrast, an adult human's brain's right hemisphere is responsible for regulating reasoning, analyses, and logical thinking while the left hemisphere is responsible for control of emotions.³⁷ This difference between animal's unreasonable minds and human's reasonable brains makes it impossible for animals to form the same criminal intent that humans do. However, animals are still punished for crimes alongside humans, and even sometimes are punished more severely than humans for comparable crimes.

With this concept of intent engrained in the American criminal system, human defendants are only sentenced to capital punishment when the defendant possesses the required intent.³⁸ However, animals frequently are given capital punishment (meaning they are put down) when they merely injure a human being.³⁹ This is unfair as animals should be provided the same due process that humans are afforded.⁴⁰ If animals were put on trial for capital punishment with "intent" as a required element of the crime, then think how impossible it would be for a court to ever sentence an animal to be put down. Animals are naturally vicious, so as such, they lack the capability of ever forming a premeditated intent for murder; instead, animals act more in the heat of passion, which is only manslaughter at common law and not punishable by death.⁴¹

³⁴ V.L. Bianki, *Lateralization of Functions in the Animal Brain*, NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION, <http://www.ncbi.nlm.nih.gov/pubmed/7287327> (last visited March 19, 2015).

³⁵ *Id.*

³⁶ *Id.*

³⁷ Bonin, *supra* note 31.

³⁸ Jen Girgen, *The Historical and Contemporary Prosecution and Punishment of Animals*, 9 ANIMAL L. 97, 97 (2003).

³⁹ *See id.*

⁴⁰ *See* DUE PROCESS, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "due process" as "[t]he conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case.").

⁴¹ *See* MANSLAUGHTER, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "voluntary manslaughter" as "[a]n act of murder reduced to manslaughter because of extenuating circumstances such as adequate provocation (arousing the "heat of passion") or diminished capacity.").

Without complex brains, not only is it impossible for animals to form intent, it is also impossible for a criminal punishment on animals to meet any of society's goals. "Criminal law theorists believe that criminal sentences serve two purposes."⁴² First, sentencing serves the goal of deterrence by "detering future crime by both the convict and by other individuals contemplating a committal of the same crime."⁴³ Second, sentencing serves the goal of retribution, meaning punishment.⁴⁴ "When sentencing, a judge must impose the least severe sentence that still achieves both goals, while also considering the need for societal protection."⁴⁵ Thus, the three goals of sentencing are: deterrence, retribution, and protection of society.⁴⁶ If judged under these same goals, the sentence of an animal to death would serve neither the goal of deterrence nor retribution. Killing an animal will not deter the conduct of other animals because animals do not pick up the newspaper and read about other animals' criminal convictions like humans do, nor do animals understand that when a judge decides their fate, they are being punished for conduct they did so long ago that they probably no longer even remember it. Dogs, for example, live only in the moment.⁴⁷ Behavioral tests, using auditory stimuli, have shown that dogs have a transient, short-term memory.⁴⁸ They may develop an internal timer that guides them from one ritual to the next, like from lunch time to dinner time; however, they do not have the ability to go over past events and think about them.⁴⁹ Therefore, it would be impossible for punishing an animal to meet the goal of deterrence because they could not look back and say, "I

⁴² *Sentencing*, CORNELL LAW SCHOOL LEGAL INFORMATION INSTITUTE, <http://www.law.cornell.edu/wex/sentencing> (last visited Feb. 18, 2015) (defining sentencing).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *See id.*

⁴⁷ Madeline Masters, *Do Dogs have Long-Term Memory*, THE DAILY PUPPY, <http://dogcare.dailypuppy.com/dogs-longterm-memory-2305.html> (last visited Mar. 23, 2015).

⁴⁸ Bruce L. Brown & Stefan Soetysik, *Four-Pair Same-Different Differentiation and Transient Memory in Dogs*, DEPARTMENT OF NEUROPHYSIOLOGY, <http://wvww.ane.pl/pdf/3112.pdf> (last visited Mar. 23, 2015).

⁴⁹ Masters, *supra* note 47.

did that bad act yesterday, now I am getting this punishment today, and as such, I should never do that bad act again.” That is the reason why dog trainers stress that punishment should come immediately – not minutes or hours later.⁵⁰ Therefore, what we deem as criminal punishment in our current legal system is not a reliable way to train animals to refrain from deviant behavior.

While many will likely argue that a ferocious animal needs to be put down to meet the third goal of protecting society, this is an unfair conclusion. Sentencing’s goal is to balance all three: deterrence, retribution, and protection of society. If deterrence and retribution are not being accomplished by the killing of animal defendants, then there must be a better way to accomplish protection of society. Perhaps animals could be sent to a rehabilitation program or to a piece of land where humans are prohibited.⁵¹ That way, both the animal and the humans could retain their right to happily exist.

V. **We can make our criminal laws into “wild laws.”**

From the above analysis, it is clear that we have a problem on our hands as a nation. However, pointing out a problem is only useful if there is actually a solution. Fortunately, there is something that can be done here.

Earth jurisprudence is the short and sweet answer. It will require a complete paradigm shift away from just protecting animals as property, faithful companions, or best friends; instead, we must learn to value animals’ rights for purely what they are – just the animals’ right to be.⁵² As we think about the value of our family pets or the birds chirping in our backyard, we cannot choose merely to protect them because they provide us, as people, with love or entertainment. We must instead value them for their own personal rights to live, eat, sleep, and play. After all,

⁵⁰ Laura Agadoni, *How Long Can a Dog be Punished after Bad Behavior*, THE DAILY PUPPY, <http://dogcare.dailypuppy.com/long-can-dog-punished-after-bad-behavior-1536.html> (last visited Mar. 23, 2015).

⁵¹ See Girgen, *supra* note 38, at 97.

⁵² See Jules Cashford, *Dedication to Thomas Berry*, in *EXPLORING WILD LAW: THE PHILOSOPHY OF EARTH JURISPRUDENCE*, 9 (Peter Burdon ed., 2011).

we already value animals for human-centered reasons and what it has led to is animals being abused, criminalized, and used as science experiments.

As an example, estimates of the number of animals used in scientific experiments each year in the United States range from 10 million to 100 million.⁵³ The reason we have so much animal testing is that animals lose the balancing test to humans. In modern society, we place value on living things like price tags. When valued merely as human property and entertainment, animals are given a much lower price tag than humans. However, if both humans and animals are valued for the same right to exist, then their prices will be equal. Thus, maybe animals will sometimes win the balance of interests between humans' rights to protection versus animals' rights to live, humans' rights to do with their pets as they wish versus animals' rights not to be abused, and humans' rights to better science versus animals' rights not to be subjected to cruel testing. Right now, with a lower value, animals are rarely winning that balance.

In order for our criminal law system to give animals the value they deserve, our laws, as discussed in the background section of this paper, will have to become what is termed as "wild laws."⁵⁴ To achieve this, the paradigm shift must encourage laws that are 1) centered on animals, not just humans, 2) mutually enhancing to animals and humans alike, and 3) based on community ecological governance that includes native peoples in the discussion.⁵⁵

This concept of Earth jurisprudence in the American criminal system might seem like an unattainable goal – more of philosophy than possible reality; however, there is one simple way to take a step toward Earth jurisprudence in the penal code – to provide guardians ad litem for animals. A quote from Glen Wright describes the need for an animal guardian ad litem program perfectly:

⁵³ Kelch, *supra* note 16.

⁵⁴ FILGUEIRA & MASON, *supra* note 9.

⁵⁵ *Id.*

A more philosophically problematic aspect of animals' rights in Earth Jurisprudence is the difficulty in determining what rights a particular animal has. An animal's role in the Earth system is the starting point for determining its rights, but simply identifying the role of an animal in the ecosystem does not in itself provide any detail on how human actions should be limited in relation to that animal.⁵⁶

More simply put, Earth jurisprudence would require that criminal laws be more favorable to animals by putting their interests in equal balance with human interests – like the yin and the yang. However, to know what is in an animal's best interest is impossible because we cannot read their minds. Thus, it would be best to have an impartial guardian whose job it will be to act in the best interests of the animal.⁵⁷ There is plenty of zoological research for the guardians to work with and rely on to figure out what is in the animal's best interest.

We have had the concept of guardians in our legal system for children, elderly, and the incompetent for many years.⁵⁸ The role of a guardian ad litem is to “represent the best interests of the person for whom he or she is appointed.”⁵⁹ Under the guardian ad litem program, the guardians will not only be able to provide defense of animals when accused of a crime, but they will also be able to have standing to sue on the animals' behalf when abused or mistreated.⁶⁰

⁵⁶ Wright, *supra* note 3.

⁵⁷ See Judith E. Koons, *Earth Jurisprudence: The Future Law of the Planet*, in AN INTRODUCTION TO EARTH JURISPRUDENCE: GUIDING PRINCIPLES AND WILD LAW POSSIBILITIES, 41 (Judith E. Koons & Jane M. Goddard ed.); See also Fla. Stat. 39.802(4)(c) (discussing the requirement that a guardian ad litem for children act in the best interest of the child).

⁵⁸ 4A Wash. Prac., Rules Practice GALR 2 (7th ed.) (“[A] guardian ad litem is any person who is appointed by the court to represent the best interest of the child(ren), an adjudicated incapacitated person, or an alleged incapacitated person or to assist the court in determining the best interest of the child(ren), an adjudicated incapacitated person, or an alleged incapacitated person, regardless of that person's title, except a person appointed pursuant to rule 6.”).

⁵⁹ *Id.*

⁶⁰ Marguerite Hogan, *Standing for Nonhuman Animals: Developing A Guardianship Model from the Dissents in Sierra Club v. Morton*, 95 CAL. L. REV. 513, 515 (2007).

A guardian for animals would fulfill the three principles of wild law. First of all, with animals having a consistent, neutral voice, it is likely criminal laws will become less anthropocentric in line with the first principle. It may sound like a radical shift for our criminal system to weigh crimes to and by animals equally to those to and by humans, but really it is not that radical. Take for example two already existing Florida criminal statutes. Currently, in Florida, assault on a person is a second degree misdemeanor, which carries a maximum penalty of sixty days in jail and a fine of \$500.00.⁶¹ Comparable to this law for assault on a human is the statute protecting manatees from harassment. In Florida, harassment of a manatee is punishable by a maximum fine of \$500.00 and/or imprisonment of up to sixty days.⁶² Thus, in Florida, a similar crime against a human is penalized exactly the same as a similar crime against an animal. More laws of this equality would be a big step in the direction of a more balanced ecosystem for us all to enjoy.

For the second wild law principle of mutual benefit, by humans creating laws protecting animals, both humans and animals will benefit mutually. We as humans spend so much time thinking about how we care for animals through endangered species lists and animal shelter adoptions that we do not realize just how much we depend on animals for our own survival. Without honeybees, there would be no pollination and consequentially, a decrease in food.⁶³ Without plankton that produce about fifty percent of the world's oxygen, we would not be able to breathe.⁶⁴ Without bats to eat bugs, we

⁶¹ Fla. Crim. Stat. 784.011.

⁶² *Manatee Rules and Regulations*, HOME SAFE, <http://www.homesafe.com/features/manatee/rules-of-the-road.php> (last visited Feb. 4, 2015).

⁶³ *The Human Race Needs These 6 Animals to Survive, And Most People Don't Even Know It*, VIRALNOVA (Aug. 26, 2014), <http://www.viralnova.com/animals-humans-need/>.

⁶⁴ *Id.*

would be overrun with insects destroying our crops.⁶⁵ Without fish, ocean acidity would rise to unhealthy levels.⁶⁶ Without fungi as natural recyclers, we would be missing out on all the nutrients they provide to the environment.⁶⁷ Without fish, cattle, chicken, et cetera, what would we eat to get the iron we need as humans? This list could go on and on, but I think the picture is clear. Laws that defend animals from destruction in the end will benefit humans just as much as animals more than we could ever imagine.

Finally, this concept of a guardian will allow room for the third principle of allowing native voices to have a say in the lawmaking process. Native American principles value animals, and we can seek guidance from those principles in creating our new guardian system. For example, Native Americans once valued nature so highly that each community member was named for the sign of an animal and then was in charge of protecting that species.⁶⁸ If one man maimed twenty buffalo for sport, then the buffalo protector would punish the perpetrator.⁶⁹ It was a simple system, but if we had something like it today, it would provide animals the protection they need as members of the Earth world.

VI. Conclusion

Let us end back at the beginning and think about that familiar scene – sitting in your backyard with your fluffy companion at your side while birds provide you soothing music in the trees and butterflies provide an entertaining distraction with their wonder. The stress of the day melts away and as you appreciate it all, this time you need not feel guilty. You need not feel guilty because the animals that surround you live in balance

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Tom Little, *Indigenous People and Connection to the Land* (2014), at para. 4-5.

⁶⁹ *Id.*

with you now; they are not exploited as property. You have your criminal penal code to protect you and the animals have their guardians ad litem.

Currently, the American criminal system unfairly supports a penal code of laws that under-punishes crimes against animals and over-punishes crimes by animals. We, as Americans, under the Earth jurisprudence movement, need to pressure our government to provide animals a voice through the guardian ad litem program. All are living in balance with an equal right to be. Humans and animals may have different needs – humans need roads, houses, cars, and the like while animals need a shady tree, a clean river stream, or a grassy field – but, each has a right to fulfill those needs. To achieve this, balance is needed, where finally the yin does not subordinate the yang, but instead, the two float together in perfect equilibrium. The contrary forces of humans and animals are actually complementary forces that together create the perfect balance that our world ecosystem needs to sustain itself. After all, everyone in America has a right to the pursuit of happiness – even the animals.⁷⁰

⁷⁰ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”).