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# RECASTING OUR “WILD” NEIGHBOURS: CONTESTING LEGAL OTHERNESS IN URBAN HUMAN–ANIMAL CONFLICTS

MANEESHA DECKHA & ERIN PRITCHARD<sup>†</sup>

## INTRODUCTION

Discussions of human-animal urban co-existence often characterize relationships between the two as conflict-laden, generally locating animals on the losing side.<sup>1</sup> This type of framing is unfortunate—both for how it positions animals and also for how it imagines humans vis-à-vis animals. It is a framing that is undergirded by a centuries-old binary in cultures dominated by Western intellectual traditions where humans are sharply distinguished from all other animals and nature is sharply distinguished from culture. These oppressive binaries—and the concept of “wildness” that circulates within them—infuse human–human relations as well. In fact, the use of animal and “wildness” imagery to dehumanize (and thus degrade) certain human bodies has made the division between human and non-human animals particularly ingrained. When legal and policy actors rely on terms such as “wildlife”

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<sup>1</sup> See e.g. Wency Leung, “Man v. Raccoon: Which Side Are You On?,” *The Globe and Mail* (2 June 2011), online: <[www.theglobeandmail.com](http://www.theglobeandmail.com)>. Similar rhetoric is evident in scientific texts that purport to be focused on the lives of animals. See Victoria M Lukasik & Shelley M Alexander, “Human–Coyote Interactions in Calgary, Alberta” (2011) 16:2 *Human Dimensions of Wildlife* 114 (which begins with the statement that “[h]umans have a long history of conflict with coyotes” at 114).

to represent animals in urban environments today, little consideration is given to where this notion came from or to how racial and colonial logics about wilderness indelibly shape our cultural attitudes about animals, human uniqueness, and even other humans. Western ideologies of dominance and control fit comfortably into a need to subdue the wild “other” whether the Other is human or non-human. Where non-human animals are concerned, these hierarchical cultural ideas translate into legal principles.<sup>2</sup> They are evident in the law both in terms of the general legal landscape for animals as well as more concerted legal and policy responses to “wild” animals. Seemingly benign urban wildlife management laws and policies, we argue, thus reproduce problematic cultural, racial, gender, and species logics.

In this paper, we first demonstrate the problematic cultural lineage of the legal classification of “wild” animals on which urban wildlife management laws and policies depend. We unpack some of the cultural assumptions that make what some have called a trans-species ethic rather than an anthropocentric urban ecological framework very difficult to achieve in handling the challenges raised by the presence of wild animals in human urban zones.<sup>3</sup> In the second part, we will discuss how the law

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<sup>2</sup> See Krithika Srinivasan, “The Biopolitics of Animal Being and Welfare: Dog Control and Care in the UK and India” (2013) 38:1 *Transactions of the Institute of British Geographers* 106 at 107–08.

<sup>3</sup> We wish to acknowledge from the outset that “wild” is a problematic term—indeed, contestation of the term is at the very heart of this paper. However, we continue to use the terms “wild” and “wildlife” throughout the paper as “provocative shorthand” to recognize the socially constructed division of “wild” and “domestic” non-human animals. See Marc Bekoff & Jessica Pierce, *Wild Justice: The Moral Lives of Animals* (Chicago: University of Chicago Press, 2009) at xi. We choose these specific terms given their wide usage and understandability. For a discussion on the changes in usage of the term “wildlife”, see Etienne Benson, “From Wild Lives to Wildlife and Back” (2011) 16:3 *Environmental History* 418. Benson encourages contemplation on this terminology so that the construction of wildlife as a concept becomes clearer. See *ibid* at 421. For a comparison of the relative legitimacy perceived to attach to the terms “wild” and “feral”, see Jonaki Bhattacharyya, D Scott Slocombe & Stephen D Murphy, “The ‘Wild’ or ‘Feral’ Distraction: Effects of Cultural Understandings on Management Controversy over Free-Ranging Horses (*Equus ferus caballus*)” (2011) 39:5 *Human Ecology* 613 at 613.

fortifies these problematic cultural assumptions through its classification of animals, particularly through a conception of animal bodies as subject to human ownership through property regimes. In the third part, we look at how these cultural and legal understandings of human–non-human animal relationships (i.e., animals as property) coalesce in the context of solving “conflicts” in urban spaces, in terms of the consistent privileging of human interests. We take the controversy surrounding the “invasive” rabbits on the University of Victoria campus in Victoria, British Columbia that came to a head in 2011 as a case study. Finally, we will consider how we might approach human and non-human animal urban relations in a more egalitarian way and better acknowledge non-human animals as members of our communities.

## I. CULTURAL LANDSCAPE

### A. WILDNESS AND THE NATURE–CULTURE BINARY

A binary understanding of nature and culture has long permeated Western cultural imaginaries. As Donna Haraway writes, in this binary “[n]ature is only the raw material of culture, appropriated, preserved, enslaved, exalted, or otherwise made flexible for disposal by culture in the logic of capitalist colonialism.”<sup>4</sup> Nature is perceived as passive and uncultivated<sup>5</sup>—a wilderness to be tamed—while culture is the active set of practices by which humans “dominate” nature. What is more, “culture” is exclusively associated with human agents and, conversely, agency with human beings.<sup>6</sup> Perceptions of humans as

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<sup>4</sup> Donna Haraway, “Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective” (1988) 14:3 *Feminist Studies* 575 at 592.

<sup>5</sup> See Sandie Suchet, “‘Totally Wild’? Colonising Discourses, Indigenous Knowledges and Managing Wildlife” (2002) 33:2 *Australian Geographer* 141 at 143.

<sup>6</sup> Val Plumwood, *Environmental Culture: The Ecological Crisis of Reason* (London, UK: Routledge, 2002) at 48–49. As John Charles Ryan notes in discussing Plumwood’s critique of anthropocentric accounts of agency and culture, this denial of agency vis-à-vis non-human agents as cultural creators and knowledge-makers “is perhaps nowhere more relevant than to the study of plants—organisms conventionally regarded as automatons; as voiceless objects worked over by animate

distinct from non-humans have been ingrained through these representations. Indeed, the nature–culture dualism is closely related to the rise of the idea of human uniqueness.<sup>7</sup> Humans “are understood to be unique in their ability to domesticate and civilise,”<sup>8</sup> and to transcend nature and wilderness. Kay Anderson notes that

in Judeo-Christian traditions—and despite Darwin’s influential claims for continuity between the human and animal worlds—humanity has persistently been seen *not* as a species of animality, but rather as a condition operating on a fundamentally different (and higher) plane of existence to that of “mere animals.”<sup>9</sup>

Human capacities for conscious reasoning and rationality have consistently been used to emphasize and justify this separation.<sup>10</sup> The ability to actively exert power over non-humans is highlighted in conceptions of humans as categorically distinct from non-human animals.

The nature–culture binary is thus not simply one of demarcation and opposition, but also one of subordination. As Sandie Suchet notes, “[t]he oppositional binaries of culture–nature and human–animal naturalised in Eurocentric discourses do not exist in a power-neutral situation.”<sup>11</sup> With increased urbanization, the privileging of human interests (and

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agents such as animals; as mindless constituents of the biosphere or landscape; and as mere material for physical and aesthetic consumption”: “Passive Flora: Reconsidering Nature’s Agency through Human–Plant Studies” (2012) 2:3 *Societies* 101 at 104.

<sup>7</sup> See Kay Anderson, “A Walk on the Wild Side: A Critical Geography of Domestication” (1997) 21:4 *Progress in Human Geography* 463 at 480–81 [Anderson, “Walk on the Wild Side”].

<sup>8</sup> Emma R Power, “Human–Nature Relations in Suburban Gardens” (2005) 36:1 *Australian Geographer* 39 at 41. See also Pat Shipman, *Animal Connection: A New Perspective on What Makes Us Human* (New York: WW Norton & Company, 2011) (Shipman’s premise is that domestication of other species is a “defining trait” of humanity at 13–15).

<sup>9</sup> “‘The Beast Within’: Race, Humanity, and Animality” (2000) 18:3 *Environment and Planning D: Society and Space* 301 at 302 [emphasis in original].

<sup>10</sup> See Suchet, *supra* note 5 at 143.

<sup>11</sup> *Ibid.*

culture) over non-human nature becomes more transparent. Nature is deemed to be civilized through urban cultivation, and brought into a particular “moral order.”<sup>12</sup> Most urban landscapes position humans at the centre, imagining them as agents, actively creating out of the available natural materials, while the latter are understood as objects. This tendency to centralize and exalt humans in their relationships with the non-human world in urban space is apparent with respect to a variety of non-humans, not just animals.<sup>13</sup> Consider gardens, for example. Emma Power suggests that such “spaces have been read as simple reflections of the cultures and understandings of their (human) gardener. . . . Nonhumans are largely absent within these narratives, emerging simply as the raw material from which gardens are created.”<sup>14</sup> As with their relationship to animals, humans are seen as separate from this “raw material” from which they create and are depicted as the only beings exercising agency.<sup>15</sup>

The centuries-old nature–culture binary is contemporarily reinforced through current media representations of the wilderness and wild animals in reality TV and documentary programming.<sup>16</sup> Jan-Christopher Horak discusses the increasing popularity of nature programs, noting that a number of cable channels (e.g., Animal Planet,

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<sup>12</sup> See Anderson, “Walk on the Wild Side”, *supra* note 7 at 471.

<sup>13</sup> One example of this centralization is the study of human emotion involved in interactions with wildlife. See e.g. Maarten H Jacobs, “Emotional Responses to Wildlife” 17:1 *Human Dimensions of Wildlife* 1 (a 2012 special issue). This perspective, while aimed at improving conservation efforts, is premised on a strict divide between humans and wildlife.

<sup>14</sup> *Supra* note 8 at 39 [citations omitted].

<sup>15</sup> See e.g. John Vaillant, *The Golden Spruce: A True Story of Myth, Madness and Greed* (Toronto: Vintage Canada, 2005). At page 85, the author discusses the logging industry and the archetype of the woodcutter:

Logging is the prerequisite to life as we know it: first and foremost, the trees must go. In this sense, the woodcutter has always been the pointman for Western civilization (indeed, all civilizations). Not only has he imposed a tidy, “rational,” order on nature’s apparent chaos, but he has provided the space and materials that have allowed us to feed and build our society, and to spread its message to the farthest corner of the globe.

<sup>16</sup> See generally Suchet, *supra* note 5.

Discovery Channel) are now almost exclusively devoted to such shows.<sup>17</sup> Moving “wildlife” from our immediate surroundings onto the small screen may cause persons in urban settings to fail to appreciate the impact “cultivation” of the wild has on animal habitats. Indeed, Horak argues that “the migration of nearly extinct animal species into the digital world can be seen as a virtual rescue [of animals] from the uncomfortable reality of the natural world.”<sup>18</sup> “Wildlife” programs alternately characterize “nature” and animals as something unfamiliar to be approached with curiosity and caution, detached amusement,<sup>19</sup> as a world made familiar through the projection of human morals and values onto it, as a space under human threat in danger of disappearing, as a source of spirituality to be revered and treasured,<sup>20</sup> or as a challenge to overcome.<sup>21</sup>

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<sup>17</sup> “Wildlife Documentaries: From Classical Forms to Reality TV” (2006) 18:4 Film History: An International J 459 at 460.

<sup>18</sup> *Ibid* at 473.

<sup>19</sup> See David Nibert, *Animal Rights/Human Rights: Entanglements of Oppression and Liberation* (Lanham, Md: Rowman & Littlefield, 2002) at 208.

<sup>20</sup> David P Pierson discusses these three features in the Discovery Channel’s programming that correspond to the three prominent ways in which Western cultures generally regard nature. See. “‘Hey, They’re Just Like Us!’ Representations of the Animal World in the Discovery Channel’s Nature Programming” (2005) 38:4 J of Popular Culture 698 at 707–10.

<sup>21</sup> A clear example of the latter is *Man vs. Wild*, a reality program on the Discovery Channel where adventurer Bear Grylls is taken to a particular location and must navigate the wilderness (and the various challenges it poses) to return to “civilization.” Even the name of the series underscores the familiar binary; nature, or “the Wild”, is framed as an adversary from the outset. See also *Crocodile Hunter*, *Dual Survival*, and *Out of the Wild*, other nature programs that similarly reinforce this relationship. According to a recent article, the focus on conflict between humans and wildlife is on the rise. In a particular database, a search of the term “human-wildlife conflict” indicates that only six articles were published between 1990 and 1999; the same search for the years 2000 and 2009, however, generated 98 results. See Heather Wieczorek Hudenko, “Exploring the Influence of Emotion on Human Decision Making in Human-Wildlife Conflict” (2012) 17:1 Human Dimensions of Wildlife 16 at 16.

In any case, such programs are marketable for their promise to showcase the untamed and unknown—those elements separate from our cultivated existence<sup>22</sup>—and make them resonate within the parameters of human intelligibility.<sup>23</sup> Important to this association is the reliance of these programs on conventional gendered narratives, e.g., females as self-sacrificing mothers and males as competitive, aggressive, and dominant.<sup>24</sup> In these representations, such programs take for granted the positioning of non-human animals and nature as inferior to humans, often legitimating the dominant social order by “illustrating” hierarchy among animals as the natural order of things.<sup>25</sup> David Nibert states that “media portrayals of other animals also reflect the assumed naturalness of their lowly social status. . . . [they are] frequently portrayed as dangerous and largely deserving of violent treatment.”<sup>26</sup>

Despite their pervasiveness and popularity, these oppositional relationships are not natural or universal assumptions. Suchet argues that “[c]onstructing complex worlds as culture and nature, human and animal, is not universal, true or ‘natural’ but is particular to Eurocentric knowledges.”<sup>27</sup> Indeed, many Indigenous cultures have considered humans to be integrated with nature for millennia.<sup>28</sup> Traditional

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<sup>22</sup> Perhaps nowhere is this more evident than in the popular rhetoric surrounding sharks. See Jennifer Adams Martin, “When Sharks (Don’t) Attack: Wild Animal Agency in Historical Narratives” (2011) 16:3 *Environmental History* 451 at 453–54 (a concise overview of shark behaviour analysis in the United States in the 1950s and 60s, which presented the shark as an enemy threat without agency).

<sup>23</sup> See Pierson, *supra* note 20 at 699.

<sup>24</sup> See *ibid* at 700–02. A notable exception to this gendered representation is the 2005 French documentary, *March of the Penguins*. See Gillian Calder, “Penguins and Polyamory: Using Law and Film to Explore the Essence of Marriage in Canadian Family Law” (2009) 21:1 *CJWL* 55.

<sup>25</sup> *Ibid* at 705–07.

<sup>26</sup> *Supra* note 19 at 207.

<sup>27</sup> *Supra* note 5 at 144.

<sup>28</sup> George J Sefa Dei, Budd L Hall & Dorothy Goldin Rosenberg, eds, *Indigenous Knowledges in Global Contexts: Multiple Readings of Our World* (Toronto: University of Toronto Press, 2000) at 6.

Ecological Knowledge (TEK), a term associated with the knowledges of Indigenous peoples of North America, “assumes that humans are, and always will be, connected to the natural world, and that there is no such thing as nature that exists independent of humans and their activities.”<sup>29</sup> This epistemological base does not place non-human animals in opposition to humans; rather, both form part of an interconnected system. This is not to romanticize the fate of wild animals in their interactions with Indigenous peoples, notably, when hunted and consumed.<sup>30</sup> The example nonetheless indicates the difference in the understanding of the positioning of humans in relation to animals and highlights the artificiality of the constructed border between the two in the West.

#### B. MATRIX OF DIFFERENCES

In grasping the cultural contingencies of views of humans and their place in relation to non-human others, it is important to understand the reliance of these cultural values about species difference on norms associated with other types of difference. These constructions do not emanate solely from ideas about animals or animality, but form part of a complicated discursive network that involves ideas of race, gender, class, and empire. A growing chorus of scholars, particularly ecofeminists, has noted links between representations of species difference in relation to animals and representations of other types of difference.<sup>31</sup> It is well

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<sup>29</sup> Raymond Pierotti & Daniel Wilcat, “Traditional Ecological Knowledge: The Third Alternative (Commentary)” (2000) 10:5 *Ecological Applications* 1333 at 1334.

<sup>30</sup> For animal-centred appraisals of the relationship between animal rights and Indigenous cultural claims to their bodies, see Maneesha Deckha, “Animal Justice, Cultural Justice: A Posthumanist Response to Cultural Rights in Animals” (2007) 2*J Animal L & Ethics* 189; Will Kymlicka & Sue Donaldson, “Animal Rights and Aboriginal Rights” in Vaughan Black, Peter Sankoff & Katie Sykes, eds, *Canadian Perspectives on Animals and the Law* (Toronto: Irwin Law, 2015) at 159.

<sup>31</sup> For a discussion of influential ecofeminist works in this vein, see Colleen Mack-Canty, “Third-Wave Feminism and the Need to Reweave the Nature/Culture Duality” (2004) 16:3 *NWSAJ* 154 at 168–173.

observed, for example, that femininity has historically been associated with nature, while dominant masculinity is linked to culture.<sup>32</sup> Black women's bodies in particular have frequently been animalized and objectified.<sup>33</sup> What may be less known is the impact the discourse of "the wild" and "wildness" has had in structuring these types of associations.

Indeed, discourses about the "wild" provide an especially fertile illustration of the links between animal subordination and gender and racial/cultural subordination. Suchet notes that

[s]ince Judeo-Christian creation, animals have not only been classified as a part of nature, defined as external and inferior to humans because they lack the ability to consciously reason, but they have also been separated into the binarised categories of wild and domestic or tame.<sup>34</sup>

The "wild" have not yet been brought under human control and are thus distant. Henry Buller highlights the gendered, racialized, and classed dimensions of this separation thesis. He suggests that "[a] critical element to this process of distancing the wild, has been the careful and long-term construction of the tame, which includes domesticating and commodifying nature".<sup>35</sup> He suggests that this process of domestication results in rural spaces that humans experience as "safe": "humanity nurtures, and is, in return, nurtured by an accessible, appropriated and unthreateningly recognizable nature."<sup>36</sup> The placement of wild in opposition to domestic, like the broader opposition of nature versus culture, reflects a larger project of the exertion of power and

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<sup>32</sup> See Val Plumwood, *Feminism and the Mastery of Nature* (New York: Routledge, 1993) at 24–26.

<sup>33</sup> See Shamara Shantu Riley, "Ecology Is a Sistah's Issue Too: The Politics of Emergent Afrocentric Ecowomanism" in Roger S Gottlieb, ed, *This Sacred Earth: Religion, Nature, Environment* (New York: Routledge, 2004) 412 at 414; Ruth Lipschitz, "Skin/ned Politics: Species Discourse and the Limits of "The Human" in Nandipha Mntambo's Art" (2012) 27:3 *Hypatia* 546 at 547–48.

<sup>34</sup> Suchet, *supra* note 5 at 145.

<sup>35</sup> Henry Buller, "Where the Wild Things Are: The Evolving Iconography of Rural Fauna" (2004) 20:2 *J Rural Studies* 131 at 132.

<sup>36</sup> *Ibid.*

control by positioning the “other” in relation to a particular baseline (i.e., a particular type of human).<sup>37</sup> In both ancient Greek and modern Western viewpoints, “Man’s (i.e., white, Western, and middle- or upper-class man’s) freedom and happiness . . . [has] depended on an ongoing process of emancipation from nature, both human embodiment and the natural environment.”<sup>38</sup>

The demarcation of space as “wild” and “uninhabited” through identification with animals was particularly important in the formation of a particular human subjectivity within empire building. Anderson notes that the “couplet of wildness and civility” helps illuminate not just human–animal–nature relations, but also the structuring of “colonial and gendered relations”.<sup>39</sup> Colleen Mack-Canty emphasizes that during the expansion of colonization and the rise of capitalism, the racialized “other” in colonized spaces began “to intersect more thoroughly with the perceived “otherness” of women and nature.”<sup>40</sup> Within these spatial imaginaries, colonized females, in particular, were cast as more wild, natural, embodied, and disordered than “rational” males.<sup>41</sup> Animals weighed heavily in this spatial segregation of wild from civilized.<sup>42</sup> The

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<sup>37</sup> See generally Jennifer Wolch, “Zoöpolis” in Jennifer Wolch & Jody Emel, eds, *Animal Geographies: Place, Politics, and Identity in the Nature–Culture Borderlands* (New York: Verso, 1998) 119 at 123, where the author argues that

the division between wild and domestic must be seen as a permeable social construct; it may be better to conceive of a matrix of animals who vary with respect to the extent of physical or behavioral modification due to human intervention, and types of interaction with people

[emphasis in original] [Wolch, “Zoöpolis”].

<sup>38</sup> Mack-Canty, *supra* note 31 at 156.

<sup>39</sup> Anderson, “Walk on the Wild Side”, *supra* note 6 at 478. For colonial expansion in general, Anderson argues that “[a] language of difference . . . became expressed in terms of a temporal metaphor of wild and domesticated that justified a host of ‘civilizing’ measures”: *ibid* at 475.

<sup>40</sup> Mack-Canty, *supra* note 31 at 156.

<sup>41</sup> *Ibid* at 155.

<sup>42</sup> See John S Akama, “Western Environmental Values and Nature-based Tourism in Kenya” (1996) 17:8 *Tourism Management* 567. See generally John M MacKenzie, *The Empire of Nature: Hunting, Conservation, and British Imperialism* (Manchester:

idea of "wild" animals versus "domesticated" animals rose to prominence at the time of the Enlightenment, a formative period for empire building and the rigidification of racial and gender categories that Anderson and Mack-Canty highlight.<sup>43</sup> The combined effect was a worldview that believed that the frontiers could be "*reclaimed . . . from their wildness*" through civilizing missions.<sup>44</sup> Colonies and their inhabitants were thus positioned as wild spaces in contrast to the increasingly domesticated, cultivated, and thus civilized middle-class urban life of the European metropolises.<sup>45</sup>

Wildness discourse and all of its racial, gendered, and class dimensions, were also important to establishing the legitimacy of white settler spaces. Cole Harris suggests that the "allocation" of very small reserves in British Columbia, for example, not only allowed for segregation of Indigenous practices from "civilization" and what the government considered more productive uses of the rest of the land, but was also intended to "force Native people into the workplace, there to learn the habits of industry, thrift, and materialism, thus becoming civilized."<sup>46</sup> It is important to emphasize that cultural projections about wildness and civilization onto *both* animals and humans in settler colonies (fueled by ideas of race, gender, and culture) contributed to the colonies' construction as wild territories susceptible to imperial ideologies.<sup>47</sup> Indeed, Catherine Robinson suggests that

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Manchester University Press, 1988) at 255 (regarding the establishment of game reserves in colonial East Africa).

<sup>43</sup> For discussion on the development of dualisms during the Enlightenment, see Audrey Kobayashi, "Unnatural Discourse: 'Race' and Gender in Geography" (1994) 1:2 *Gender, Place & Culture* 225.

<sup>44</sup> Anderson, "Walk on the Wild Side", *supra* note 7 at 474 [emphasis in original].

<sup>45</sup> See Catherine Nash, "Cultural Geography: Postcolonial Cultural Geographies" (2002) 26:2 *Progress in Human Geography* 219 at 222–23.

<sup>46</sup> Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver, BC: UBC Press, 2002) at 265.

<sup>47</sup> See Howard I Kushner, "The Persistence of the 'Frontier Thesis' in America: Gender, Myth, and Self-Destruction" (1992) 23:1 *Can Rev American Studies* 53; Catherine J Robinson, "Buffalo Hunting and the Feral Frontier of Australia's Northern Territory"

Eurocentric frontier ideologies not only delineated differences between “savage” and “civilized” humans but also imposed hierarchical categories on to flora and fauna based on the real or perceived value different species had to frontier development.<sup>48</sup>

The cultural anxieties captured by wildness discourse served to racialize humans as well as the animals and even plants involved.<sup>49</sup>

### C. CURRENT RESONANCE

This racialized and gendered “wildness” discourse persists today even without the explicit and declared sense of gender, cultural, or racial hierarchies that circulated during the 18th and 19th centuries. References to individuals and foreign countries—even continents—as “exotic” and “wild” still occur if they exhibit features or behavioural practices that the dominant culture perceives as falling outside the boundary of civilization.<sup>50</sup> Indeed, a considerable proportion of the global tourism industry depends on Westerners harbouring these fantasies about the places they visit, the people they will meet, and even

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(2005) 6:6 *Social & Cultural Geography* 885; Deborah B Rose, “The Year Zero and the North Australian Frontier” in DB Rose & A Clarke, eds, *Tracking Knowledge in North Australian Landscapes: Studies in Indigenous and Settler Ecological Knowledge Systems* (Darwin: Australian National University, 1997) 141.

<sup>48</sup> Robinson, *supra* note 47 at 887.

<sup>49</sup> Anderson notes that in colonial framing, “[j]ust as nondomesticated plants were ‘weeds’ and nondomesticated animals were ‘wild,’ non-western indigenous peoples typically bore the title of ‘savage.’”: “Walk on the Wild Side”, *supra* note 7 at 474.

<sup>50</sup> See Graham Huggan, *The Postcolonial Exotic: Marketing the Margin* (New York: Routledge, 2001); Edward Said, *Orientalism* (New York: Vintage Books, 1979); David Sibley, *Geographies of Exclusion: Society and Difference in the West* (New York: Routledge, 1995) at 27. This “geography binary” has also been created between “natural” space and cities by ecologists who view urban space as unworthy of analysis. See Robert A Francis et al, “Urban Ecosystems as ‘Natural’ Homes for Biogeographical Boundary Crossings” (2012) 37:2 *Transactions of the Institute of British Geographers* 183 at 183.

the flora and fauna they will experience.<sup>51</sup> As Susan Hawthorne suggests, "[a]ny unfamiliar person can be exotic to someone else, but systematic exoticization is carried on only by the dominant culture."<sup>52</sup> This "exoticization" is in relation to what the dominant culture is not. While the statement that someone or something is "exotic" may initially convey an exaltation (e.g., "she is so exotic", suggesting desire by the speaker for another), the claim relies on a notion of static and reified difference that harnesses racial and colonial logics about nature and culture for its resonance.<sup>53</sup> Racial, gendered, and colonial ideas about wildness also operate in contemporary dominant understandings of the subjectivities of non-Western peoples. The subject construction of the "wild indigenous Other" is still connected to colonial notions of wild landscapes.<sup>54</sup> This is seen, for example, in the reserve system, which reinforces the idea of the white urban space and the "wild" native space.<sup>55</sup> Conversely, those that are seen to be "invasive" or too "wild" for the domestic order are also routinely marginalized and subhumanized.<sup>56</sup>

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<sup>51</sup> See Elizabeth Wilson Gordon, "Traveling to the 'Exotic,'" in James Gifford & Gabrielle Zezulka-Mailloux, eds, *Culture & the State: Landscape & Ecology (Critical Works from the Proceedings of the 2003 Conference at the University of Alberta)* (Edmonton: CRC Humanities Studio, 2003); Catherine A Palmer, "Tourism and Colonialism: The Experience of the Bahamas" (1994) 21:4 *Annals of Tourism Research* 792.

<sup>52</sup> "The Politics of the Exotic: The Paradox of Cultural Voyeurism" (1989) 1:4 *NWSA Journal* 617 at 625.

<sup>53</sup> See Suren Lalvani, "Consuming the Exotic Other" (1995) 12:3 *Critical Studies in Mass Communication* 263.

<sup>54</sup> Suchet, *supra* note 5 at 152–53.

<sup>55</sup> See Harris, *supra* note 46. See generally Mack-Canty, *supra* note 31 at 155.

<sup>56</sup> See Ratna Kapur, "Human Rights in the 21st Century: Take a Walk on the Dark Side" (2006) 28:4 *Sydney L Rev* 665 at 675–82; Clapperton Chakanetsa Mavhunga, "Vermin Beings: On Pestiferous Animals and Human Game" (2011) 29:1 *Social Text* 151 at 153.

#### D. SUMMARY

Our cultural categories of “wild”, “civilized”, “domestic”, and the spaces and objects they denote, then, rely on deeply problematic ways of understanding the world. Specifically, they adopt the subordinating logics of racial and colonial discourses, often gendered, to be intelligible. Far from operating as normatively innocuous terms, they form part of a repertoire of signifiers that perpetuate Otherness and corresponding oppressive practices. As Nibert argues,

[i]f the masses are taught to discount the oppressed as “foreign,” “alien,” “uncivilized,” “unclean,” “stupid,” “inferior,” and so on, they become socially distanced from the devalued others, thus precluding both opportunities and tendencies for empathetic response.<sup>57</sup>

As discussed above, the impact of these significations transcends human–human interaction to also infect human–non-human interaction. This cultural discourse is formalized to the extent that our laws are developed within this cultural context. It is therefore important to deconstruct the legal landscape and consider the way in which law deploys these problematic categories about the wild and the wilderness in regulating human–non-human animal interaction.<sup>58</sup>

## II. LEGAL LANDSCAPE

In keeping with Buller’s discussion of “safe” interactions with animals and the commodification of nature,<sup>59</sup> humans still typically only accept “wildness” into our urban spaces in ways that benefit us and

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<sup>57</sup> Nibert, *supra* note 19 at 197.

<sup>58</sup> See Jon T Coleman, “Killed Him a Bear: Wildlife and the Man” (2011) 16:3 *Environmental History* 408. Coleman articulates this endeavour in a different way, stating that “[t]o protect natural environments, we need to become proficient at understanding and unwinding human ones”: *ibid* at 409. Coleman explores the story of David Crockett as an exercise in applying this framework, thus teasing out the gender, race, class, and species dimensions that figure in a cultural understanding of “wilderness”.

<sup>59</sup> See Buller, *supra* note 35 and accompanying text.

on our terms. Anderson discusses a number of ways we see this limited “acceptance” in urban areas: e.g., animals are recreated in unthreatening forms as toys, displayed in zoos or aquaria (or, decreasingly, in circuses), and brought in through tourist initiatives such as safaris, theme parks, and whale watching.<sup>60</sup> These accepted urban manifestations of the “wild” are subject to human control, which facilitates the continued Othering of non-human animals. In fact, this carefully controlled “wildness” may further ingrain our perception of human superiority and distinctness. As Randy Malamud argues, containment of animals “convince[s] people that we are the imperial species—that we are entitled to trap animals, remove them from their worlds and imprison them within ours.”<sup>61</sup> Such confinement and display of animals is closely associated with socio-political power in the West.<sup>62</sup>

The law’s approach to animals facilitates these kinds of activities and their underlying worldview. It is virtually uncontested in law that animals *are* property, a conception bolstered by prominent Western intellectual traditions.<sup>63</sup> The law thus assigns animals an instrumental status. As Gary Francione explains, “[i]f we say that

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<sup>60</sup> Anderson, “Walk on the Wild Side”, *supra* note 7 at 479. Of course, there are some limited exceptions to these based on majoritarian human preferences vis-à-vis certain species, typically the celebrated megafauna. For example, the government of Ontario has proposed legislation that would prohibit breeding or buying and selling orcas, and would carry a fine of up to \$60,000 and/or two years in prison for first conviction. These proposed amendments to the *Ontario Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O-36, would also make it mandatory for facilities with marine mammals to establish animal welfare committees and have a qualified marine mammal veterinarian available at all times. For more information, see Richard J Brennan, “Ontario to Ban Breeding, Acquisition of Killer Whales,” *The Toronto Star* (23 March 2015), online: <[www.thestar.com](http://www.thestar.com)>.

<sup>61</sup> R Malamud, *Reading Zoos: Representations of Animals and Captivity* (New York: New York University Press, 1998) at 2, cited in Rebecca Bishop, “Journeys to the Urban Exotic: Embodiment and the Zoo-Going Gaze” (2004) 11:1 *Humanities Research* 106 at 107.

<sup>62</sup> See Bishop, *supra* note 61 at 109.

<sup>63</sup> SM Wise, “The Legal Thinghood of Nonhuman Animals” (1996) 23 *Boston College Env’t Aff L Rev* 471.

an animal is property, we mean that the animal is to be treated under the law primarily (if not exclusively) as a means to human ends, and not as an end in herself.”<sup>64</sup> Yet, instead of questioning the property classification for animals (and the resulting positioning of animals as means), the law instead turns its attention to what *kind* of property various animals are. In general, the laws map onto the culturally constructed categories we have with respect to animals—namely, wild versus domestic—reinforcing the hierarchical values that infuse them.

#### A. “DOMESTIC” AND THE PRIVATE PROPERTY SPHERE

The legal understanding of the term “domestic” animals is tightly tied to human cultural practices in both residential and commercial activities. What is more, “domestic” animals are identified by their relationship to humans, rather than by an exhaustive list of different species.<sup>65</sup> The term “domestic” was judicially defined in *Morelli v Saskatchewan*<sup>66</sup> as follows: “In a broad sense, the term would include any tame animal, even tame

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<sup>64</sup> *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995) at 46.

<sup>65</sup> Except where defined for limited purposes, see e.g. *Designation and Exemption Regulation*, BC Reg 168/90, s 8, where “domestic” animals are defined for the purposes of s 26(2) of the *Wildlife Act*, RSBC 1996, c 488, as including:

- (a) horses of the genus *Equus*;
- (b) cattle of the genus *Bos*;
- (c) sheep of the genus *Ovis*, except *Ovis canadensis* and *Ovis dalli*;
- (d) goats of the genus *Capra*;
- (e) swine of the genus *Sus* except feral pigs within the meaning of section 3.2;
- (f) an animal defined as game under the *Game Farm Regulation*, BC Reg 5/2015, that is lawfully kept under that Regulation;
- (g) an animal lawfully held under a licence issued under the *Fur Farm Regulation*, BC Reg 8/2015; and
- (h) an animal not defined as wildlife in the *Wildlife Act* or regulations, that is not native to or does not naturally occur within the province and is tame and kept in captivity for the use of man.

Note in particular the emphasis in paragraph 8(h) on “tame[ness]” and being kept “for the use of man.”

<sup>66</sup> 2002 SKQB 294, 31 MPLR (3d) 292.

farm animals, especially if they were kept as pets.”<sup>67</sup> In an early case, the Prince Edward Island Supreme Court stated that “[t]here is nothing in any Act that makes the dog or cat a domestic animal, they are considered such because they have become subservient to the use of man.”<sup>68</sup> The influence of dominant cultural practices in these judicial pronouncements is clear. The dated nature of these cases and the infrequency with which the law actually turns its attention to precisely specifying which animals are “domestic” is also indicative of the law’s comfort with relying on implicit cultural sensibilities to fill in any definitional gaps. The consequence of the “domestic” legal classification is that ownership of domestic animals is absolute; they are considered chattels.<sup>69</sup> Indeed, these animals “are ‘goods’ for the purposes of the [*Sale of Goods Act*].”<sup>70</sup>

The term “domestic,” then, connotes full human control whereby humans are entitled to use these animal bodies as they see fit, subject to anti-cruelty legislation.<sup>71</sup> The applicable anti-cruelty legislation does not, however, disrupt the ownership paradigm. The *Prevention of Cruelty to Animals Act* in British Columbia, for example, regulates the treatment of domestic animals and wildlife in captivity in that province.<sup>72</sup> The central regulatory offence within the *PCAA* states that “[a] person responsible for an animal who causes or permits the animal to be, or to continue to

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<sup>67</sup> *Ibid* at para 21.

<sup>68</sup> *Ebers v MacEachern*, [1932] 3 DLR 415 at 416, 4 MPR 333 (PEI Sup Ct).

<sup>69</sup> See Bruce Ziff, *Principles of Property Law*, 5th ed (Toronto: Thomson Reuters Canada, 2010) at 134.

<sup>70</sup> Judah Benjamin & Anthony Guest, *Benjamin’s Sale of Goods*, 5th ed (London, UK: Sweet & Maxwell, 1997) at 73.

<sup>71</sup> Federally, see the *Criminal Code*, RSC 1985, c C-46 (s 445.1 – Cruelty to Animals); *Health of Animals Act*, SC 1990, c 21; *Meat Inspection Act*, RSC 1985, c 25. Provincially, see e.g. *Prevention of Cruelty to Animals Act*, RSBC 1996, c 372 [*PCAA*]; *Animal Protection Act*, RSA 2000, c A-41; *Animal Protection Act*, 1999, SS 1999, c A-21.1; *Animal Care Act*, SM 1996, c 69.

<sup>72</sup> *PCAA*, *supra* note 71, s 2.

be, in distress” commits an offence,<sup>73</sup> unless the distress “results from an activity that is carried out in accordance with reasonable and generally accepted practices of animal management”.<sup>74</sup> While the statute is not explicitly restricted to defined “domestic” animals, a simple reading clearly conveys that it is directed at modestly regulating the property rights that persons either have as owners of animals or are left with as part of the bundle of rights attached to ownership—possession and control.<sup>75</sup> The statute is careful to exempt any conventional use of animals from its regulation of property rights in animals.

The language used in the statute also confirms the extent to which domestic animals are relegated to the status of “things”. For example, if the British Columbia Society for the Prevention of Cruelty to Animals removes an animal from her owner’s custody, the statute authorizes that the society may destroy, sell, or otherwise dispose of the animal 14 days after the society has given notice to the owner.<sup>76</sup> Usage of terms like “destroy” and “dispose of” not only denies the animals’ agency, but also evokes the detachment with which one would interact with inanimate objects. Also, with respect to “abandoned” animals, which the statute defines as “ownerless animals”, the Society is permitted to “take custody of the animal and arrange for food, water, shelter, care and veterinary treatment for it”.<sup>77</sup> Again, the terminology is evocative of property rights discourse.

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<sup>73</sup> *Ibid*, ss 9.1(2), 24(1).

<sup>74</sup> *Ibid*, s 24.02(c).

<sup>75</sup> For a basic discussion on the nature of property, see Ziff, *supra* note 69 at 1–58. To our knowledge, no court has published a decision providing a proper contextual statutory interpretive analysis for this BC provision. The fullest and highest level of judicial treatment that a comparable anti-cruelty provision has received in Canada in a non-dissenting judgment occurred in the 1978 Quebec Court of Appeal decision in *R v Menard* (1978), 4 CR (3d) 333, 43 CCC (2d) 458 (Que CA). In it, the Court of Appeal affirmed the rights of human or corporate owners to subordinate animals subject only to limited anti-cruelty requirements that were, as in the BC legislation, given shape according to industry standards.

<sup>76</sup> *PCAA*, *supra* note 71, s 18.

<sup>77</sup> *Ibid*, s 10.1(2) [emphasis added].

## B. “WILD” AND THE PUBLIC PROPERTY SPHERE

Unlike domestic animals, “wild” animals (or *ferae naturae*) are not subject to individual human ownership (unless captive).<sup>78</sup> Yet while these animals have no *owner*, they are still subject to privatization.<sup>79</sup> The ability to grant ownership rights has traditionally vested in the government.<sup>80</sup> This historical arrangement continues today. For example, in 2009 in *Maynes v British Columbia*,<sup>81</sup> the British Columbia Court of Appeal affirmed the Minister’s position that “[t]he [BC] *Wildlife Act* provides that, *unless licensed*, all wildlife in British Columbia is the property of the government.”<sup>82</sup> Through this declared public ownership in wildlife, and the licensing schemes governments establish with respect to these bodies, the state asserts its jurisdiction to regulate ownership rules.<sup>83</sup> Michael Asch has suggested that the government “acts as though it were a manager whose responsibility is to ensure that such species continue to exist and that, when possible, a certain portion of their populations may be harvested.”<sup>84</sup> Indeed, Steve Garlick, Julie Matthews, and Jennifer Carter argue that in developing legal frameworks around wildlife,

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<sup>78</sup> See *Diversified Holdings Ltd v R* (1982), 133 DLR (3d) 712 at para 717, [1982] 3 WWR 516.

<sup>79</sup> See Ziff, *supra* note 69.

<sup>80</sup> See e.g. *Wildlife Act*, RSBC 1996, c 488 [*Wildlife Act* (BC)]; *Wildlife Act*, RSA 2000, c W-10, s 7(1) [*Wildlife Act* (AB)]; *The Wildlife Act*, 1998, SS 1998, c W-13.12, s 23.

<sup>81</sup> 2009 BCCA 499, [2009] BCWLD 8577.

<sup>82</sup> *Ibid* at para 17 [emphasis added].

<sup>83</sup> This issue comes up in multiple common law jurisdictions. In Australia, the case of *Yanner v Eaton* is instructive. As Steven White summarizes, “The majority stated that the statutory vesting of property in wild animals was nothing more than ‘a fiction expressive in legal shorthand of the importance to its people that a State has power to preserve and regulate the exploitation of an important resource.’”: “Animals in the Wild, Animal Welfare and the Law” in P Sankoff & S White, eds, *Animal Law in Australasia: A New Dialogue* (Annadale, NSW: Federation Press, 2009) 230 at 233, citing *Yanner v Eaton*, [1999] HCA 53, 201 CLR 351.

<sup>84</sup> “Wildlife: Defining the Animals the Dene Hunt and the Settlement of Aboriginal Rights Claims” (1989) 15:2 Can Pub Pol’y 205 at 209.

“animal subjectivities are rarely acknowledged, instead being replaced by generally superficial analysis of numbers, leading to statistically and scientifically vague concepts such as ‘endangered’, ‘threatened’, ‘abundant.’”<sup>85</sup> These terms are then used to determine particular species’ eligibility for human use.

Thus, while there are no absolute individual property rights in live wild animals (and they are not considered “goods”), “a qualified property may be obtained in such animals by lawfully taking them and reducing them into possession: they may be then bought and sold and are presumably ‘goods.’”<sup>86</sup> Further, the government assumes the authority to license hunting and capture of wildlife within its jurisdiction; individuals can hold property in dead or live wild animals if the animal bodies have been lawfully hunted or captured.<sup>87</sup> Killing or capturing wildlife is deemed lawful if the individual has obtained the proper licences. Through these legal avenues, the “wild” is brought under human control and, either de facto or de jure, domesticated<sup>88</sup>—to exist as either dead or alive under human or corporate dominion.

### C. “WILD” AND COMMUNAL PROPERTY

A different property classification results for certain wild animals vis-à-vis certain indigenous groups in Canada. This is due to the constitutional recognition of Aboriginal rights.<sup>89</sup> Aboriginal resource

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<sup>85</sup> “Countering Brutality to Wildlife, Relationism and Ethics: Conservation, Welfare and the ‘Ecoversity’” (2011) 1:1 *Animals* 161 at 163.

<sup>86</sup> Benjamin & Guest, *supra* note 70 at 73.

<sup>87</sup> See *Wildlife Act* (BC), *supra* note 80, s 2(3); *Wildlife Act* (AB), *supra* note 80, s 8.

<sup>88</sup> See e.g. *Wildlife Act* (BC), *supra* note 79, s 2(3) (“a person who lawfully kills wildlife and complies with all applicable provisions of this Act and the regulations acquires the right of property in that wildlife”). See also *ibid*, ss 29, 41 (providing exemptions from prohibitions against capturing—or attempting to capture—wildlife for persons authorized by the regulations or permit).

<sup>89</sup> Aboriginal rights to hunt and fish for food are recognized in Canada, and are specific to the individual nation’s traditional territory. Section 35 of the *Constitution Act, 1982* states that “[t]he existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”: being Schedule B to the *Canada Act*

rights are held collectively: where these hunting and fishing rights exist, animals do not belong to individuals, but rights to their bodies are thought to be historically based on “communal ownership accompanied by local group responsibility for management.”<sup>90</sup> Indigenous persons may still have the legal right to possess the wild animals they kill or capture.<sup>91</sup> This form of legal ownership of animal bodies is determined by the Canadian common law’s Aboriginal rights test.<sup>92</sup> While Aboriginal legal

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1982 (UK), 1982, c 11. The test established by the Supreme Court of Canada (SCC) was that an activity will be deemed an Aboriginal right if it is a “practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right”: *R v Van der Peet*, [1996] 2 SCR 507 at para 46, 137 DLR (4th) 289. In some cases, these rights are formalized by treaties. Lynda M Collins and Meghan Murtha note that while treaty rights “derive from an agreement between a given First Nation and the Crown, Aboriginal rights arise by virtue of Aboriginal peoples’ prior use and occupation of an area of land”: “Indigenous Environmental Rights in Canada: The Rights to Conservation Implicit in Treaty and Aboriginal Rights to Hunt, Fish, and Trap” (2010) 47:4 *Alta L Rev* 959 at 984. Aboriginal peoples often rely on their territories’ resources for both subsistence and commercial purposes. See *ibid* at 960.

<sup>90</sup> Emily Walter, R Michael M’Gonigle & Céleste McKay, “Fishing around the Law: The Pacific Salmon Management System as a ‘Structural Infringement’ of Aboriginal Rights” (2000) 45:1 *McGill LJ* 263 at 275.

<sup>91</sup> See e.g. *R v Sparrow*, [1990] 1 SCR 1075, 70 DLR (4th) 385 [cited to SCR]. Dickson CJC and La Forest J discussed the nature of Musqueam food fishing rights, finding that the evidence supported the fact that “the taking of salmon was an integral part of [the Musqueam peoples’] lives and remains so to this day”: *ibid* at 1094. They further stated that “any allocation of priorities after valid conservation measures have been implemented must give top priority to Indian food fishing”: *ibid* at 1116. This suggests that (at least for food purposes) Aboriginal peoples may individually be legally entitled—outside of government licensing regimes—to these fish once caught. See also *R v Sundown*, [1999] 1 SCR 393, 170 DLR (4th) 385 (the SCC affirming the protection of practices incidental to treaty rights—in this case, construction of a temporary hunting shelter—and acknowledging the Treaty 6 entitlement of the individual respondent Sundown to hunt for food in a provincial park).

<sup>92</sup> There are examples of individualized ownership of wildlife within Aboriginal systems of knowledge. For example, in discussing conceptions of wildlife held by the Dene and Métis of the Mackenzie River Valley, Michael Asch states that “[t]he Dene . . . accept the view that captured animals become the property of the particular

traditions form part of Canada's legal framework,<sup>93</sup> absent the application of a self-governing agreement, Aboriginal peoples' (unique) relationships with animals are still largely governed by the common law.<sup>94</sup>

This legal framework subordinates not only animals, but also Indigenous peoples. In addition to being subject to a colonial legal system, conceptions of the rights of Indigenous persons in Canadian law continue to rely on historic differences between Indigenous people and white colonizers.<sup>95</sup> John Borrows argues that the test for Aboriginal rights developed by the SCC is retrospective and may reinforce stereotypical notions about Aboriginal persons.<sup>96</sup> He states that the test "is about what was, 'once upon a time,' central to the survival of a

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individuals and/or groups who harvested them": *supra* note 84 at 210. He also notes that "although Dene will often say that animals in the wild belong to 'no one,' what they appear to mean is that they do not belong to any one individual before capture": *ibid* at 211. Asch argues that Dene explanations of their relationships with animals in their territory came closer to Western understandings of "domestic" than "wild" animals; he notes that "[t]he boundaries of the land within which 'intimate association' exists may be enormous by Euro-Canadian standards, but it is still an intimate association": *ibid*. Although the approach to animal ownership differs between Aboriginal legal traditions with their non-hierarchical and reciprocal orientations, and those characteristic of Western thought, many Aboriginal traditions nonetheless incorporate an instrumental relation to non-humans.

<sup>93</sup> John Borrows notes that "Canada is a juridically pluralistic state, and draws on many sources of law to sustain order throughout the land. While civil and common law traditions are generally recognized nationwide, this is not always the case with indigenous legal traditions": "Indigenous Legal Traditions in Canada: Contemporary and Comparative Perspectives on the Rights of Indigenous Peoples" (2005) 19:1 Wash UJL & Pol'y 167 at 174.

<sup>94</sup> Constance MacIntosh, "Indigenous Rights and Relations with Animals: Seeing beyond Canadian Law" in Peter Sankoff, Vaughan Black & Katie Sykes, eds, *Canadian Perspectives on Animals and the Law* (Toronto: Irwin law, 2015) 187 at 204.

<sup>95</sup> See John Borrows, "Sovereignty's Alchemy: An Analysis of *Delgamuukw v. British Columbia*" (1999) 37:3 Osgoode Hall LJ 537 at 569-72; Val Napoleon, "Extinction by Number: Colonialism Made Easy" (2001) 16:1 CJLS 113.

<sup>96</sup> *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002) at 60, 70.

community, not necessarily about what is central, significant, and distinctive to the survival of these communities today.<sup>97</sup> The test, then, solidifies Aboriginal persons as cultural “Others,” while “freez[ing] the development of certain Aboriginal practices in the distant past.”<sup>98</sup> Michael Asch and Patrick Macklem similarly argue that “the assertion of Canadian sovereignty over aboriginal peoples as well as the contingent theory of aboriginal rights that it generates, ultimately rest on unacceptable notions about the inherent superiority of European nations.”<sup>99</sup> The perpetuation of this colonial framework makes it unsurprising that this particular (value-laden) way of categorizing the world is also still firmly entrenched in our legal classifications of non-human animals.

#### D. DOMESTIC OR WILD: STILL SUBORDINATE NON-PERSONS

Whether animals are seen to be wild or domestic, privately, communally, or publicly held, these common law classifications reinforce the hierarchical and anthropocentric cultural order in which we place them. The reverse is true for humans and even corporations. The dominant cultural order imagines human beings as exceptional and corporations as socially, economically, and politically desirable. The law reinforces this cultural worldview. Lyne Letourneau notes that “[i]n contrast to the concept of animals as property, all human beings are ‘persons’ under the law, and as persons, human beings are holders of rights.”<sup>100</sup> Corporations are similarly considered to be legal persons,<sup>101</sup> and as a result, enjoy many of the same rights as natural persons. That law reinforces culture in this

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<sup>97</sup> *Ibid* at 60.

<sup>98</sup> *Ibid* at 70.

<sup>99</sup> “Aboriginal Rights and Canadian Sovereignty: An Essay on *R. v. Sparrow*” (1991) 29:2 *Alta L Rev* 498 at 510.

<sup>100</sup> “Toward Animal Liberation? The New Anti-Cruelty Provisions in Canada and Their Impact on the Status of Animals,” (2003) 40:4 *Alta L Rev* 1041 at 1047–48.

<sup>101</sup> See e.g. *Interpretation Act*, RSC 1985, c I-21, s 35(1); *Interpretation Act*, RSBC 1996 c 238, s 29; *Interpretation Act*, RSA 2000, c I-8, s 28(1); *Interpretation Act*, RSS 1995, c I-11.2, s 27(1).

area is easily seen if we recall the history of property with respect to women, where “subjugation . . . was based on the classification of living beings as property in order to facilitate domination and to reinforce male power structures.”<sup>102</sup> As with those classifications, categorizations with respect to animals are culturally contingent—this goes for both the classification of animals as “wild” or “domestic,” and the broader conception of animals as property. As Francione argues,

Apart from our proclamation, there is simply no reason to conclude that characteristics thought to be uniquely human have any value that allows us to use them as a nonarbitrary justification for treating animals as property. These characteristics can serve this role only after we have assumed their moral relevance.<sup>103</sup>

We attach labels to certain bodies based on particular characteristics, and then see these invented labels as immutable. These categories assist in organizing animal bodies in ways that best serve human interests.<sup>104</sup> It is against this general legal backdrop that we must filter our responses to animals in urban environments to truly grasp the ethics of our actions in this regard. It is to this analysis that we now turn.

### III. WHO BELONGS IN CITIES?

In this part, we take a closer look at how the colonial logics of “wildness” and “civilization” inform not only general hegemonic cultural ideas

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<sup>102</sup> Derek W St. Pierre, “The Transition from Property to People: The Road to the Recognition of Rights for Non-Human Animals” (1998) 9:2 *Hastings Women’s LJ* 255 at 266. For a survey of some of the shortcomings of rights-based advocacy for animals, see Jason Byrne, “The Human Relationship with Nature” in Ian Douglas et al, eds, *The Routledge Handbook of Urban Ecology* (New York: Routledge, 2011) 63 at 69–70. Byrne’s article provides an overview of the various philosophical traditions upon which the dominant perspective on urban wildlife is built, as well as the arguments of those by whom the norms are being challenged.

<sup>103</sup> “Animals: Property or Persons?” in Cass R Sunstein & Martha C Nussbaum, eds, *Animal Rights: Current Debates and New Directions* (New York: Oxford University Press, 2004) 108 at 129.

<sup>104</sup> Colin Jerolmack, “How Pigeons Became Rats: The Cultural–Spatial Logic of Problem Animals” (2008) 55:1 *Social Problems* 72 at 81–82, 85–86, 90.

about animals as well as legal ownership of animals as discussed in the preceding parts, but also shape current administrative policy responses to wild animals who reside and roam freely in cities.

#### A. URBAN “CONFLICTS”

When non-human animals exceed numbers deemed desirable by humans in a certain place, there is a sense of entitlement to “manage” these populations, which are quickly stigmatized as invasive or as “pests”.<sup>105</sup> Suchet suggests that the clear demarcation between human and animal (with humans as “overlord”) justifies such management practices and devaluing labels.<sup>106</sup> This stigmatizing tactic is part of the repertoire used to construct particular species of animals as social problems.<sup>107</sup> As Colin Jerolmack documents in his review of the discourses by which certain animals get turned into social problems in cities, the discourse about invasiveness and pestilence projected onto animals is spatially boundary-setting and draws heavily upon pre-existing dominant sensibilities about “human deviance” and marginalized human groups.<sup>108</sup> Similar to Suchet, Jerolmack stresses that “a powerful organizing

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<sup>105</sup> See Mavhunga, *supra* note 56 at 153. Such entitlement is firmly entrenched even in the field of biology, which facilitates the “managing” of animals classified as “pests”, problems, nuisances, or invasive. See generally Dawn A Gorham & William F Porter, “Examining the Potential of Community Design to Limit Human Conflict with White-Tailed Deer” (2011) 35:3 *Wildlife Society Bulletin* 201; Harumi Akiba, Craig A Miller & Hiroyuki Matsuda, “Factors Influencing Public Preference for Raccoon Eradication Plan in Kanagawa, Japan” (2012) 17:3 *Human Dimensions of Wildlife* 207; Adrian Peace, “Ponies Out of Place? Wild Animals, Wilderness and Environmental Governance” (2009) 19:1 *Anthropological Forum* 53 at 53–54.

<sup>106</sup> *Supra* note 5 at 147. See generally Sue Donaldson & Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford: Oxford University Press, 2011) at 145–46 [Donaldson & Kymlicka, *Zoopolis*]; Jeffrey C Sanders, “Animal Trouble and Urban Anxiety: Human–Animal Interaction in Post–Earth Day Seattle” (2011) 16:2 *Environmental History* 226 (Sanders finds similar issues with dogs and public order where loose animals were often seen as symbols of urban blight and impotence of city government in twentieth-century Seattle).

<sup>107</sup> Jerolmack, *supra* note 104 at 73–75.

<sup>108</sup> *Ibid* at 75.

principle”<sup>109</sup> underlying the dynamics of this discursive construction of animals as social problems in urban spaces is the “modernist understanding of the nature–culture relationship”,<sup>110</sup> entailing the signification of the “wild” with “animals”. As Sue Donaldson and Will Kymlicka emphasize, humans living in urban spaces view animals and cities as unusual due to the pervasive hold that the association of animals with the “wild” have on human mindsets.<sup>111</sup> The regular entitlement that humans feel in killing animals is arguably heightened in a context where it is imagined that animals have no claim to be; if there is no alternative acceptable to humans in a given urban human–animal encounter then the option of killing is cast as necessary.

The practice of culling animals when humans determine it is necessary is widespread, both with “native” and non-native animal populations.<sup>112</sup> It is revealing to examine the interests that motivate decisions to reduce particular populations, and indeed, the contextual factors that contribute to the apparent need for reduction. With respect to the culling of elephants in a South African National Park, for example, Werner Scholtz suggests that “[i]t is improbable that the overpopulation

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<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> *Zoopolis*, *supra* note 106 at 210–11.

<sup>112</sup> There are numerous examples of human attempts to control animal populations through “culling”—some of which have been successfully challenged by animal rights activists and others. See e.g. Richard Black, “Badger Cull ‘May Worsen Problem’”, *BBC News* (15 September 2010), online: <[www.bbc.co.uk](http://www.bbc.co.uk)>; Adrian Tame, “Plea to Stop Kangaroo Slaughter”, *Herald Sun* (12 December 2010), online <[www.heraldsun.com.au](http://www.heraldsun.com.au)>; “Vernon Mulls Cull of Dog-Killing Coyotes”, *Canadian Press* (9 November 2010), online: <[www.bc.ctvnews.ca](http://www.bc.ctvnews.ca)>; “Rabbit Cull Planned by University of Victoria”, *CBC News* (6 May 2010), online: <[www.cbc.ca](http://www.cbc.ca)>; Robert Matas & Sunny Dhillon, “Post-Olympic Slaughter of 70 Sled Dogs Prompts Rage, Embarrassment”, *The Globe and Mail* (31 January 2011), online: <[www.theglobeandmail.com](http://www.theglobeandmail.com)>; Zoe McKnight, “Cull of the Wild: Controlling Animal Populations Across Canada”, *The National Post* (5 August 2010), online: <[www.nationalpost.com](http://www.nationalpost.com)>; “Welsh Badgers Saved as Cull Declared Unlawful”, *Wildlife Extra News* (July 2010), online: <[www.wildlifeextra.com](http://www.wildlifeextra.com)>.

problem would ever have arisen were it not for the need to reserve space for animals to protect them from the encroaching human elements.”<sup>113</sup> Moreover, Peter J. Stoett argues that if particular species did not adversely affect humans and produce a “sudden and prolonged economic impact,” it is unlikely they would attract attention and intervention at all.<sup>114</sup> The hand that humans play in creating purported conflicts between animals and humans is infrequently acknowledged in representations of “invasive” species. Rather than activate our responsibility to take steps to coexist with animals in urban spaces, wildlife laws and policies continue to privilege human interests.

#### B. ANTHROPOCENTRIC LEGAL RESPONSES

A 2003 report by the BC Ministry of Environment (then the Ministry of Water, Land, and Air Protection) entitled *Wildlife–Human Conflict Prevention Strategy*, wherein the government outlined a new approach to reduce such conflicts, reveals the privileged position of the human.<sup>115</sup> The report focuses on minimizing human contact with wildlife in (civilized) urban spaces and states that “[s]olutions [to conflicts] may involve a suite of prevention activities, and will follow a progression from attractant [e.g. food] management through to population management, employing non-lethal options *when possible*.”<sup>116</sup> Elsewhere, the Ministry notes that intervention by conservation officers will be limited to threats to (human) public safety, and suggests other methods for dealing with “nuisance” wildlife, such as “erecting barriers”, and

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<sup>113</sup> “Animal Culling: A Sustainable Approach or Anthropocentric Atrocity?: Issues of Biodiversity and Custodial Sovereignty” (2005) 2:2 Macq J Intl & Comp Envtl L 9 at 21.

<sup>114</sup> Peter J. Stoett, “Counter-Bioinvasion: Conceptual and Governance Challenges” (2007) 16:3 Environmental Politics 433 at 438.

<sup>115</sup> (17 July 2003), online: <[www.env.gov.bc.ca](http://www.env.gov.bc.ca)>.

<sup>116</sup> *Ibid* at 11 [emphasis added].

“securing buildings”.<sup>117</sup> Conservation is deemed a priority, but human safety and human-owned property protection are paramount. Other provincial governments have developed similar policies to manage human–wildlife conflicts.<sup>118</sup>

The rabbit controversy that erupted at the University of Victoria in Victoria, British Columbia engaged this provincial policy in 2011. The situation involving rabbits on the University of Victoria campus illustrates the policy and the law’s anthropocentric dynamic, including how both are facilitated by law’s constructed classifications (i.e., “domestic” and “wild”) in regard to animals. The European rabbit population that used to exist on the University of Victoria campus, once estimated to be 1,300 in number, has been widely publicized.<sup>119</sup> A backgrounder put out by the University at the height of controversy outlining its position stated that “[m]ost feral rabbits at UVic are unwanted pets or descendants of unspayed or unneutered pets abandoned on campus”.<sup>120</sup> Citing health and safety concerns, damage to vegetation, and the rabbits’ migration into neighbouring communities, the University attempted various methods of removing the animals.<sup>121</sup> The University’s classification of the animals as “feral”, a stigmatizing appellation suggesting an illegitimate presence, enabled this justification.<sup>122</sup> The BC Supreme Court has accepted this position. In

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<sup>117</sup> British Columbia Ministry of Environment, “Conservation Officer Service—Reporting Human Wildlife Conflicts”, online: <[www.env.gov.bc.ca/cos/info/wildlife\\_human\\_interaction](http://www.env.gov.bc.ca/cos/info/wildlife_human_interaction)>.

<sup>118</sup> See e.g. Alberta Environment and Parks, “Human–Wildlife Conflict”, online: <[www.aep.alberta.ca/fish-wildlife/human-wildlife-conflict/default.aspx](http://www.aep.alberta.ca/fish-wildlife/human-wildlife-conflict/default.aspx)>; Ontario, Ministry of National Resources and Forestry, “Strategy for Preventing and Managing Human–Wildlife Conflicts in Ontario”, online: <[www.web2.mnr.gov.on.ca](http://www.web2.mnr.gov.on.ca)>.

<sup>119</sup> See e.g. “Rabbits Causing Headaches at UVic”, *CBC News* (1 April 2010), online: <[www.cbc.ca](http://www.cbc.ca)>.

<sup>120</sup> University of Victoria, “Feral Rabbits at UVic: Backgrounder” (5 September 2008) at 1, online: <[www.communications.uvic.ca](http://www.communications.uvic.ca)>.

<sup>121</sup> See University of Victoria, “UVic Rabbit Management Strategy: Backgrounder” (8 September 2008) at 1, online: <[www.communications.uvic.ca](http://www.communications.uvic.ca)>.

<sup>122</sup> See Peace, *supra* note 105 at 67.

*Cassels v University of Victoria*,<sup>123</sup> the Court set aside an injunction secured previously by community advocates that prevented the University from removing the feral rabbit population.<sup>124</sup> The University wanted to humanely trap and kill any new rabbits found on campus, though it had not publicly defined how it would ensure that trapping is “humane”,<sup>125</sup> a matter that concerned the advocates.

The Ministry of the Environment supported the University’s position with respect to the latter’s entitlement to remove the animals. An email cited in *Cassels* written on behalf of the Minister of Environment stated that it was the Ministry’s position that

[b]ecause these particular rabbits reside on private land and are *Schedule C* wildlife, the University of Victoria can control the population as they see fit as long as they abide by the regulations set forth under the *Wildlife Act* as well as city and municipal guidelines and bylaws.<sup>126</sup>

A second email cited in the judgment confirmed that “[t]he Ministry considered feral rabbits to be invasive, non-native wildlife species and lists them under Schedule C of the Designation and Exemption Regulation of the *Wildlife Act*.”<sup>127</sup> Vis-à-vis third parties (i.e., individuals or groups who do not own the land on which the rabbits are residing or have a private claim to the animal as a previous owner), however, the

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<sup>123</sup> 2010 BCSC 1213, 323 DLR (4th) 180 [*Cassels*].

<sup>124</sup> *Ibid.*

<sup>125</sup> See “Rabbits @ UVic”, online: <communications.uvic.ca/rabbits> (the University of Victoria has specifically allocated a webpage for updates on the rabbits).

<sup>126</sup> *Cassels*, *supra* note 123 at para 10, citing *Designation and Exemption Regulation*, BC Reg 168/90, Section C (a list of mostly non-native wildlife that can be captured or hunted at any time).

<sup>127</sup> *Ibid* at para 11. *Designation and Exemption Regulation*, BC Reg 168/90, Schedule A lists the vertebrates that are considered wildlife for the purposes of the *Wildlife Act* (BC), *supra* note 80, s 1, while Schedule B lists wildlife that may only be captured or killed to protect property, unless regulations declare an open season. For more information regarding Schedule B, see British Columbia, “Hunting and Trapping Synopsis 2010–2012”, online: <www.env.gov.bc.ca>. Schedule D lists threatened species, and Schedule E lists endangered species.

government viewed the rabbits as wildlife and asserted jurisdiction over them through public property paradigm (i.e., licensing). The community advocates pressing for non-lethal solutions for the rabbits fell into this category.

Neither classification—private property (*vis-à-vis* the University) or wildlife (*vis-à-vis* everyone else)—would have helped the rabbits. If they were deemed to be un-owned and abandoned *domestic* animals on University land, the University or the BC Society for the Prevention of Cruelty to Animals could have disposed of the rabbits in accordance with anti-cruelty legislation.<sup>128</sup> Categorized instead as “wildlife,” they were subject to licensing schemes, and could have been disposed of in accordance with government authorization. The point is not whether the potentially lethal resolution would be authorized in the case of the rabbits, but rather the fact that both the University and the government assumed authority to make decisions with respect to these animals enabled by their propertied status. Neither legal classification for animals as “domestic” or “wild” considers animals as independently valuable beings; instead, each is understood in relation to benefit (or nuisance) to humans.

This privileging of human interests reinforces the hierarchical logics of control over the “wild”, and the opposition of (ordered) civilization and (disordered) nature discussed above.<sup>129</sup> The concept of “nativism”

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<sup>128</sup> See *PCAA*, *supra* note 71, ss 10.1, 17.

<sup>129</sup> Endangered species lists also reflect this colonial logic: Once again, the wild is seen as justifiably subject to human management and organization. See Suchet, *supra* note 5 at 148. Animals have value when they are rare; when there is excess, they are seen as a problem. See Kay Anderson, “Culture and Nature at the Adelaide Zoo: At the Frontiers of ‘Human’ Geography” (1995) 20:3 *Transactions of the Institute of British Geographers* 275. Endangered species receive increased protection. See e.g. *Species at Risk Act*, SC 2002, c 29. But the perceived rarity may also lead to further endangerment or extinction through increased hunting (due to an increase in value) or through wildlife watching, i.e., “if some species face disproportionate anthropogenic disturbance resulting from increased interest in observing threatened species in the wild”: Richard Hall, EJ Milner-Gulland & F Courchamp, “Endangering the Endangered: The Effects of Perceived Rarity on Species Exploitation” (2008) 1:2 *Conservation Letters* 75 at 79. Protection of endangered

regarding "invasive" or foreign species used to legitimize removal by the University imagines foreign species as threats to native populations.<sup>130</sup> As Peter J. Stoett notes, given Canada's colonial history, the fact that theorization regarding invasive alien species "emanates largely from the so-called 'First World,' source of the great human migrations and imperial impositions of the last 500 years, is more than ironic; voices from the periphery continue to be silenced by the waves of historical interpretation."<sup>131</sup> Yet, those claiming superior positioning (in this case, humans) are still drawing the boundaries around who or what belongs in a particular space. As Donaldson and Kymlicka note, human policies toward wildlife harness potent exclusionary discourses of Otherness and foreignness that permeate debates about human immigration as guidance on appropriate animal habitats.<sup>132</sup> Stoett suggests that the adaptability of so-called invasive alien species,

which traverse borders and infest the commons without human permission, [also] give rise to broader and perhaps ancient fears about

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animals is still conceived in relation to the benefits of biodiversity to humans. On introducing Bill C-5 (which would later become the *Species at Risk Act*), sponsoring Minister Hon. David Anderson (then Minister of the Environment) noted that "Canada is blessed with a rich biodiversity of over 70,000 known plants and animals, many of which are found nowhere else in the world. . . . We have a moral obligation to protect this precious diversity so that it can be enjoyed by generations of Canadians to come": Canada, House of Commons, *Hansard*, 1st Sess, No 016, (19 February 2001) at 1745. So we can relate positively and humanize, but this again is our own valuation of their importance.

<sup>130</sup> William O'Brien, "Exotic Invasions, Nativism, and Ecological Restoration: On the Persistence of a Contentious Debate" (2006) 9:1 *Ethics, Place and Environment* 63. O'Brien notes at page 65 that

[w]hile a direct connection is difficult to establish, critics express concern that the often strident anti-exotics rhetoric could serve to reinforce and/or promote nativism more generally: a concern fueled by the growth of anti-immigrant strains within the ranks of contemporary environmentalism, particularly in North America.

See Stoett *supra* note 114 at 436 (Stoett aptly notes here that humans are the "ultimate invasive species" in that we have caused the most ecological damage).

<sup>131</sup> *Ibid* at 440.

<sup>132</sup> *Zoopolis*, *supra* note 106 at 94.

our inability to overcome the strength of nature on the one hand, and alarming uncertainty about our own impact on the earth on the other.<sup>133</sup>

It is a worldview that more than echoes its colonial heritage where both human and animal populations were sub-humanized and exterminated through pestiferous ideology of who belongs and who does not.<sup>134</sup> Wildlife regulations reflect not only the historical need to control and order nature, but also to maintain human superiority as the orderers and expel those deemed alien/foreign.

### C. SUMMARY

Urban wildlife regulation, as evinced in the BC government's current policy and the University of Victoria rabbit controversy legal resolution, follows a paradigm similar to other areas of animal legislation, such as welfare laws and charitable laws where the interests of legal persons are balanced against animal interests.<sup>135</sup> In fact, Francione argues that

[t]he result of any supposed balancing of human and non-human interests required by animal-welfare laws is predetermined from the outset by the property status of the nonhuman as a "food animal," "experimental animal," "game animal," et cetera.<sup>136</sup>

He submits that "if animal interests are to be morally significant, we must accord to nonhumans the basic right not to be treated as property, and this requires that we seek to abolish, and not merely to regulate, institutionalized animal exploitation."<sup>137</sup> As they currently stand, urban wildlife conflict policies are anthropocentrically oriented, failing to

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<sup>133</sup> *Supra* note 114 at 436.

<sup>134</sup> See generally Mavhunga, *supra* note 56.

<sup>135</sup> For example, the law recognizes the promotion of animal welfare as charitable only if the charitable activities benefit humans in some way. See Canada Revenue Agency, "The Promotion of Animal Welfare and Charitable Registration" (Ottawa: CRA, 2011), online: <[www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)>.

<sup>136</sup> Gary Francione, "Reflections on *Animals, Property, and the Law and Rain without Thunder*" (2007) 70 L & Contemporary Problems 9 at 9.

<sup>137</sup> *Ibid* at 11.

afford animals appropriate regard as beings in and of themselves, rather than property or beings amenable to proprietization. They also draw upon a hierarchically laced discourse of wildness and civilization.

We must acknowledge our embedded claim to superiority when we enter into discussions of wildlife in urban environments and the attendant politics and history of gender, race, class, and species they implicate. Unless we are comfortable with the inegalitarian foundations of the ensuing policies formulated to “manage” animals, we need to revisit them to put them on a more balanced footing. Deconstruction of our legal and cultural responses to animals raises questions as to what alternative conceptions of animals (and our relationship to them) might be. We consider such alternatives with respect to urban human–animal encounters in the section below.

#### IV. SHARED SPACES: RETHINKING HUMAN–NON-HUMAN ANIMAL RELATIONSHIPS

The UVic rabbit controversy is by no means an anomaly. The construction of other liminal animals as social problems in British Columbia and elsewhere is an ongoing phenomenon.<sup>138</sup> How might

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<sup>138</sup> Indeed, an even more recent example is the cull organized by the municipality of Oak Bay, adjacent to Victoria, to target the urban deer population. The rationale for the cull provided by the municipal government is the rising number of deer–human conflicts and that “doing nothing is not an option”: Dirk Meissner, “Deer Culls in Oak Bay, Invermere Loom”, *The Huffington Post (Canada)* (29 December 2013), online: <[www.huffingtonpost.ca](http://www.huffingtonpost.ca)>. To this end, city officials cite examples of humans and their pets being harmed by the deer, and of deer dying slow and painful deaths after being hit by cars or being impaled when trying to leap over fences. See *ibid.* The province has given the municipality permission to hire a contractor to trap a number of deer and shoot them with a bolt gun. This plan has been met with much controversy in the community. Most notably, the BC Society for the Prevention of Cruelty to Animals (SPCA) strongly opposes the deer cull on the grounds that “it may not be humane and will not decrease the deer population in the long term”: Katherine Dedyne, “BC SPCA Opposed to Oak Bay Deer Cull”, *The Times Colonist* (2 February 2015), online: <[www.timescolonist.com](http://www.timescolonist.com)>. While not categorically opposed to deer culls, the SPCA is concerned about the suffering of the deer if the first shot does not kill them, and has threatened to launch an investigation

humans relate to animals we encounter in urban spaces in a more egalitarian manner, one that does not invoke modes of classification that perpetuate hierarchical logics that subordinate animals as well as vulnerable humans? This Part sets out cultural, political, and legal steps that would help generate such an approach.

#### A. CULTURAL STEPS

An important starting point is the dissolution of the sharp nature–culture boundary we have constructed between human and non-human animals, upon which the concept of wild pivots. Although entrenched, it can soften and dissipate. One way to educe this boundary softening is to recognize the Other’s perceived difference in our selves. Anderson calls for “a human Self more conversant with its own wild side, dedomesticated and unbound.”<sup>139</sup> Such a conception would demystify the “wild” and allow more organic and compassionate human relationships with non-humans. Josephine Donovan also suggests that “care and compassion is a practice that can and should be applied universally—a categorical imperative, if you will—to all animals (human and non).”<sup>140</sup> We can have more compassion for those we are conditioned to perceive as wild/Other, as well as genuinely valuing markers of wildness within ourselves.

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if they are provided with evidence that the animals are bleeding to death while conscious. See *ibid.*

<sup>139</sup> “Walk on the Wild Side”, *supra* note 7 at 481.

<sup>140</sup> “Feminism and the Treatment of Animals: From Care to Dialogue” (2006) 31:2 *Signs* 305 at 310. In an interesting investigation of the scope of the ethic of care, Andrea Olive undertook a gendered analysis of the relative interest in preserving two endangered animals, the desert tortoise and the water snake. Her findings suggest that the ethic of care manifests in diverse ways, and she encourages “research to be more precise when evoking an ethic of care explanation”: “A Research Note on Gendered Perceptions of Wildlife: The Ethic of Care Meets a Snake and a Tortoise” (2012) 33:2 *J Women, Politics & Policy* 176 at 184.

Conversely, relinquishing the idea of urban spaces as “naturally” wildlife-free can facilitate a softening of the nature–culture boundary.<sup>141</sup> Acknowledging the social constructedness of urban spaces involves a recognition of those (often displaced) bodies that have been rendered invisible through “civilization” of their habitat, as well as acceptance of “non-native” populations introduced into particular spaces by humans, as with the UVic rabbits. Jennifer Wolch presents the idea of a transurban ecology of non-intervention in which she argues that animals are subjects, not objects, and “have their own realities.”<sup>142</sup> In conceiving of a new, as she calls it, “zoöpolis”, Wolch argues that “[t]o allow for the emergence of an ethic, practice, and politics of caring for animals and nature, we need to renaturalize cities and invite the animals back in, and in the process, re-enchant the city.”<sup>143</sup> She suggests that

[t]he reintegration of people with animals and nature in zoöpolis can provide urban dwellers with the local, situated, everyday knowledge of animal life required to grasp animal standpoints or ways of being in the world, to interact with them accordingly in particular contexts, and to motivate political action necessary to protect their autonomy as subjects and their life spaces.<sup>144</sup>

This reintegration does not entail a reversal of the subordination dynamic (i.e., subordinating human interests instead); rather, the focus on integration aims to remove the notion of opposition of interests

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<sup>141</sup> This simple but profound concept has been recognized as central to any project where the interests of animals are to be valued. For example, in a project jointly undertaken between Norway and India entitled “Wildlife Interactions: From Conflict to Coexistence in Sustainable Landscapes”, one of the five “lessons learnt” enumerated in their report was that “[w]ildlife does not recognize borders”: Jørn Linnell, John Thomassen & Ketil Skogen, “Wildlife-Human Interactions: From Conflict to Coexistence in Sustainable Landscapes” (Norwegian Institute for Nature Research, 2011) at 10. Rather than focusing on the space where the animals should not be, the project aims to encourage “frameworks (both legislative and philosophical) that accepts that wildlife exists outside protected areas”: *ibid.*

<sup>142</sup> “Zoöpolis” *supra* note 37 at 121.

<sup>143</sup> *Ibid* at 124.

<sup>144</sup> *Ibid.*

entirely. Where conflicts do arise between the needs of human and non-human animals, we must resist the tendency to automatically privilege human interests, and instead, seek more creative solutions.

According to Diane P. Michelfelder, the issue with urban human-wildlife conflicts “really is one of integration, of how to inhabit an area jointly with others of different species with a minimum of conflict.”<sup>145</sup> Michelfelder suggests looking at urban wildlife populations in terms of community value rather than aesthetic value, and in doing so, recasting urban wildlife as “neighbours”.<sup>146</sup> She argues that

once . . . we have created an environment in which [animals] find their home, making us participants in a larger community with them, we ought not to translocate them, deceive them, or eliminate them from public view and the place they have made their home.<sup>147</sup>

Michelfelder suggests that viewing non-human animals as neighbours with their own interests does not entail unconditional consent for any and all actions of these beings.<sup>148</sup> Rather, as with any neighbour, apparent “conflicts” require reconsideration of whether there really is a problem and, if so, engaging in cooperative problem solving that takes all interests into account. In anticipation of inevitable human-non-human animal interaction, she discusses “ethical city planning”, which involves “the creation of spaces with mutable uses . . . and with a special eye to enhancing human-wildlife interaction within these spaces.”<sup>149</sup>

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<sup>145</sup> “Valuing Wildlife Populations in Urban Environments” (2003) 34:1 J Social Philosophy 79 at 83. Indeed, for an example of one Toronto resident doing just that, see Christina Trotter, “Finding Peace with the Raccoons in Our Backyard”, *The Globe & Mail* (6 July 2011), online: <[www.theglobeandmail.com](http://www.theglobeandmail.com)>.

<sup>146</sup> *Supra* note 145.

<sup>147</sup> *Ibid* at 87.

<sup>148</sup> *Ibid* at 86.

<sup>149</sup> *Ibid* at 87. Such a perspective on use of space would also allow for a recognition of the “deep connections, at both the microbial and landscape scales, that link bodies and species often portrayed as ecological adversaries”: Dawn Biehler, “Embodied Wildlife Histories and the Urban Landscape” (2011) 16:3 Environmental History 445 at 449. Biehler advocates for the study of zoonotic pathogens as a point of

Garlick, Matthews, and Carter add to this neighbour ethic when they discuss Zygmund Bauman’s work on the community of place that suggests that “the ideal form of togetherness . . . occurs in the ethical community, where communal unity rests on difference (‘mixophilia’), long-term commitment, sharing, concern and responsibility.”<sup>150</sup> They further argue that embracing the Other in this way may contribute to a broader conservationist ethic in humans, through its normalization of long-term interactions with wild animals.<sup>151</sup> In specific relation to campus controversies like that the University of Victoria witnessed, they put forth the conception of the “ecoversity”, where “universities adopt a relational ethics and transform themselves as spaces and places wherein their residents might live a ‘mutually engaged’ existence with wildlife and local ecosystems”.<sup>152</sup> Rather than human “management” or control of non-human bodies, we should work towards a reconceptualization of urban spaces that takes seriously all of the interests affected. In this model, animal interests are considered without reference to the effect their treatment has on humans. This is achieved through a de-emphasis on the discourse of difference and wildness.

## B. POLITICAL AND LEGAL STEPS

Acknowledging the moral status of animals through deconstructing the human–non-human and wild–domestic binaries raises serious questions for the political and legal framework that relegates animals to objects of human ownership. Effectively embracing an ethic and worldview that

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entry for discussing the power imbalances and social ordering that foster rigid species delineation.

<sup>150</sup> *Supra* note 85 at 166.

<sup>151</sup> *Ibid* at 164.

<sup>152</sup> *Ibid* at 169. Carrie H Fox and Marc Bekoff similarly call for increased contemplation of ethics in all animal “management” initiatives. Though speaking specifically about the protection of wolves in the United States, their argument can be extended to all human–non-human relationships. The authors write, “Ultimately, we must always challenge ourselves: should we be doing what we are doing and, if so, can we do it better?”: “Integrating Values and Ethics into Wildlife Policy and Management: Lessons from North America” (2011)1:1 *Animals* 126 at 138.

sees non-human animals as neighbours with whom we are in reciprocal relationships and as a legitimate and desired part of the community requires a reframing of their political and legal status vis-à-vis humans.

Donaldson and Kymlicka have recently taken up this task of articulating a human citizenship-derived model for animals. In their treatise, *Zoopolis*, the two outline a political model that can recognize animal subjectivity as well as forward the commitments of an animal rights ethic to inviolable rights for animals;<sup>153</sup> the authors find the latter to be articulated in the abstract by animal rights theorists, but insufficiently mobilized in the literature to create an actual program of political change.<sup>154</sup> Borrowing from Wolch, Donaldson and Kymlicka coin their vision for a “situated animal ethics”<sup>155</sup> as a “zoopolis”, signalling a society that, in order to be just, treats domesticated animals as co-citizens, respects the sovereignty of wild animals who live apart from humans, and affords denizenship to those animals humans perceived as wildlife coexisting with us in urban landscapes.<sup>156</sup> It is their theorization about denizenship for urban wild animals that particularly interests us here. Denizenship does not entail the full sets of rights and responsibilities that citizenship would for domesticated animals as it aims to have urban wild animals live their lives on their own terms as much as possible, without the level of human governance that a citizenship model entails for domesticated animals. It does ensure, however, that urban animals will have “rights of residency”<sup>157</sup> and that their interests will be treated on the same level as human interests once animals become part of the community, no matter how they arrived.<sup>158</sup>

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<sup>153</sup> *Supra* note 106.

<sup>154</sup> *Ibid* at 14–15.

<sup>155</sup> *Ibid* at 12.

<sup>156</sup> *Ibid* at 14–15. For a recent and detailed articulation of what citizenship for domesticated animals entails, see Will Kymlicka & Sue Donaldson, “Animals and the Frontier of Citizenship” (2014) 34:2 *Oxford J Leg Stud* 201.

<sup>157</sup> Donaldson & Kymlicka, *Zoopolis*, *supra* note 106 at 231.

<sup>158</sup> *Ibid* at 214, 227–30.

Donaldson and Kymlicka’s relationally driven denizenship seeks to bring the needs of urban wild animals into the fold of interests to be accommodated as best as possible and, at the very least, ensure them a “security of residence”.<sup>159</sup>

Denizenship would appear to require legal fortification and thus alteration of animals’ current property status in law. As Francione reminds us, “When sentient beings are regarded as property, laws that regulate the treatment of the beings are generally not effective to protect the interests that the law may recognize the beings to possess.”<sup>160</sup> While there is a vibrant debate about the need to abolish animals’ property status before animal interests can advance,<sup>161</sup> the type of legal change that would compel government and third-party recognition of the interests of denizen animals to exist would be personhood status or something akin to it.<sup>162</sup> Donaldson and Kymlicka also recognize this.<sup>163</sup> Recognition of these animals’ personhood or personhood-like status would put their interests on par with other legal persons. Critically, it would force a greater incentive for decision makers to find a non-violent compromise when genuine conflicts between humans and animals do arise. Moreover, it would not require governments to relinquish their jurisdiction to regulate wild animals in urban spaces, an abdication that may not be easily forthcoming. This recognition requires that non-human animals no longer be viewed as property or wholly subject to human control.

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<sup>159</sup> *Ibid* at 230.

<sup>160</sup> *Supra* note 64 at 112.

<sup>161</sup> See especially Gary Francione & Robert Garner, *The Animal Rights Debate: Abolition Or Regulation?* (New York: Columbia University Press, 2010). Fully justifying the personhood option is beyond the scope of this paper.

<sup>162</sup> We say something “akin” to personhood to acknowledge the fact that the pre-existing personhood category in law may not do justice to animals’ specific needs such that an entirely new category of legal subjectivity for animals should be developed. For an argument in this vein, criticizing the anthropocentric nature of personhood as a legal category for animals, see Maneesha Deckha, “Beyond (Property and) Personhood: Toward a New Legal Subjectivity for Animals” [unpublished; on file with authors].

<sup>163</sup> *Zoopolis*, *supra* note 106 at 40.

Governments may continue to regulate animal activities as they regulate human activities, but now, with animals' property status abolished, must afford animals the sincere respect for their interests that personhood (or an equivalent status newly conferred onto animals) mandates when formulating policy and taking regulatory action.

That conflict will invariably occur is not prohibitive to this alternative urban legal landscape. Humans living together in urban spaces regularly enter into conflicts.<sup>164</sup> Legitimate solutions to questions of how persons can productively share urban environments are never lethal ones nor otherwise physically violent (nor, of course, should they be). Municipal planners, policy makers, and politicians are challenged to find solutions or make decisions that consider the interests of all even if at the end of the day some are valued over others. As Joseph Singer states, “[c]hoices of property rules ineluctably entail choices about the quality and character of human relationships and myriad choices about the kind of society we will collectively create.”<sup>165</sup> Yet, there is no consistent trump card where some groups are always favoured. There are, of course, systemic biases that will favour some communities' interests over others often along class, race, and ethnic lines.<sup>166</sup> These biases must continue to be unlearned and unearthed. Yet, our point is that stated official policy is not to stigmatize one human group as an “invasive” species or as “pests.” Somehow, inter-human disputes are managed

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<sup>164</sup> See Nancy Kleniewski & Alexander Thomas, *Cities, Change, and Conflict: A Political Economy of Urban Life*, 4th ed (Belmont, Cal: Wadsworth, 2010).

<sup>165</sup> Joseph William Singer, “Property and Social Relations: From Title to Entitlement” in Charles Geisler & Gail Daneker, eds, *Property and Values: Alternatives to Public and Private Ownership* (Washington, DC: Island Press, 2000) 3 at 13.

<sup>166</sup> Consider, for example, gentrification of particular spaces. Harold A McDougall notes that in the US context, “[d]uring urban renewal city governments used the power of eminent domain to remove the poor from their homes in an attempt to revitalize decaying neighbourhoods and reverse a decline in municipal tax revenues. Now low income residents are being displaced by middle and upper income individuals interested in acquiring inner-city housing on the private market”: “Gentrification: The Class Conflict over Urban Space Moves into the Courts” (1981) 10:2 *Fordham Urb LJ* 177 at 177–79.

without the selection of violent options and official policy is typically to do what is in the public interest.

There is no reason that the interests of animal communities cannot also enter this calculus of interests to be weighed, considered, and addressed in our understanding of urban spaces, particularly when the animals at issue do not prey on human beings. As Jeremy Waldron notes, “regulation of public space is a different matter in a community some of whose members have no private space to retreat to than in a community all of whose members have access to private spaces”.<sup>167</sup> Although Waldron’s argument was implicitly discussing the human members of the community, his insight is usefully extended to non-human members as well. With such regulation and with an ethic that subverts the conventional hierarchical and exclusionary attitudes to wild animals in urban spaces guiding the denizenship model as Donaldson and Kymlicka advocate, the zoopolis that Wolch envisions can be better sustained.

## CONCLUSION

Concepts of the “wild”, “wildness”, and “wildlife” reflect problematic discourses about difference, Otherness, and belonging. In the West, a foundational cultural binary that positions nature in an antagonistic relation with culture and devalues all those associated with it (both human and non-human) activates these concepts. Ideas about the wild and nature were critical to hegemonic projects of exclusion, including colonialism of non-Western peoples and the exploitation of animals. These concepts continue to resonate and distribute their Othering effects through their discursive presence in contemporary popular culture and influence in current norms about animals.

Current laws facilitate the cultural Othering effects of wildness discourse. Through the law’s established property framework, animals are classified as objects amenable to the control of persons (humans and corporations). In so doing, the law formalizes and entrenches a cultural power relationship. The treatment of non-human animals resulting from this dynamic is troubling. As we have discussed with respect to the

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<sup>167</sup> “Homelessness and Community” (2000) 50:4 UTLJ 371 at 373.

rabbits at the University of Victoria, when animal bodies are deemed undesirable in certain spaces, humans are entitled to “manage” the populations through certain mechanisms—the approach to management (and *which* humans are allowed to engage in it) depends on whether the animals are deemed domestic or wild. Yet neither of these constructed categories appreciates the beings’ interests, subjectivity, and agency.

It is time to reassess this positioning and find more egalitarian ways for humans to relate to non-human animals. The possibility of such change is evident in the fact that our placement of humans in opposition to nature and our claim to superiority over non-humans are culturally contingent. As we have noted, other worldviews support the assertion that such opposition is not inevitable. Our particular focus here has concerned human relationships with animals they encounter in urban environments. With respect to these animals that reside in urban spaces, there are several measures to adopt in the cultural, political, and legal spheres. Culturally, until we accept “wildlife” as part of our urban community and begin to take these beings’ interests seriously, it will be difficult to see our understanding of non-human animals as anything other than oppressive or our legal and policy response to them as politically innocent. Legal and policy actors would do well to understand the checkered cultural and legal heritage of the concept of “wildlife” and to acknowledge the power dynamics reproduced in the continued use of this term and the discourses that sustain it. Initiating policies and laws that take as their foundation the worthiness of animals as denizens of cities and the recognition of their status as interest-bearing legal subjects will be a marked departure from those that prevail today privileging human interests. When such cultural, political, and legal baselines are in place, an evaluation of urban wildlife management laws and policies can proceed that it is hoped will move to develop alternative ways of relating to other animals who share our urban environments without subscribing to and reproducing problematic cultural, racial, gender, and species logics.