

# UNDERCURRENTS

Issue 17 : Animal



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# Guest Editorial

Lauren Corman

As this edition of *Undercurrents* is poised to print, an online CBC article reports the top ten things visitors will not see in Beijing during the Olympic Games. The government is in the midst of a crackdown to manufacture what they believe is a more acceptable China, or perhaps more precisely, a more acceptable China to Western eyes. Number one is rain.<sup>1</sup> After “rowdy fans” and “pushing and shoving” is “dog meat.” Not only will dog meat not appear on restaurant menus, but regular patrons will also be actively discouraged from ordering any canine-related cuisine during the Games.

Of the CBC list, the dog meat entry has prompted the greatest deluge of website feedback. A brief sampling: “Say what you will about culture, I still don’t like the idea of dogs for food. At least in North America, our animals are killed somewhat humanely...”; “It is ridiculous for us to judge the Chinese harshly for eating dogs as food when we slaughter thousands of animals every year to fill our bellies in North America”; “People rarely eat dog here. It is actually a Korean thing”; “As for dog... a little gamey but delicious! Don’t knock it ‘til you’ve tried it!” and finally, “Ace work fact-checking, CBC - that [accompanying] photo of [the] ‘dog meat’ [protest] was taken in Korea.”

There are many important queries to pose about the CBC story, featured picture, and resultant commentary. We might immediately raise questions related to nationalism, colonialism, xenophobia, food politics, racism, technology, spectatorship, and animal welfare, among others. Perhaps the more challenging exercise is to consider how these discourses might intersect in complex and layered ways. Even that is not enough, though, as the discourses we use to analyze phenomena are rife with their own suppositions. For example, how does one become a food animal? In which ways do dominant discourses of nationalism preclude the possibility of animal nations? How does “animal welfare” assume the property status of animals and an orientation toward “humane” care rather than industry abolition? In the Academy and society more broadly, we are learning to ask better questions, to question the discourses themselves, and to call out the unmarked categories as the tenuous and contradictory constructions they are.

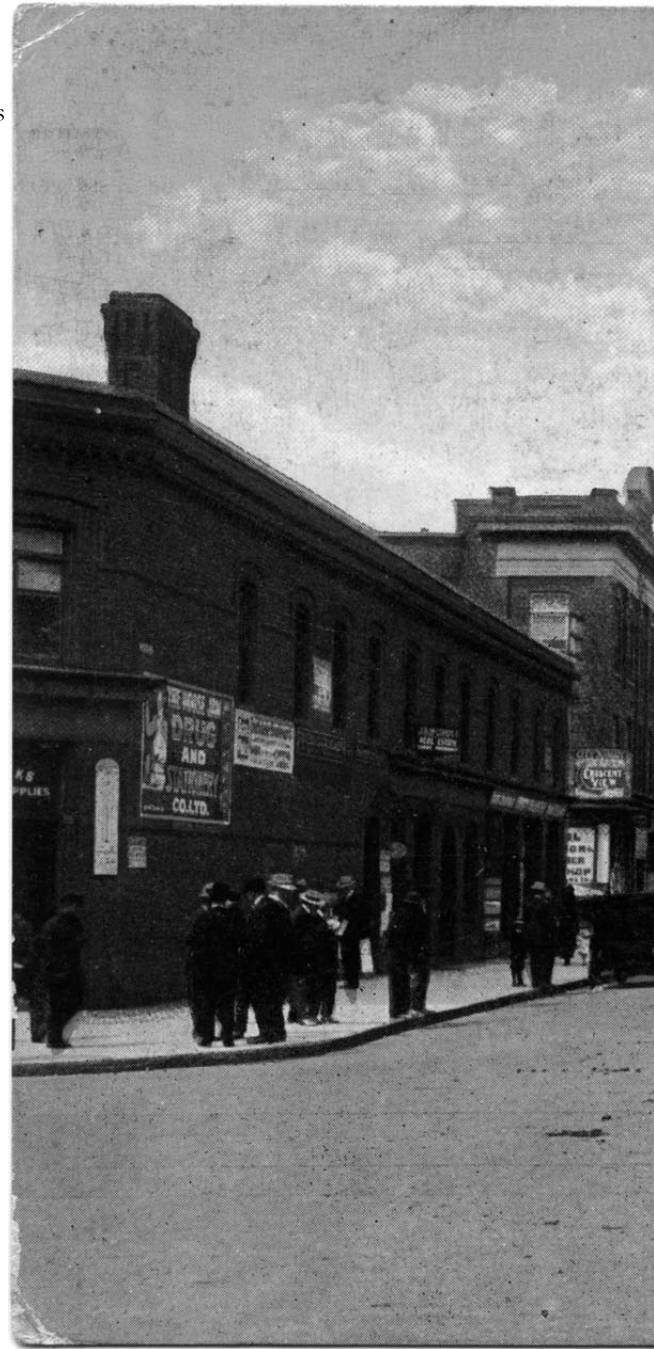
Chief among these pursuits for Animal Studies scholars are efforts to de-center the human subject (e.g., Baker, 1993), that is, to both reveal the human subject as a historically and culturally-mediated construction, and to simultaneously reposition animals as subjects. For many, such a shift is paired with the desire to realize what Sallie McFague (1997) describes as “subject-subjects relations.” In her article, “Becoming (more-than) human, Nicole Bonner addresses this notion as part of her inquiry into the the colonial and gendered roots of the concept of “human,” suggesting that a continual interrogation of how we understand that category opens up a more ethical position from which to act. In relation, a great deal is missed (and many negative consequences reaped) when our analyses fail to acknowledge animals beyond their metaphorical uses, or when we treat them simply as blank canvasses to splash own desires and fears against. These are not minor topics. As Jody Emel and Jennifer Wolch (1998) contend, “As the frontier between civility and barbarity, culture and nature increasingly drifts, animal bodies flank the moving line. It is upon animal bodies that the struggles for naming what is human, what lies within the grasp of human agency, what is possible are taking place” (p. 19). Consider, for example, Akira Mizuta Lippit’s contention (this issue) that Western human subjectivity is, as of the late 1950s, haunted subjectivity. That is, the human subject is haunted by animals and all excluded Others. The self-assuring phrase, “It’s only an animal,” does not hold. Animals return our gaze; they assert their presence and their subjectivity.

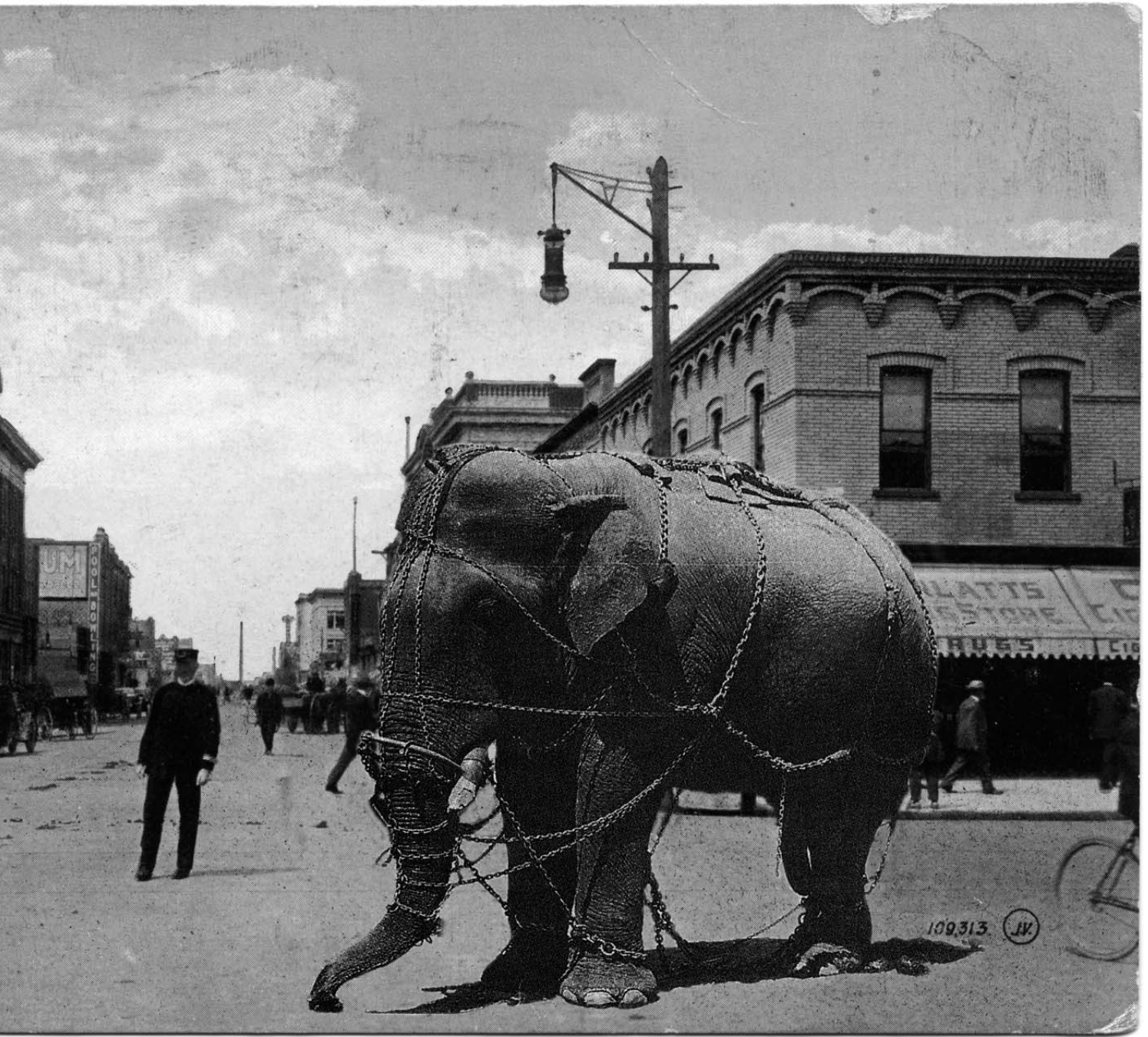
Following Donna Haraway (1991, 2003), an appreciation of specificity and partial perspective is crucial. As more critical understandings of dominant Western human subjectivity are generated, there must be a simultaneous acknowledgement of the multiplicity of subjectivities and cultures, both human and nonhuman, which are reproduced and negotiated in particular places, at particular times. For example, Gavan Watson shows this in his attention to the interlaced multiple meanings of “the Barn Owl”, specifically as related to a controversial photo that appeared in an Ontario birding community one fated winter. Adjacently, Rachel Forbes, in her investigation of the possible place of animals within Aboriginal legal systems, contrasts such renderings against those of traditional Western jurisprudence. Without such engaged orientation, we are prone to regard Others as abstractions, comfortable in the false sense of security that these categories can afford; we potentially elide meaningful differences and remain starkly ignorant of past and present lived experiences, while leaving ourselves largely unmoved and unchanged.

This issue of *Undercurrents* is an invitation. Like the featured photography of Jo-Anne McArthur, which draws us deeper into its subjects, these pieces offer entry points into future discussions. In these offerings, *UnderCurrents* invites readers to open more spaces where “the question of the animal”, and its various human and nonhuman interlocutors, may flourish.

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*Elephant and River Street, Photomontage by Sue Lloyd*

# Hinterland's Who's Who: Birding, Multiplicity, and Barn Owls

Gavan P.L. Watson

## The Barn Owl

The Barn Owl (*Tyto alba*) is a medium-sized, tawny coloured owl that, with the exception of Antarctica, has worldwide distribution. Like most owls the Barn Owl is considered to be nocturnal. Like all owls, it is predatory bird. In the Barn Owl's case, members of the species are said to enjoy (or specialize, in the biological parlance) in small ground mammals—rodents, for example. In Eastern North America, the majority of their diet would include Meadow Voles (*Microtus pennsylvanicus*) and Deer Mice (*Peromyscus maniculatus*). Barn Owls strike a distinct-look with their lack of ear tufts (a misnomer of sorts as the tufts—the “horns” of a Great Horned Owl, *Bubo virginianus*—are not ears and not associated with hearing at all) and their distinct heart-shaped facial disc (which *is* associated with hearing, but that's another story for another time). As their common name suggests they can be found living in barns, on a nest made from the regurgitated un-digestible remains of those Meadow Voles and Deer Mice they hunt. Of course Barn Owls are not just limited to barns, but nest in silos, abandoned buildings and tree cavities too. Arguably, this should make their name “Barn, Silo, Abandoned Building & Tree Cavity Owl” but that doesn't really roll off the tongue in the same way.

These attributes and distinguishing features are all things to keep in mind if you find yourself out bird-watching near a barn in Southern Ontario. During your explorations, while there are certain to be Rock Pigeons (*Columba livia*) fluttering about, if you happen to come across a Barn Owl in this setting, you should take notice. Seeing a Barn Owl in Southern Ontario (especially a living Barn Owl) is something to make special note of—it's not a regular occurrence. Part of the significance of seeing a Barn Owl lies in its relative in-abundance. While individuals identified as *Tyto alba* enjoy a cosmopolitan reputation, Southern Ontario has been considered the northern range of the species (“Ontario Barn Owl Recovery Project,” 2005) and it has been suggested that Barn Owls have always found, say, other places more to their liking. Because of this, the Barn Owl is a special bird in Canada: it is officially endangered, recognized by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) (“Ontario Barn Owl Recovery Project,” 2005). It seems as though Barn Owls living in Ontario have had bad luck of late—

of the “handful” (“Ontario Barn Owl Recovery Project,” 2005 ¶ 4) that have been seen since 1999, two were roadkills (“Ontario Barn Owl Recovery Project,” 2005) and no breeding pairs have been “confirmed.”

## The Barn Owl of February 27th 2006

If you are a serious birder in Ontario, with a computer and internet access, it is likely that you are aware of the electronic mailing list called Ontbirds. Ontbirds is presented by the self-proclaimed provincial birding association, the Ontario Field Ornithologists. The electronic mailing list (or listserv) is meant to be a clearing-house of bird sightings and directions for interested birders: you read about a bird you would like to see, get the directions and off you go on a (perhaps literal) wild goose chase. On average, four to seven sightings are posted daily. As might be expected, more posting occurs on the weekend, and more postings occur seasonally during spring and fall migration. Typical emails follow a standard form: the subject line contains the bird or birds seen and their location while the body of the email contains more specific information about the birds and precise directions to the location they might be found. While thorough, the information shared is, generally speaking, pretty uncontentious stuff. So, it was with interest that a seemingly normal post on February 28th, 2006 took on new dimensions: whispers of deception, accusation of fraud and, more interestingly for my work, questions of what is normal, known and natural all emerged.

On February 28th, 2006, a simple posting appeared in mailboxes of subscribers outlining how a photograph had been taken of a Barn Owl and posted on a web-based photography site. A URL was given linking to the photograph. It was noted that the photographer had not reported seeing the bird on the Ontbirds listserv, but that there was a link to the location where the bird was seen. That same day, the moderator of the listserv posted reminding the subscribers that the Barn Owl was considered “endangered” on breeding territory and that there were rules about posting about endangered birds on the listserv; all of the requirements that needed to be met prior to posting were created in order to reduce the likelihood that an observed bird would abandon a nest or breeding attempt.

The following day, March 1st, a conversation had begun

via the listserv. Another respondent was interested in knowing more details about the sighting and if the bird had been seen again. The next email later that day was from the photographer himself. In the email, he explained that though he did not remember exactly where he saw the bird, he used Google maps to locate the general location and road names. According to his directions, the Barn Owl was seen in Eastern Ontario, in the Ottawa region. As well, he shared the story of finding the owl, taking the photograph and watching the bird fly away from him. The author also stated that his initial reason for going out birding that day was to find Snowy Owls to photograph and that he had no luck in finding those birds that day.

On March 2nd, another email arrived from another Ontbirds subscriber. In it, the author began to question the authenticity of the photograph. This email suggested that the owl's feet have been "doctored," as though something was removed after the photograph had been taken. The author reminded those reading that the Barn Owl is rare for Ontario and especially so where the photograph was taken—the implication being that the bird is so rare that it most likely didn't exist.

A third email followed on March 2nd in which the author suggests that there is nothing in the photograph that appears unusual or doctored. The author offered another suggestion about the authenticity of the owl. He reminded us that there was a Barn Owl sighting in a different part of Ontario earlier in the winter and attributes the owl's presence not to digital photographic magic, but to efforts undertaken on the part of humans to help the species recover.

Yet, this claim to reality does not seem to be working. Later in the afternoon on March 2nd, a fourth email arrived that supports the initial hypothesis that the photograph has been doctored. The author shared that the bird looks like one he had seen at Parc Omega, a wildlife park in Québec, and provides a URL to a photograph of the Parc Omega Barn Owl.

The pull of the network to make the photograph unau-

thentic, and in turn, the owl, continues to mount. In a fifth email, the author shared the contention that the fencepost the Barn Owl is pictured perching on was specially made for captive birds to land on. The author also suggested that given the lighting of the photograph and kind of weather that was observed on the day that the photograph was supposed to have been taken, the photograph could not be discounted as being genuine.

This is where the conversation ends on Ontbirds. At 5:30 pm on March 2nd, the listserv co-ordinator posted a message that states that the current conversation on the photographed Barn Owl is inappropriate. The co-ordinator reminded readers that Ontbirds is not a discussion list and is for "reporting birds period." The closing line in the email reminds readers that not following the guidelines could result in the restriction or loss of being able to post to the listserv.

This does not mean, however, that the conversation ended. In following the network thread to a website that catalogues rare birds from the Ottawa area, the sighting details for the Barn Owl seen on February 27th is prefaced with the words "LIKELY HOAX." The page author outlines a litany of evidence that supports his claim that the image has been manipulated. The webpage author concludes his outline with the statement "let the viewer beware."

### **Enacting birds: reflection on the Barn Owl of February 27th**

I have spent some time thinking about the birders and the Barn Owl. I have read and reflected on the emails and the allegations. From this, themes have emerged concerning the construction of what is natural as well as insights into the creation of what Donna Haraway (2003) calls "naturecultures." Most importantly, this event, be it framed as authentic bird sighting or elaborate hoax, helps enact and make visible a topology of inter-species ethical relations between those who watch birds and the birds they watch.

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Figure 1: Set of relations enacted in this Barn Owl sighting

## Networks

Ontbirds operates within an established network of relations. People post their sightings to share with other interested birders. The process through which experiences are transcribed from embodied encounters to textual references is seemingly an invisible one. In this case, there were visible deviations from the established network. Within the birding community that posts to Ontbirds, the claim to have "found" a bird is an important one. In posts where the author is reporting a first-sighting and they did not find the bird themselves, the name of the bird finder (skilled, lucky or otherwise, as it is never suggested the kind of effort it took to come across the bird) is included. In this example, the finder did not make a submission to Ontbirds to report a rare bird. Rather, it seems like in this case, the original post came via an on-line gallery created by the finder that had the photograph and birding information on it. While never overtly stated, I believe that the authenticity of the Barn Owl was partially called into question due to the fact that the finder of the bird did not post his sighting to the listserv. Additionally, I find interesting to note that in the finder's one email to the Ontbirds listserv, he did his best

to fit into the established network. However, problematic for him, he was not familiar with the area where he took the photograph. Part of the established Ontbirds network is knowing where you observed a bird; the more detailed the description of location and directions, the better.

In networks, effort is required to maintain the relationships of the actors. The listserv tends to operate with little of what I would call boundary policing on the part of the co-ordinator. What is particularly interesting about the Barn Owl postings was the need of the Ontbirds co-ordinator to make comments concerning the type and quality of postings over the three day period, all referencing the mail about the Barn Owl. In well-established networks, subtle deviations from the established routine lead to powerful reactions: networks tend to become visible when they are threatened. The questioning of the authenticity seems to be such a reaction.

What this suggests for a birding network is the power that lies in the focus on names, dates and details. This hybridity that exists between birders and the electronic mailing list certainly has implications in shaping what is considered normal, known and natural for those who subscribe to the list. Birds are enacted



through Ontbirds as realities "out there" to be discovered, recorded and reported. While this is not necessarily that surprising, it does, in turn have an impact on other enactments of birds, especially visible in the multiple objects created.

### **Multiple objects**

In this case there was an exceeding focus by birders on the rarity of the bird, to the point where I believe that the Barn Owl became a multiple object. Emerging from the field of Science and Technology studies, the idea of multiple objects opens a different way to think about the taken-for-granted: objects are often thought of as rigid and immobile in their existence - a Barn Owl will always be a Barn Owl (for a detailed discussion of multiple objects, see Law, 2004; Mol, 2002). In response to this, a multiple version of the object counters this notion of singularity. In focusing on the fractal nature of "reality" and in attending to difference, I believe that this perspective requires attention be paid to the enactment of objects. Enactment, in this sense, is the claim that "relations, and so realities and representations of realities...are being endlessly or chronically brought into being in a continuing process of production and reproduction, and have no status, standing or reality outside those processes" (Law, 2004, p. 159). Enactment is different than constructivism as it does not "imply convergence to singularity," in opposition to the fixing of objects' identities, "but takes difference and multiplicity to be chronic conditions" (Law, 2004, p. 158). Difference suggests that multiple versions of the same object can exist simultaneously - this occurs because while objects are enacted in practice, these practices can be different. If the practices are different, then so too must be the objects (Law, 2004). Yet these multiple versions - or multiple objects - are, more often than not, able to cohere together. So, if these coherences shape our reality, then reality:

is not in principal fixed or singular, and truth is no longer the only ground for accepting or rejecting a representation. The implication is that there are various possible reasons, including the political, for enacting one kind of reality rather than another, and that these grounds can in some measure be debated. (Law, 2004, p. 162)

As such, a focus on the enactment of objects is filled with attention to the many ways that actors, human and otherwise, engage to create a reality: a reality described through investigation, a reality that is not the only one "out there" and a reality that focuses on heterogeneity and difference. In the move to collapse multiple realities into one, a distinctly political move is made, where one reality, one particular enactment of

an object gains primacy over the others. In this particular becoming of the Barn Owl, the enactment of rarity overshadowed the other ways the bird was known (see Figure 1). Rather than having to pass judgement on if I think the Barn Owl was properly enacted, I think it is more valuable to examine the ways the bird was enacted. Let me outline the different ways (that I can see):

- as a rare bird species (through the Ontbirds coordinator, external web pages and some birders' previous knowledge)
- as a biological reality (through the email that suggested the Owl was a result of species rebound and human conservation efforts)
- as digital magic (many of the claims to digital alteration of the photograph enacted this Barn Owl)
- as an Eastern Ontario Barn Owl (through the initial posting)
- as an Québec Barn Owl (through the claims it came from Parc Omega)

There have also been subtle and tacit ways that the authenticity has been enacted, framed through the network of discovery, recording and reporting previously described. Through these discourses, the Barn Owl has been enacted as a:

- valuable, wild bird
- feral bird of ambivalent worth
- wildlife park captive and therefore does not count

In this multiplicity, the Barn Owl lost value in the eyes of some birders as its authenticity was called into question. What is implicit in this questioning is the understanding that there is some kind of a continuum that reported birds are judged against. It seems that the gold standard of authenticity is one that is wild, rare and (relatively) easy to find. It goes without saying that this perspective is not entirely unproblematic. This, in part, helps explain why there are not any postings to Ontbirds describing a flock of Pigeons seen in a ubiquitous habitat, such as the urbanized core of Anytown, Ontario. A Pigeon simply does not match up to the gold standard of valuable birds. In deciding what gets to "count" in knowledge-making endeavours, and what counts as the gold standard, other birds disappear from what is noticed. In that disappearance, the bird moves to the hinterland. I turn to that next.

### **The hinterland and otherness**

Hinterland's are an attempt to engage with the act of disappearing. Law puts forward three kinds of Hinterland's: the first, he suggest are "in-here objects" (Law, 2004, p. 55); the second are "visible or relevant out-there contexts" (Law, 2004, p. 55); and the third are "out-there processes, contexts, and all the rest, that are both necessary and necessarily disappear from visi-

bility or relevance" (Law, 2004, p. 55). I would deploy an artistic metaphor of positive space and negative space here: that which is present is the positive space of an image and that which is absent is negative space of an image. It is often difficult to decide if it is the negative or positive space that bounds the image: each side depends on the other such that if one is not there, the known image would disappear. Perhaps, if I expand the metaphor, the hidden absent is that which is not within the frame of the image. Importantly, all that lies outside the frame, while unnecessary in the composition of the image, is only unnecessary because it has been selectively ignored in the composition of the image. Emerging from this perspective on the hinterland is the acknowledgement that a relationship with the unknown, or the other, is necessary; rather than simply ignoring the disappearance, it is an attempt to acknowledge that disappearance is integral to any kind of knowing.

Thus, if birding, as an act, continues the "process [of] enacting necessary boundaries between presence, manifest absence and Otherness" (Law, 2004, p. 144), then the various activities taken up in the name of coming to know these organisms are each a distinctly political move, moves that shape and reaffirm (mostly conventional) ways of knowing the nonhuman. For example, the second post in this chain made explicit that the individual Barn Owl was, in fact, part of larger species, *Tyto alba* and that species was considered to be an endangered one. The term endangered species does just that: focus on species, at the expense of the individual. In this organism's identification as a member of a species, it loses any ability to be something else; what could be has been othered. This act of othering is at times common in birdwatching. It occurs more than once in the Barn Owl discussion: through the questioning about the validity of the sighting, the focus subtly shifts from the sighting to determining the authenticity of the photograph. Again, in this move the individual owl disappears.

The Barn Owl was not the only member of the order Aves to be othered in this particular natureculture assemblage. It is also interesting to note that the Snowy Owls, the birds that were the original objective of the outing that produced the Barn Owl, have disappeared. Likely, there were other birds seen during that trip, but for whatever reason (perhaps not rare, not big, not charismatic), they were ignored. For my purposes, I consider this othering problematic, in part, because it does little to acknowledge the lived experiences of non-

human individuals. The challenge here is that the act of othering, in and of itself, is not inherently wrong.

Rather than focusing on what might be out there, I believe that it is important to be able to recognize enactments that are politically aligned with the kind of relationships that ought to exist. So, one needs to develop the skill of attending to what is observably cast to the hinterland and what is brought to the forefront. In a sense, this is what I've attempted to do with my analysis of the Barn Owl narrative and the creation of the enacted set of relations in Figure 1. In creating this particular map of relations, I attempt to move beyond the established frame and re-focus on those multiple enactments that have been cast aside. In so doing, political actions and entrenched positions are more easily visible, while others can re-emerge from obscurity. It is true that there might be other unknowable enactments that exist in the hinterland-but let me suggest that acknowledging that, at best, partial perspectives (Haraway, 1991) are our best version of reality (as a nod to multiplicity does) offers more space for other realities to emerge.

Thinking more generally about our dominant cultural relationship with the nonhuman, the promise of attentiveness to the various enactments of animals offer the opportunity to intentionally enact a reality that is more in line with one's own ethics. In asking what practices of birding are good or which practices ought we to be enacting, attention can be turned to current enactments to ask: "Ought they be enacted in this way?" This simple question, paired with the knowledge that there are other enactments hidden, could be enough to continue to question some of our Western culture's taken-for-granted assumptions about what it is to be human and otherwise.

## References

- Haraway, D. (1991). Situated knowledges: The science question in feminism and the privilege of partial perspective. In *Simians, Cyborgs, and Women: the reinvention of nature* (pp. 183-202). Routledge: New York.
- Haraway, D. (2003). *The companion species manifesto: dogs, people, and significant otherness*. Chicago: Prickly Paradigm Press.
- Law, J. (2004). *After method: mess in social science research*. London: Routledge.
- Mol, A. (2002). *The body multiple: ontology in medical practice*. Durham: Duke University Press.
- Ontario Barn Owl Recovery Project. (2005, February 7). Retrieved March 4, 2006, from <http://www.bsc-eoc.org/regional/barnowl.html>

**In asking what practices of birding are good or which practices ought we to be enacting, attention can be turned to current enactments and ask: "Ought they be enacted in this way?"**

## Photos by Jo-Anne McArthur

Keeping non-human animals in captivity is a common practice, fraught with moral complications and contradictions. In one context, the bent metal of a chain-link fence is a mentally suffocating and physically demeaning enclosure, robbing animals of their natural rhythms and behaviours; in another context, the fence acts as the protective barrier of a sanctuary, guarding inhabitants from exposure to further brutality at the hands of human beings. The contexts of captivity are numerous, as are the ways we can rationalize even the most blatant cruelty.

Travelling the world as a photographer, Jo-Anne McArthur has seen and documented the extremes and in-betweens of human / non-human animal relationships. In the series of photographs presented throughout this issue of *UnderCurrents* and on both covers, she explores the issue of captivity in all of its simplicity and complexity: from roadside "zoos" that dot the Canadian landscape, to discreet and dense confinement areas where animals are bred for food, to sanctuaries where comfort and joy abound and eden seems almost within reach.



Photo by Jo-Anne McArthur

# Becoming (More-than-) Human: Ecofeminism, Dualisms and the Erosion of the Colonial Human Subject

by Nicole Bonner

Illustrations by Sami Abdelmalik

In contemporary, North American society, what it means to be 'human' is often taken for granted; in other words, 'humanness' is usually accepted as a readily knowable, uncomplicated and stable aspect of social reality. Ivone Gebara argues that because we believe that we already know the meaning of 'humanness,' reflecting on this notion often appears to be of little interest, need or value. "Since we imagine that everyone already knows what a ['human'] is, we might have the feeling that we are wasting our time on notions that are already familiar, and that we ought to be seeking solutions to the urgent problems that [currently] face us" (Gebara, 1999: 67). Like Gebara, I argue that the concept of 'human,' is not 'natural,' stable or straightforward, rather it is a culturally-specific and historical invention, one intimately implicated within contemporary, environmental problems. In other words, although the category of human is often understood as readily comprehensible and fundamentally elevated above, and detached from, nature and 'more-than-human' beings, I maintain that the human subject is positioned within what I will term 'the web of life,' that is, the worldwide, ecological community which encompasses both human and more-than-human subjects. I believe the term, 'becoming' is a useful adjective to describe the human; becoming allows us to consider the human not as a natural or stable entity, but as one which is emerging and transforming in relation to environmental and social contexts. As a being situated within an ecological web of life, the human is not distinct from nature and more-than-human animals, but exists and changes in continuous relation to them.

Long before the onset of European colonization of what is now considered North America, various dualisms permeated the European, historical imagination. Within this worldview, aspects of these

dichotomies were understood to exist in fundamental distinction from one another; that is, not only were divisions of each dualism conceptualized as inherently disconnected and independent, but one aspect of each dichotomy was always understood as naturally and intrinsically superior to the other. Sallie McFague argues that the primary dualism within this imagination was the conceptualization of 'reason' and 'nature' as fundamentally distinct entities, in which reason was positioned in hierarchical relation to nature. However, this dichotomy has been broadened to represent, incorporate and interconnect with multiple other dichotomies, including, spirit/body, male/female, reason/emotion, and human/nature (McFague, 1997: 88). According to McFague, "the [reason/nature] dualism illuminates most of the other dualisms: whatever falls on the top side of a dualism has connections with 'reason,' and whatever falls on the bottom side is seen as similar to 'nature'" (1997: 88). In this sense, the projection of these constructions onto seemingly-different aspects of reality, including 'different' bodies, functioned to hierarchically organize both European society and the universe at large.

It is important to recognize that because these dualisms were constructions of a very particular and ethnocentric group within European history, namely elite, white men, such subjects were also imagined to embody the superior aspects of various dichotomies; in other words, characteristics associated with reason were presumed to adhere to white, European males (McFague, 1997: 88). Within this imagination, the rational capacities and spiritual natures of white, masculine and European humans were imagined to prevent them from being confined by or to their bodies, or influenced by emotional or sexual responses. Importantly, because such racialized and gendered subjects were the

I argue that the concept of 'human,' is not 'natural,' stable or straightforward, rather it is a culturally-specific and historical invention, one intimately implicated within contemporary, environmental problems.



only subjects envisioned to embody these and other superior dimensions of various dualisms, white, European men were positioned as the ideal modes of humanness within a great chain of being. In this sense, as the white, European masculine subject was assumed to embody humanness, subjects who were constructed to embody the opposing dimensions of these dichotomies were regarded as his nonhuman Others. Arguably, as the human was constructed to embody whiteness, masculinity and European ancestry, his Other may be regarded as the colonized, non-white woman. Through her gendered, racialized and cultural difference from the human, she was constructed to embody characteristics he did not. According to this dualistic relationship of interconnected difference(s), because she embodied matter, or solely bodily existence, she possesses neither inherent consciousness nor spirituality allowed by such consciousness. Because she was conceptualized as the Other to the sole, normative human, she was categorized as nonhuman. In this sense, it may be recognized how there has existed a significant, *conceptual* connection between non-white women and nature, as both were understood as nonhuman material beings in relation to the European, white man, who was presumed to embody true humanness. Through this ideology of the normative human subject, women and nature are conceptually demoted to a subordinate position because of what they are assumed to be (Primavesi, 1991: 142). However, this connection between nature and Aboriginal women is not only ideo-

logical: because both are regarded to exist in solely material form, and therefore to lack spiritual natures or capacities for consciousness, various manifestations of colonial violence against both nature and Aboriginal women have been historically disregarded, undermined or recognized as justified. This construction of the masculine human subject as the one who alone inhabits higher realms of reason and spirit served to legitimize and stabilize future social and religious structures of subordination and dominance. Women and nature have been placed under male domination and rule by the compelling and authoritative force of this prevailing ideology (Primavesi, 1991: 142-147).

Within contemporary, North American academe, this historical, European construction of the human has been greatly interrogated, denaturalized and critiqued by postcolonial, critical race and psychoanalytic theorists, including Frantz Fanon and Sylvia Wynter, among many others. Within their theories, great energy is focused on how the articulation of humanness has, and continues to affect subjects who have been historically excluded by this rigid definition at the level of social, emotional, psychic and bodily realities. These theorists are correct in their assertions that the purpose of the human construction was to reduce the modes of being, embodied by nonwhite and non-European/nonwestern subjects, in order to elevate the mode of being embodied by their cultural Others. However, it must be recognized that there exists a subtle, but continued, hierarchical and dualistic relationship between human and

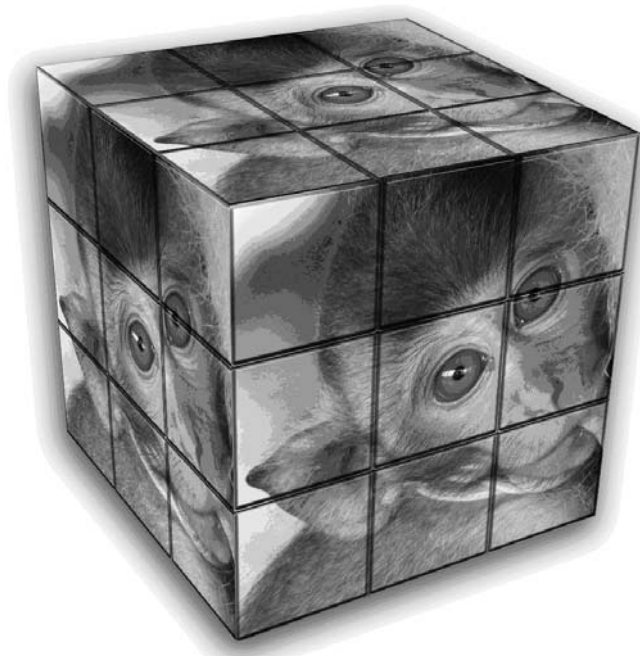
nonhuman within these theories. Not only do human beings continue to be understood as stably and inherently different from nonhuman beings, principally animals, but human experiences of colonial violence, and therefore, human modes of being, are essentially recognized as more significant than the modes of being and lived realities of more-than-human beings. In fact, as the conflation of racialized humans with more-than-humans is articulated as undermining the violence experienced by such human subjects, violence against animals and nature, in such forms as human invasion, objectification, exploitation and voracious consumption, is disregarded as violence per se. Gebara calls this trend an anthropocentric “hierarchicalizing of knowing [that actually] runs parallel to the hierarchicalizing of society, [which is] itself a characteristic of the patriarchal world” (1999: 25). In this sense, within such criticism, there is an attempt to destabilize one conception of the boundary between human and nonhuman, while a second human/nonhuman dualism is (re)produced and supported; ultimately, the traditional border, employed in colonial fantasies to distinguish what counts as (a) human and what does not, is kept intact.

These attempts to distinguish the human, along with having a colonial genealogy, are built on the assumption of a distinct sphere in which humans act, and blind to ideas of significant interconnection and interdependence: dimensions of each dualism are considered not only unrelated to, but to actually oppose, one another. However, each element of social reality is constructed in relation to others; in other words, every

aspect of each dichotomy involves a reference to that which is supposedly opposite, distinct from, or Other to, the primary category (See Hewitt Suchocki, 1982). In this sense, all aspects of the dichotomies require reference beyond them in order to develop as intelligible categories and, therefore, cannot be understood, or even exist, outside the relationships within which they are implicated (Hewitt Suchocki, 1982: 6–7). More importantly, there are material interrelationships that are not captured by these dichotomies. As an example we can think of contemporary environmental threats, such as global warming and Colony Collapse Disorder in North America, that illustrate how humans are not ultimately separate from nature, but dependent on it for our survival, and that ‘natural’ phenomena has the potential to powerfully and disastrously affect humans. In this sense, it must be recognized that there is danger within denial: by assuming that we are not part of nature, we ultimately deny the significance of ecological problems on their own bodies and lived realities.

However, I think it necessary at this point to remark on the (neo)colonial anthropo-centrism within many conceptions of human/nature relationality. Similar to the consciousness of more-than-human animals, when ecological problems are recognized as problems per se, and especially, when such issues are recognized to transcend the human/nature divide and create an impact in the lives of humans, such problems tend to be understood in human terms. In other words, nature often becomes the subject of human attention, concern, and care when humans acknowledge the fact that we





are intimately related to, and ultimately dependent on, the earth for our survival and wellbeing, and that by abusing and destroying nature and more-than-human subjects, humans ultimately bring about their own destruction. Although within such types of care, the interrelatedness among all beings within the web of life is recognized, such care for nature often develops because humans fear the effects of environmental disasters on our lives, and not because we genuinely care about the lives and wellbeing of Other creatures or the earth, in and of themselves. And even within environmental concerns, the recognition of the interrelatedness of all living subjects often leads to a hierarchy of environmental issues. Within conceptions of human/more-than-human relations, there is often a hierarchy of environmental issues and social issues, including the (neo)colonial treatment of humans outside the dominant, white, European/western man as nonhuman, strengthening the conceptual disconnect between these human and more-than-human. These aspects of environmental interrelatedness must be regarded as not only anthropocentric, but violent, contemporary manifestations of the historically-dominant, European construction of the normative and viable human subject.

In this sense, it is evident that a new consciousness must emerge. Humans must begin to recognize that, as Paula Gunn Allen states, “we are the land... the land and the people are the same... The earth is the source of being of the people and we are equally the being of the earth. The land is not really a place separate from ourselves... The land is not a mere source of survival, dis-

tant from the creatures it nurtures” (Allen, as quoted in Christ, 1997: 114). Christ employs the term ‘interdependence’ in order to characterize the connection between all beings in the web of life. Yet the word interdependence must be used cautiously, for although humans are dependent on nature, animals, plants and other more-than-humans, as well as other humans for our survival, the earth is not reciprocally dependent on humans. In fact, the presence of (certain) humans on the earth has historically prevented, and continues to threaten, the flourishing and wellbeing of Others, including both human and more-than-human beings within the web of life. In this sense, concepts such as interdependence undermine the reality of power relations that exist between and among different modes of being, including human relationships and those between humans and nature.

For this reason, ecofeminists’ use the notion interdependence to illustrate that humans are not separate from, but intimately implicated within, the natural world. This concept helps to demonstrate that “‘human’ beings are essentially relational and interdependent. We are tied to [‘human’ and ‘more-than-human’] Others from the moment of birth to the moment of death. Our lives are dependent in more ways than we can begin to imagine on support and nurture from the web of life, from the earth body” (Christ, 1997: 136). Because the interdependent relation between human subjects and the earth is conceptualized as so intimate, human actions can have significant, and often disastrous effects on nature. However, the agency and power



of nature in creating significant phenomena in the lived realities, societies and experiences of humans must also be recognized. This concept destabilizes colonial, western (and gendered) conceptions of the earth as a passive object, to be owned, harnessed, excavated and harvested in order to increase the economic and social flourishing of humans. In other words, the notion of interdependence demonstrates that humans are also affected by more-than-human lives, and that the earth is not a passive, receptive instrument to be exploited by and for human cultures. Examples such as decreased air quality and Colony Collapse Disorder illustrate the power of the earth to violently fight back against human abuse in order to protect itself.

In order for a more life-affirming, harmonious relationship between the natural world and human beings to emerge and, therefore, in order to ensure the survival of all beings within the web of life, what ultimately needs to emerge is a new conception of the relationship between human and more-than-human life. McFague proposes the notion of subject-subjects relations, which encompasses a radical and life-affirming way of transforming this hierarchical relationship. According to this model, human subjects must relate to nature as a subject. While recognizing their own intrinsic relation to Other subjects, grounded in their interconnection within the web of life, human subjects must recognize more-than-human subjects' own intrinsic value and right to live, quite apart from human interests and lives. In other words, we must recognize the otherness of more-than-humans, yet simultaneously feel a connection and recognize an affinity with such subjects. This connection "underscores both radical unity and radical individuality. It suggests a different, basic sensibility for all our knowing and doing and a different kind of know-ink and doing... It says: 'I am a subject and live in a world of many other different subjects'" (McFague, 1997: 38). According to McFague, this will involve "the loving eye [as well as] the other senses, for it moves the eye from the mind (and the heavens) to the body (and the earth). It will result in an embodied kind of knowledge of other subjects who, like ourselves, occupy specific bodies in specific locations on this messy, muddy, wonderful, complex, mysterious earth" (McFague, 1997: 36).

Practicing this type of relationship will implicitly and explicitly embody a radical challenge to what it has historically meant to be both a human and nonhuman subject. It will require an erosion of the imagined boundary, grounded in the perception of difference, between human and nature, and the other, interconnected dichotomies within the European, colonial, historical imagination. It will also involve re-valuing the both sides of classic western dualisms as significant and worthy in and of themselves. This type of relationship will necessitate the erosion of concepts such as intrinsic inferiority and superiority, and potentially end the embodied and lived power relations that such concepts

sanction. Perhaps most importantly, the subject-subjects relationship will allow a new understanding of the relations between all beings within the web of life to emerge; the human, that is, the normative, white, European man of the (neo)colonial imagination, and the human of the human/nature dichotomy, and his wellbeing, subjectivity, knowledge and mode of being, will be displaced of from the dominant center. Beginning to recognize and relate to more-than-humans as subjects will inevitably represent a strong challenge to the coherence of the traditional, anthropocentric, colonial paradigm. The fantasy of humans as the sole, normative subjects within the universe has historically, and continues to provide powerful senses of security and identity to many of us; we are therefore deeply attached to this conception of humanness. However, in order for a more life affirming, harmonious relationship between the natural world and human beings to emerge, we must begin to practice such models within all of our relationships, including relationships with more-than-human beings and other human subjects. Such an endeavor is crucial for the flourishing, and ultimately, the survival of all beings within the web of life.

#### Bibliography

Christ, Carol P (1997). *Rebirth of the Goddess: Finding Meaning in Feminist Spirituality*. California, Massachusetts and New York: Addison-Wesley Publishing.

Gebara, Ivone (1999). *Longing for Running Water: Ecofeminism and Liberation*. Minneapolis: Fortress Press.

Hewitt Suchocki, Marjorie (1982). "Why a Relational Theology?" In *God, Christ, Church: A Practical Guide to Process Theology*. New York: Crossroad Publishing, 3-11.

McFague, Sallie (1997). *Super, Natural Christians: How We Should Love Nature*. Minneapolis: Fortress Press.

Primavesi, Anne (1991). *From Apocalypse to Genesis: Ecology, Feminism and Christianity*. Minneapolis: Fortress Press.

<sup>i</sup> The term, 'more-than-human' will be used in place of the term, 'nonhuman' in certain areas within this paper. For a number of reasons, I believe the former term is more appropriate. Firstly, nonhuman carries connotations of difference from an explicitly human norm, and a related sense of deficiency and deviance. For this reason, I will employ nonhuman in areas in which I describe traditional, colonial human perceptions of more-than-humans. However, I believe that more-than-human conveys a sense that there literally exists significantly more than simply human realities in the world. More-than-human is also more comprehensive than related terms, such as animals or nature, as it can encompass many diverse expressions of realities, experiences and subject(ive)ities that transcend traditional constructions of humanness.



Photos by Jo-Anne McArthur



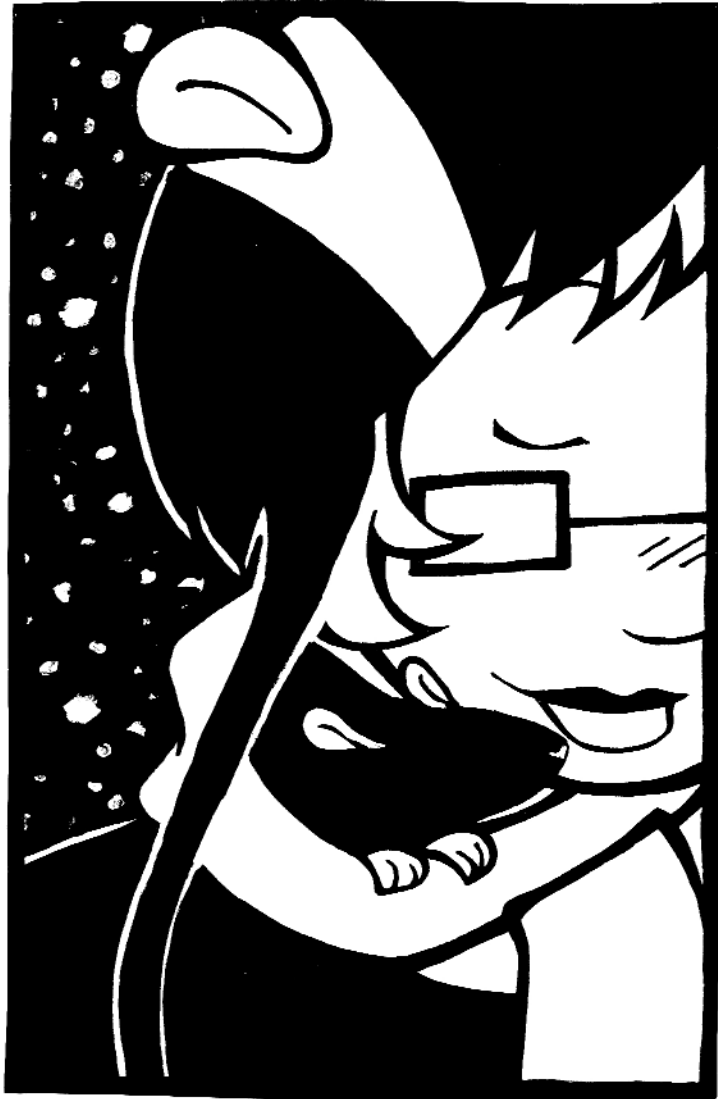
beside my own



is a heart



that beats



three hundred and eighty  
times per minute.

*Your are my Sunshine*, Illustration by Mara Steinberg

# Electric Animal

## An Interview with Akira Mizuta Lippit

by Lauren Corman

Dr. Akira Mizuta Lippit, author of *Electric Animal: Toward a Rhetoric of Wildlife*, explores, in the context of the development of cinema, how the concept of “the animal” has become central to modern understandings of human subjectivity. Lippit considers the disappearance of real animals and their concurrent appearance in various conceptual and material uses, particularly noting the ways in which the conjoined notions of humanity and animality figure into and through cinema. The animal, he argues, haunts the foundation of western logical systems. Yet, despite the fact that humans and animals suffer under the discursive weight of the signifier, Lippit is careful to note the increasing instability of the human-animal boundary and what might be done to realize more just relationships among both humans and other animals.

On February 12, 2008, Lauren Corman spoke with Lippit as part of the “Animal Voices” radio program, a weekly show dedicated to animal advocacy and cultural critique. They discussed how Lippit developed his thesis and the ramifications of his theoretical work.

*Electric Animal: Toward a Rhetoric of Wildlife* was published in 2000 by the University of Minnesota Press. “Animal Voices” can be heard weekly on CIUT 89.5 FM in Toronto, or online at [animalvoices.ca](http://animalvoices.ca).

**Lauren Corman:** How have questions regarding animals and animality figured into your film scholarship? When did you bring these themes into your work, and why?

**Akira Mizuta Lippit:** That is its own story in a way. The book that you refer to, *Electric Animal*, was written initially as my doctoral dissertation, and at the time, I was thinking in particular about the moment at which cinema appeared in the late 19th century. There are all kinds of phantasmatic and imaginary birthdays of cinema, but generally people agree that 1895, or thereabouts, was when cinema appeared as a set of technological, aesthetic, and cultural features, and as an economic mode of exchange. People sold and bought tickets and attended screenings.

And I was thinking about what it must have felt like at that moment to experience this uncanny medium. There are various reports of early film performances and screenings, some of them apocryphal and inventive and embellished and so forth, but I think the fascination, the kind of wonder that cinema evoked among many early viewers had to do with this uncanny reproduction of life, of living movement, and the strange tension that it created between this new technology (and we are in the middle of the industrial revolution and seeing the advent of all sorts of technologies and devices and apparatuses), and its proximity to, in a simple way, life: the movements of bodies. And I began to think that the principle of animation, here was critical. To make something move, and in thinking about the term animation and all of its roots, to make something breathe, to make something live.

What struck me, in this Frankensteinian moment was the sense that something had come to life, and the key seemed to be about how people understood, conceived of, and practiced this notion of animating life through a technology. I started to hear a resonance between animals and animation. I started to think about the way in which animals also played a role, not only in early cinema and in animation and the practice of the genre but leading up to it in the famous photographs of Edward Muybridge and Étienne-Jules Marey, the moving images of animals that were produced serially, as well as the “chronophotographs” that rendered animal motion. And it occurred to me that there was a reason to pause and think about what role animals were playing at that moment in history.

As I began to read, and as I began to collect materials and to think through this question of the status and function of the animal, what animality meant, it took on its own set of values, and essentially *Electric Animal* ended up being a kind of preamble, or an introduction to a book that I haven’t yet written, because I only reach at the end of the book, and in a very perfunctory manner, the advent of cinema. So in a sense, this book, and this question, about what an animal meant for generations before, at that moment and in successive generations, became its own subject, one I still think is critically linked to the question of cinema, and the arrival of cinema, and the force of cinema throughout the 20th century.

**LC:** Let’s return to that piece that you mentioned about life, and that cinema could show or play this Frankensteinian role; of course, a parallel stream is

around death, and some of the work that I have read about early cinema shows that people were quite afraid, initially, of what it meant. Could you comment on that theme of death and the animal in cinema?

**AML:** This emerged as a major issue during the course of my study. The discourse on death and the uncanny, the idea that something appears to be there, in the form of a ghost or a phantom, already existed in discussions of photography throughout the 19th century. The sense that photography forges a material connection to the object, that the photograph establishes a material connection to the photographed object, and as such when you look at a photograph you are not simply looking at a rendering, like an artist's interpretation in a painting or sculpture, but you are actually looking at, experiencing a kind of carnal, physical contact with the persons themselves, or with an object, reappears frequently in the discourses on photography. This creates a real excitement, and also fear. I think that effect, the photographic effect of somehow being in the presence of the thing itself, is enhanced by the addition of movement, because with movement you have the feeling that this being is not just there, looking at you perhaps, but also moving in its element, in its time, whether (and this is very important to the discussions of photography) that person is still alive or not. I think that gap is produced at the moment of any photograph and perhaps in any film: the person who appears before you, who appears to be alive, who at that moment is alive, may or may not still be alive. So it produces, among those who have thought in this way, a sense of uncanniness, something is there and isn't there at once.

Where I think that this is particularly important in this discussion of "the animal," and as I began to discover in doing the reading (I should add that I am not a philosopher, I don't teach philosophy, but I am a reader of philosophy; I read it sporadically, I read here and there wherever my interests are) is that with very few but important exceptions, there is a line of western philosophy that says animals are incapable of dying. On the most intuitive level this seems nonsensical. Of course animals die. We know that animals die. We kill animals; we kill them and we see them die. No question that animals die. But the philosophical axiom here—which begins with Epicurus, but is repeated over and over, by

Descartes perhaps most forcefully, and in the 20th century by Martin Heidegger—is that death is not simply a perishing, the end of life, but it is a experience that one has within life, a relationship with one's own end. The claim that is made over and over again, which has been disputed by many people – and it is certainly not my claim – but the claim that one finds repeatedly in philosophy is that animals don't die – they don't have death in the way human beings have, and carry with them, death. Animals know fear, they know things like instinctual preservation, they seek to survive, but they don't have death as an experience. Heidegger will say in the most callous way, they simply perish.

It struck me that this problem was not a problem of animals, but rather a problem for human beings. If human beings don't concede the capacity of animals to die, then what does it mean that animals are disappearing at this very moment, in the various developments of industry, in human population, in urbanization, environmental destruction, that animals are increasingly disappearing from the material and everyday world? And where do they go, if we don't, as human beings, concede or allow them death? (Of course this is only in a very specific, and one might argue, very small, discursive space in western philosophy. Many people have pointed out that this is not the case in religious discourses, in a variety of cultural practices, and in various ethnic and cultural communities. This is a certain kind of western ideology that has been produced through a long history of western philosophy.) So the question of death, the particular form of suspended death that photography and cinema introduced appeared in response to perhaps a crisis in western critical and philosophical discourse that denied to the animal, to animals, the same kind of death that human beings experience. You have this convergence of two death-related, life-and-death related, problems at a time when I think that these issues were particularly important.

**LC:** So from there, the question that comes to mind is what purpose does it serve and the word that is coming to mind is identity, and the idea of human identity and subjectivity. There must be some reason that western thought keeps going back to this denial of animal death. You tie it in, as others have, to language.

It struck me that this problem was not a problem of animals, but it was a problem for human beings. If human beings don't concede the capacity for animals to die, then what does it mean that animals are disappearing at this very moment, in various kinds of developments of industry, in human population, in urbanization, environmental degradation, that animals are increasingly disappearing from the material and everyday world.

AML: Two key features of human subjectivity, in the tradition of western philosophy, have been language and death, and the relationship between language and death. This goes back to Plato, to Socrates, and before. The point at which I was writing *Electric Animal*, at the end of the 20th century, gave me the ability to look back at developments in critical theory, philosophy, and the history of ideas throughout the 20th century, and it became clear with the significant interventions of the late 1960s that from at least one century earlier, the question of human subjectivity, its stability, its absoluteness, had already been in question. This question is slowly working its way toward a radical re-evaluation of the status of, the value of, and ultimately the confidence that human beings place in their own subjectivity, and there are many, many influences: around questions of gender and sexuality, questions of race and identity, and in crimes like genocide, for example, during World War II, but before and after as well. All of these developments contribute to this reevaluation, but one could argue that at this moment, in the late 19th century already, there was a certain sense that what had been insisted upon as absolutely unique, as an absolute form in itself – the human subject – required a whole series of constant exclusions and negations for it to survive.

One such exclusion is to claim as properly human, language; what makes the human being human, is the capacity for language, and through this capacity, the capacity for death. As many philosophers argue, only human beings can name death as such, because language gives us the capacity to name those things, not just objects around us, but to name those things that do not appear before us, and these would be the traditional philosophical objects: love, death, fear, life, forgiveness, friendship, and so on. And it will be assumed that animals have communication, they communicate various things within their own groups and between groups, they signal of course, but that animals don't have language as such, which means they can't name those things that are not before them or around them. And it is very clear that there is an effort among human beings to maintain the survival of this precious concept of human subjectivity, as absolutely distinct and absolutely unique. So you find in those long discourses on human subjectivity, this return to questions of language and death.

I would suggest that at this time, with the appearance of Charles Darwin and his theory of evolution, and with other disruptive thinkers like Sigmund Freud and the advent of psychoanalysis, there is a great sense of uncertainty regarding these edifices of human subjectivity, language and death. In *Electric Animal* this moment is particularly rich with such shifts and instabilities, and the sense that language is not exclusive to

human beings, as many people thought, but also that language is not as self-assured in human beings as people thought. Here psychoanalysis plays an important role in indicating, at least speculatively, that we are not as in control of the language that we use to the extent that we would like to believe.

LC: What are the consequences of this process in western thought, where the subject is conceived through an exclusion or a negation of the animal? What are the implications for humans, and also what are the implications for animals? I know that is a huge question.

AML: It is a huge question; It is a very important question.

One could argue that the consequences of a certain practice, let's say, of the politics of the subject have been disastrous, certainly for animals, but also for human beings. If you take one of the places where the form of the human subject is created, it would be Descartes' *Discourse on Method*, his attempt to figure out what, when everything that can be doubted and has been doubted, is left to form the core. And this is his famous quote: "Je pense donc je suis", I think therefore I am, I am thinking therefore I am. If you read the *Discourse on Method*, this is a process of exclusion: I exclude everything that I am not to arrive at the central core of what I am. The process he follows leads him to believe that it is his consciousness, it is his presence, his self-presence with his own consciousness that establishes for him, beyond any doubt, his existence. This is somewhat heretical, it is a break from theological discourses of the soul; it represents a form of self-creation through one's consciousness.

But consciousness is a very complicated thing, a very deceptive thing, because what I believe, what I feel, is not always exactly the way things are. Looking at a series of important shifts that have taken place during what we might call generally the modern period, which extends further back than the recent past, one finds a number of assaults on the primacy of consciousness. Freud names one as the Copernican revolution, which suggested that the earth was not the centre of the universe and that human beings were not at the centre of the universe; the Darwinian revolution, which suggested that human beings were not created apart from other forms, all other forms of organic life, and that human beings shared with other animate beings, organic beings a common history, a pre-history. And Freud (he names himself as the third of these revolutionaries), is the one who suggested that consciousness itself is not a given at any moment, or available at any moment, to us as human beings. What constitutes our sense of self, our consciousness, is drawn from experiences that we no longer have access to—interactions with others, the





Photos by Jo-Anne McArthur

desires of others, the kinds of influences and wishes that were passed into us through others, our parents, other influential figures early in our life—and that what we believe to be our conscious state, our wishes, desires, dreams and so forth, are not always known to us, and in fact can't be known because they might be devastating and horrifying, in some cases. They will tell us things about ourselves that we couldn't properly accept or continue to live with.

I think that what is happening, certainly by the time that we enter the 20th century, around this discourse of the subject is that it is no longer holding, it is no longer serving its original purpose; it is generating more anxiety than comfort. Key historical events, World War I, for example, are producing enormous blows to the idea of western progress, humanism, and Enlightenment values, to the cultural achievements of the West—Hegel, for example, a 19th century philosopher, is very explicit about this—to those values that helped to shape the world, and ultimately were supposed to have created a better world for human beings: the Enlightenment, the pursuit of knowledge, science, medicine, religion and so forth. And yet, by the mid-twentieth century many of these beliefs were exposed as illusions, especially after the advent of death camps, camps created for the sole purpose of producing, as Heidegger himself says, producing corpses, a factory for corpses. It's not a place where people happen to die. This is an entire apparatus designed in order to expeditiously, efficiently, and economically, create corpses out of living human beings. Similarly, with the first use of the atomic bomb, on Hiroshima and Nagasaki in 1945, on human beings. This was a machine, a science, a technology, a weapon devised for maximizing, efficiently and economically, the destruction of human beings. I think what this created for many thinkers, philosophers, writers, artists, activists, citizens around the world was a sense that in fact what had helped to create this situation and these catastrophic results was not a matter of totalitarian regimes and bad politics, but something more fundamental: a certain belief that I have the right to destroy or take life from others.

And how is that achieved? By first denying that those others are like me. So the discourse on Jews practiced throughout Nazi Germany is in fact even more extreme than that of the discourse on animals; in fact, as many people have pointed out, that many Nazis were famous for their love of animal, some were practicing vegetarians; they outlawed animal experimentation. In a sense animals were more like Aryan Germans, than Jews were.

You have a series here of rhetorics that allow you to cast the enemy, the Other, at a distance from your own subjectivity, and in order to achieve this you have to deny

them any form of subjectivity. Not just that they are just culturally different, or that they engage in different practices: They are radically and absolutely unlike me. And I believe that as many people began to think about this condition (Adorno has a very famous passage in which he talks about this), it became clear that one of the sources of this, is in fact the very ideology of the subject, which insists on an absolute autonomy, singularity, and distinct mode of existence from that which is not the subject, not any subject, the Other.

Adorno, in a passage he wrote in a book titled *Minima Moralia*, which is a collection of aphorisms and observations he wrote during and after World War II, offers an observation I quote in *Electric Animal*. He titles it "People are looking at you", and he says there is a moment in a typical scene of hunting where a wounded animal looks into the eyes of the hunter, or the killer as it dies. It produces at that moment, an effect that is undeniable: This thing, that is alive, that I have wounded and which is now dying, is looking at me. How can I deny that it is alive, that it is there, that it exists in the world, with its own consciousness, its own life, its own dreams, and desires? Adorno says the way you shake this off is you say to yourself, "It's only an animal." He will then link that gesture to the history of racism, and what he calls the pogrom, or genocide, against other human beings. You transfer this logic. So the ability to say to an animal, toward an animal that you have killed, whose death you've brought about, "It's only an animal", becomes the same logic you apply to other human beings when you harm or kill them. It's a very profound observation because it suggests that in fact there is no line that separates the killing of animals from the killing of human beings. And in fact already at the moment when we kill an animal, we recognize something immediately that we have to erase from our consciousness with this phrase, "It's only an animal."

**LC:** It seems to me then, too, that it's this kind of perpetual haunting, because in that erasure, in that statement, "It's only an animal," there's the animal itself that you had to assert yourself against and its living beingness. Do you think in that moment that he's talking about—because it seems like kind of a struggle, or a narrative that you have to tell yourself—do you think that is also a moment potentially of agency, or resistance, in terms of an assertion of an animal subjectivity, or *umwelt*, or however you want to describe it?

**AML:** Absolutely, and I think that Adorno's phrase and that passage in which he is writing about this scene, an arbitrary, perhaps imaginary but typical scene of the hunt written shortly after the end of World War II, as well as all of Adorno's pessimistic observations about the state of human culture, are written in a state of deep anguish. As he says in this very brief aphorism, we

never believe this, even of the animal. When we tell ourselves, “It’s only an animal”, we in fact never believe it. Why? Because we are there and we see in the presence of an Other, a life that is there. For him it is important that the gaze, as he says, of the wounded animal, falls on the person who has perpetrated the crime. You seek to exclude it, to erase it, to dismiss it by saying that it is only an animal, but it allows you to transfer that very logic into the destruction of other human beings.

Your phrase “haunting” is really important because I think that it suggests that a phantom animal becomes the crucial site not only for an animal rights, but for human ethics as well. The ability to kill another, is something in fact we—we, human beings—never properly achieve; we never truly believe this, “It’s only an animal” at that moment, Adorno says. We tell ourselves this, we insist upon it, try to protect ourselves through this mantric repetition of a phrase, “It’s only an animal,” “It’s only an animal,” yet we never believe it. And as such, we are haunted by it. I think the crisis in human subjectivity, in discourses on the human subject that arrive in the late 1950s, has everything to do with this kind of haunted presence. Human subjectivity is now a haunted subjectivity, haunted by animals, by everyone that has been excluded, by women, by people of different races, different ethnicities, different sexual preferences. And in fact the convergence of civil rights, critical theory, animal rights, feminism, the gay and lesbian movements, all of these things really shape—to use Foucault’s term—the episteme in which the primary political focus for many philosophers and theorists erupts in a critique of the subject.

**LC:** Without getting you to offer something prescriptive [both laugh] about where to go from here, I do, I guess, want to ask about where to go from here. Because our audience is sort of the average person, turning on their car radio, or the animal rights activist, what does this mean then for... It just seems like a huge juggernaut, this huge weight, of Western history for people who want to shift, or people talk about blurring the boundaries between humans and animals (and this, of course, is very anxiety-provoking considering the legacy of Western thought), where is the turn now? Or where do you think there are potentials for (I think your phrase is) “remembering animals”? Is that the best we can do?

**AML:** Again, it’s an important question in so many ways. There are so many things I would like to speak to in response to that question. I would say that I don’t know if I am, by nature, an optimist or a pessimist. I do think, however, that a lot of things have been turning away from this condition, let’s say, or a certain kind of assumption, about the longevity of the human subject. I think that human subjectivity practiced honestly and

ethically will continue to re-evaluate the terms of its own existence in relationship to Others, defined in the modern sense. And I do think that a certain ability to exist with an Other—an Other that may not share the same language that I speak, but certainly exists in a world that is as valuable, authentic, legitimate, as my own—will be the goal. I’ll introduce a phrase by Jacques Derrida. Somebody asked him, what does justice mean? What would justice be? He says justice is speaking to the Other in the language of the Other. I find this to be a very beautiful and very optimistic expression. It is not my task to exclude from my world those that I don’t understand; but it is my responsibility, or it is the practice or task of justice, to learn the Other’s language, which is to give the Other that capacity for language, to assume that there is in the Other, language. Language is, according to that earlier part of our conversation, language is that which is traditionally denied to the Other. “I don’t know what you mean when you speak”; “women speak emotionally”; “animals don’t have any language”; “the language that less developed cultures speak is not as articulate or precise as the language that I speak”, and so on and so forth. I think this pursuit of justice, defined as Derrida does, is very important.

The other thing I will add is that the development of a field that some have called, perhaps temporarily, provisionally “Animal Studies”, is absolutely critical. I think there was a time when Animal Studies would have meant zoology, or in a very focused and direct manner, the pursuit of animal rights. What has been really been exciting for me to observe in this field of animal studies—and it’s not merely a community of scholars and academics; they are artists and performers, who engage in expressive and creative actions, activists who are committed politically, activists who are engaged in their daily lives and daily practices, and also a wide range of scholars in a variety of fields (feminists, literary scholars, historians, historians of ideas, philosophers, and so forth)—there is a certain understanding that “the question of the animal”, as it’s been called, or “of animals” or “of animality”, is not something that is restricted in the end just to the well-being of animals: it affects everybody in fact in ways that are obvious and perhaps less obvious. I think this kind of realization and this kind of community, let’s say, ex-community of people, who are in the field but also outside of their fields but in contact with one another is another way in which, much of what has been established can be critiqued, rethought, unthought, reformulated, toward a viable existence for all forms of life on this earth, and elsewhere.

**LC:** It seems to me that it’s a difficult but important place to be, working in Animal Studies, in these divergent fields. My own experience was coming from Women’s Studies. It’s interesting how you point to

these different groups, marginalized groups, and I think that one of the saddest things for me has been also that there's this incredible moment of optimism, and potential to be thinking about "the animal" in different ways, (and thus us in different ways) but also in those moments of marginalization there has been a scrambling, a push towards a reinforcement of that human subject to say, "Ah, we are just like that, though. We are not like animals." I think that this is very classic, in terms of an older feminism: liberation is about inclusion into a human culture that is necessarily exclusionary of animals. I think that's still happening, that while there's a kind of opening up of what this question means, "the question of the animal", there's also a concern, my concern anyway, that a simultaneous reinforcement as marginalized groups fight, using language, using the discourse of rights, etc., to become a part of what they were always excluded from.

**AML:** That's right. That's a very difficult situation that traditionally marginalized groups have had to address. When you have been denied very basic civil rights, for example, one of the immediate and legitimate goals of any movement is to make sure that one secures those rights for one's constituencies, for one's members, and at the same time to make sure that the pursuit or achievement of that right does not reproduce the exclusion of others that one was fighting against initially. That's why I think the role of animal rights is so impor-

tant, because the animal is perhaps the place where life as such has been most excluded in the history of human cultures. And as such it is the place, perhaps, where this rethinking has to begin. There will be all sorts of differences, and all sorts of different objectives and agendas, but when this discussion is practiced rigorously and in good faith, I think ultimately it will be productive. Remember that most of those whom we now think of as the great thinkers were often marginalized in their time; many endured this marginalization, ridicule, hostility. It's part of the task, and I think one of the comforts we can draw in these situations is that the process is ongoing and one makes a contribution where one can, one engages where one can, and it continues forward hopefully toward some better formulation of life for all beings.

**LC:** Thank you very much. I hope you can join us again on the program sometime. It was really a great honour, and a great pleasure, to speak with you today.

**AML:** It was a great pleasure for me today. And I really appreciate the work you're doing. The questions were just fantastic. I enjoyed every moment of it.

**LC:** Thank you so much. Today we've been speaking with Dr. Akira Mizuta Lippit.



*Untitled, Photograph by Jackson Tait*

# Creating Legal Space for Animal-Indigenous Relationships

by Rachel Forbes

The first law enacted in Canada to protect existing Aboriginal rights was section 35 of the *Constitution Act, 1982*.<sup>2</sup> The first law in Canada to recognize the rights of non-human animals as anything other than property has yet to be enacted. The first Supreme Court of Canada (hereafter referred to as the Court) case to interpret section 35 was *R. v. Sparrow*.<sup>3</sup> The 1990 case confirmed an Aboriginal right of the Musqueam peoples of British Columbia to fish for food, social and ceremonial purposes. Since this precedent-setting case, many similar claims have been brought before the courts by way of the fluctuating legal space created by s.35. Many of these cases have been about establishing rights to fish<sup>4</sup>, hunt<sup>5</sup>, and trap non-human animals (hereafter referred to as animals). The Court has developed, and continues to develop tests to determine the existence and scope of Aboriginal rights. These tests primarily embody cultural, political and, to a surprisingly lesser degree, legal forces. One of the principal problems with these tests is that they privilege, through the western philosophical lens, the interests of humans. Animals are, at best, the resources over which ownership is being contested.

The Euro-centric legal conceptualization of animals as 'resources' over which ownership can be exerted is problematic for at least two reasons. First, the relegation of animals solely to a utilitarian role is antithetical to Indigenous-animal relationships and therefore demonstrates one of the fundamental ways the Canadian legal system is ill equipped to give adequate consideration to Indigenous law. Second, failure to consider animals' inherent value and agency in this context reproduces the human-animal and culture-nature binaries that are at the root of many of western Euro-centric society's inequities.

This paper argues that Aboriginal peoples' relationships with animals are a necessary, integral and distinctive part of their cultures<sup>6</sup> and, therefore, these relationships and the actors within them are entitled to the aegis of s.35. Through the legal protection of these relationships, animals will gain significant protection as a corollary benefit. If the Court were to protect the cultural relationships between animals and Aboriginal groups, a precondition would be acceptance of Indigenous legal systems. Thus, this paper gives a brief answer to the question, what are Indigenous legal systems and why are animals integral to them?

The Anishinabe (also known Ojibwe or Chippewa) are Indigenous peoples who have historically lived in the Great Lakes region. The Bruce Peninsula on Lake Huron is home to the Cape Croker Indian Reserve, where the Chippewas of Nawash First Nation live. The people of this First Nation identify as Anishinabe. The Anishinabek case of *Nanabush v. Deer* is a law among these people and is used throughout the paper as an example of Indigenous-animal relationships. Making the significant assumption that s.35 has the capacity to recognize Indigenous law, the subsequent section of the paper asks why we should protect these relationships and how that protection should be achieved. Finally, the paper concludes that both the ability of s.35 to recognize Indigenous-animal relationships, and the judicial and political will to grant such recognition, are unlikely. Indigenous-animal relationships are integral to the distinctive culture of the Anishinabek, however the courts would be hesitant to allow such an uncertain and potentially far-reaching right. This is not surprising given that such a claim by both Indigenous and animal groups would challenge the foundations upon which the Canadian legal system is based.

There are many sensitive issues inherent in this topic. It should be noted the author is not of Indigenous ancestry, but is making every effort to learn about and respect the Indigenous legal systems discussed. While this paper focuses on a number of Anishinabek laws; it is neither a complete analysis of these practices, nor one that can be transferred, without adaptation, to other peoples. Finally, Indigenous peoples and animal rights and Indigenous law scholars, such as Tom Regan and Mary Ellen Turpel-Lafond, respectively, may insist on an abolitionist approach to animal 'use' or reject the legitimacy of s.35 itself.<sup>7</sup> These perspectives are worthy and necessary. This paper positions itself amongst these and other sources in order to reflect upon the timely and important issue of the legal status of Indigenous-animal relationships.

## I: WHAT ARE INDIGENOUS LEGAL SYSTEMS?

The Law Commission of Canada defines a legal tradition as "a set of deeply rooted, historically conditioned attitudes about the nature of law, the role of law in the society and the polity, the proper organization and operation of a legal system, and the way law is or should be made, applied, studied, perfected and taught."<sup>8</sup>

Indigenous legal traditions fit this description. They are living systems of beliefs and practices, and have been recognized as such by the courts.<sup>9</sup>

Indigenous practices developed into systems of law that have guided communities in their governance, and in their relationships amongst their own and other cultures and with the Earth.<sup>10</sup> These laws have developed through stories, historical events that may be viewed as 'cases,' and other lived experiences. Indigenous laws are generally non-prescriptive, non-adversarial and non-punitive and aim to promote respect and consensus, as well as close connection with the land, the Creator, and the community. Indigenous laws are a means through which vital knowledge of social order within the community is transmitted, revived and retained. After European 'settlement' the influence of Indigenous laws waned. This was due in part to the state's policies of assimilation, relocation and enfranchisement.<sup>11</sup> Despite these assaults, Indigenous legal systems have persevered; they continue to provide guidance to many communities, and are being revived and re-learned in others. For example, the Nisga'a's legal code, *Ayuuk*, guides their communities and strongly informs legislation enacted under the *Nisga'a Final Agreement*, the first modern treaty in British Columbia.<sup>12</sup>

The land and jurisdiction claims of the Wet'suwet'en and Gitksan Nations ultimately resulted in the Court's decision in *Delgamuukw*,<sup>13</sup> a landmark case that established the existence of Aboriginal title. The (overturned) BC Supreme Court's statement in *Delgamuukw*<sup>14</sup> reveals two of the many challenges in demonstrating the validity of Indigenous laws: "what the Gitksan and Wet'suwet'en witnesses[es] describe as law is really a most uncertain and highly flexible set of customs which are frequently not followed by the Indians [sic] themselves." The first challenge is that many laws are not in full practice, and therefore not as visible as they could be and once were. What the courts fail to acknowledge, however, is that the ongoing colonial project has served to stifle, extinguish and alter these laws. The second challenge is that the kind of law held and practiced by Indigenous peoples is quite for-

eign to most non-Indigenous people. Many Indigenous laws have animals as central figures. In Anishinabek traditional law, often the *animals are the lawmakers*<sup>15</sup>: they develop the legal principles and have agency as law givers. For instance, the Anishinabek case *Nanabush v. Deer, Wolf*, as outlined by Burrows, is imbued with legal principles, lessons on conduct and community governance, as well as 'offenses' and penalties. It is not a case that was adjudicated by an appointed judge in a courtroom, but rather one that has developed over time as a result of peoples' relationships with the Earth and its inhabitants. An abbreviated summary of the case hints at these legal lessons:

Nanabush plays a trick on a deer and deliberately puts the deer in a vulnerable position. In that moment of vulnerability, Nanabush kills the deer and then roasts its body for dinner. While he is sleeping and waiting for the deer to be cooked, the Wolf people come by and take the deer. Nanabush wakes up hungry, and out of desperation transforms into a snake and eats the brains out of the deer head. Once full, he is stuck inside the head and transforms back into his original shape, but with the deer head still stuck on. He is then chased and nearly killed by hunters who mistake him for a real deer.

This case is set within the legal context of the Anishinabek's treaty with deer. In signing the treaty, the people were reminded to respect beings in life and death and that gifts come when beings respect each other in interrelationships.<sup>16</sup> Nanabush violated the rights of the deer and his peoples' treaty with the deer. He violated the laws by taking things through trickery, and by causing harm to those he owed respect. Because his actions were not in accordance with Anishinabek legal principles, he was punished: Nanabush lost the thing he was so desperately searching for, and he ended up nearly being killed.

This case establishes two lessons. The first is that, like statutory and common law, with which Canadians are familiar, Indigenous law does not exist in isolation. Principles are devised based on multiple teachings, pre-

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vious rules and the application of these rules to facts. That there are myriad sources of Indigenous law suggests that the learning of Indigenous law would require substantial effort on the part of Canadian law-makers.<sup>17</sup> The second is that animals hold an important place in Indigenous law, and those relationships with animals – and the whole ‘natural’ world – strongly inform the way they relate to the Earth.

## II: CAN CANADIAN LAW ACCEPT INDIGENOUS LEGAL SYSTEMS?

If there were a right recognized under s.35 concerning the Indigenous-animal relationship, what would it look like? Courts develop legal tests to which the facts of each case are applied, theoretically creating a degree of predictability as to how a matter will be judged. Introduced in *Sparrow*, and more fully developed in *Van der Peet*, a ‘test’ for how to assess a valid Aboriginal right has been set out by the Court. Summarized, the test is: “in order to be an Aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the Aboriginal group claiming the right.”<sup>18</sup> There are ten, differently weighted factors that a court will consider in making this assessment.

The right being ‘tested’ in this discussion is the one exemplified in *Nanabush v. Deer*: the ability of Indigenous peoples to recognize and practice their laws, which govern relationships, including death, with deer and other animals. The courts have agreed that a generous, large and liberal construction should be given to Indigenous rights in order to give full effect to the constitutional recognition of the distinctiveness of Aboriginal culture. Still, it is the courts that hold the power to define rights as they conceive them best aligning with *Canadian society*<sup>19</sup>; this is one way that the Canadian state reproduces its systems of power over Indigenous peoples.<sup>20</sup>

The application of the Aboriginal right exemplified in *Nanabush v. Deer* to the *Sparrow* and *Van der Peet* tests would likely conclude that the Anishinabek do have an integral and distinctive relationship with animals. However, due to the significant discretion of the Court on a number of very subjective and politically sensitive factors, it is uncertain that the *Nanabush v. Deer* case would ‘pass’ *Van der Peet*’s required ten factors.<sup>21</sup> This is indicative of the structural restraints that s.35 imposes.<sup>22</sup> The questions it asks impair its ability to capture and respect the interrelationships inherent in Indigenous peoples’ interactions with animals. For example, the Court will characterize hunting or fishing as solely subsistence, perhaps with a cultural element. Shin Imai contends these activities mean much more: “To many...subsistence is a means of reaffirming Aboriginal identity by passing on traditional knowledge

to future generations. Subsistence in this sense moves beyond mere economics, encompassing the cultural, social and spiritual aspects for the communities.”<sup>23</sup> Scholar Kent McNeil concludes that: “regardless of the strengths of legal arguments in favour of Indigenous peoples, there are limits to how far the courts [...] are willing to go to correct the injustices caused by colonialism and dispossession.”<sup>24</sup> It is often not the legal principles that determine outcomes, but rather the extent to which Indigenous rights can be reconciled with the history of settlement without disturbing the current economic and political structure of the dominant culture.

## III: WHY PROTECT THE ANIMAL-INDIGENOUS RELATIONSHIP?

Legally protecting animal-Indigenous relationships offers symbiotic, mutually respectful benefits for animals and for the scope of Aboriginal rights that can be practiced. For instance, a protected relationship would have indirect benefits for animals’ habitat and right to life: it would necessitate protecting the means necessary, such as governance of the land, for realization of the right. This could include greater conservation measures, more contiguous habitat, enforcement of endangered species laws, and, ideally, a greater awareness and appreciation by humans of animals and their needs.

Critical studies scholars have developed the argument that minority groups should not be subject to culturally biased laws of the mainstream polity.<sup>24</sup> Law professor Maneesha Deckha points out that animals, despite the central role they play in a lot of ‘cultural defences,’ have been excluded from our ethical consideration. Certainly, the role of animals has been absent in judicial consideration of Aboriginal rights.<sup>26</sup> Including animals, Deckha argues, allows for a complete analysis of these cultural issues and avoids many of the anthropocentric attitudes inherent in Euro-centric legal traditions. In *Jack and Charlie*<sup>27</sup> two Coast Salish men were charged with hunting deer out of season. They argued that they needed to kill a deer in order to have raw meat for an Aboriginal religious ceremony. The Court found that killing the deer was not part of the ceremony and that there was insufficient evidence to establish that raw meat was required. This is a case where a more nuanced consideration of the laws and relationships with animals would have resulted in a more just application of the (Canadian) law and prevented the reproduction of imperialist attitudes.

A criticism that could be lodged against practicing these relationships is that they conflict with the liberty and life interests of animals.<sup>28</sup> Theoretically, if Indigenous laws are given the legal and political room to fully operate, a balance between the liberty of animals and the cultural and legal rights of Indigenous peoples can be struck.<sup>29</sup> Indeed, Indigenous peoples’ cultural and legal





Photos by Jo-Anne McArthur

concern for Earth is at its most rudimentary a concern for the land, which is at the heart of the challenge to the Canadian colonial system. If a negotiated treaty was reached, or anti-cruelty and conservation laws were assured in the Indigenous peoples' self government system, then Canadian anti-cruelty<sup>30</sup> and conservation laws,<sup>31</sup> the effectiveness of which are already questionable, could be displaced in recognition of Indigenous governance.<sup>32</sup>

Indigenous peoples in Canada were – and are, subject to imposed limitations – close to the environment in ways that can seem foreign to non-Indigenous people.<sup>33</sup> For example, some origin stories and oral histories explain how boundaries between humans and animals are at times absent:

Animal-human beings like raven, coyote and rabbit created them [humans] and other beings. People ...acted with respect toward many animals in expectation of reciprocity; or expressed kinship or alliance with them in narratives, songs, poems, parables, performances, rituals, and material objects.<sup>34</sup>

Furthering or reviving these relationships can advance the understanding of both Indigenous legal systems and animal rights theory. Some animal rights theorists struggle with how to explain the cultural construction of species difference: Indigenous relationships with animals are long standing, lived examples of a different cultural conception of how to relate to animals and also of an arguably healthy, minimally problematic way to approach the debate concerning the species divide.<sup>35</sup>

A key tenet of animal-Indigenous relationships is respect. Shepard Krech posits that Indigenous peoples are motivated to obtain the necessary resources and goals in 'proper' ways: many believe that animals return to the Earth to be killed, provided that hunters demonstrate proper respect.<sup>36</sup> This demonstrates a spiritual connection, but there is also a concrete connection between Indigenous peoples and animals. In providing themselves with food and security, they 'manage' what Canadian law calls 'resources.'<sup>37</sup> Because of the physical nature of these activities, and their practical similarity with modern 'resource management,' offering this as 'proof' of physical connection with animals and their habitat may be more successful than 'proving' a spiritual relationship.

Finally, there are health reasons that make the Indigenous-animal relationship is important. Many cultures have come to depend on the nutrients they derive from particular hunted or fished animals. For example, nutrition and physical activity transitions related to hunting cycles have had negative impacts on

individual and community health.<sup>38</sup> This shows the multidimensionality of hunting, the significance of health, and, by extension, the need for animal 'resources' to be protected.

#### **IV: HOW SHOULD WE PROTECT THESE ABORIGINAL RIGHTS?**

If the Anishinabek and the deer 'win' the constitutional legal test ('against' the state) and establish a right to protect their relationships with animals, what, other than common law remedies,<sup>39</sup> would follow? Below are ideas for legal measures that could be taken from the human or the animal perspective, or both, where benefits accrue to both parties.

If animals had greater agency and legal status, their needs as species and as individuals could have a meaningful place in Canadian common and statutory law. In *Nanabush v. Deer*, this would mean that the deer would be given representation and that legal tests would need to be developed to determine the animals' rights and interests. Currently the courts support the view that animals can be treated under the law as any other inanimate item of property. Such a legal stance is inconsistent with a rational, common-sense view of animals,<sup>40</sup> and certainly with Anishinabek legal principles discussed herein.<sup>41</sup> There are ongoing theoretical debates that inform the practical questions of how animal equality would be achieved: none of these in isolation offers a complete solution, but combined they contribute to the long term goal.

Barsh and James Sákéj Youngblood Henderson advocate an adoption of the reasoning in the Australian case *Mabo v. Queensland*,<sup>42</sup> where whole Aboriginal legal systems were imported intact into the common law. Some principles that Canada should be following can also be drawn from international treaties that Canada has or should have signed on to.<sup>43</sup> Another way to seek protection from the human perspective is through the freedom of religion and conscience section of the *Charter*. Professor John Borrows constructs a full argument for this, and cites its challenges, in *Living Law on a Living Earth: Aboriginal Religion, Law and the Constitution*.<sup>44</sup> The strongest, but perhaps most legally improbable, way to protect the animal-Indigenous relationship is for Canada to recognize a third, Indigenous order of government (in addition to provincial and federal), where all three orders are equal and inform one another's laws. This way, Indigenous laws would have the legal space to fully function and be revived. Endowing Indigenous peoples with the right to govern their relationships would require a great acquiescence of power by governments and a commitment to the establishment and maintenance of healthy self-government in Indigenous communities. Louise Mandell offers some reasons why Canada should treat

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Aboriginal people in new ways, at least one of which is salient to the third order of government argument:

To mend the [E]arth, which must be done, governments must reassess the information which the dominant culture has dismissed. Some of that valuable information is located in the oral histories of Aboriginal Peoples. This knowledge will become incorporated into decisions affecting the [E]arth's landscape when Aboriginal Peoples are equal partners in decisions affecting their territories.<sup>45</sup>

#### **V: CONCLUSION**

A legal system that does not have to justify its existence or defend its worth is less vulnerable to challenges.<sup>46</sup>

While it can be concluded that s.35 has offered some legal space for Indigenous laws and practices, it is too deeply couched in Euro-centric legal traditions and the anthropocentric cultural assumptions that they carry. The most effective strategy for advancing Indigenous laws and culture, that would also endow many animals with greater agency, and relax the culture-nature, human-animal binaries, is the formal recognition of a third order of government. Lisa Chartrand explains that recognition of legal pluralism would be a mere affirmation of legal systems that exist, but which are stifled: "...this country is a multijuridical state, where the distinct laws and rules of three systems come together within the geographic boundaries of one political territory."<sup>47</sup>

Revitalizing Indigenous legal systems is and will be a challenging undertaking. Indigenous communities must reclaim, define and understand their own traditions: "The loss of culture and traditions caused by the historic treatment of Aboriginal communities makes this a formidable challenge for some communities. Equally significant is the challenge for the Canadian state to create political and legal space to accommodate revitalized Indigenous legal traditions and Aboriginal law-making."<sup>48</sup> The project of revitalizing Indigenous legal traditions requires the commitment of resources sufficient for the task, and transformative change to procedural and substantive law. The operation of these laws within, or in addition to, Canadian law would of course cause widespread, but worthwhile controversy.

In *Animal Bodies, Cultural Justice*<sup>49</sup> Deckha argues that an ethical relationship with the animal Other must be established in order realize cultural and animal rights. This paper explores and demonstrates the value in finding legal space where cultural pluralism and respect for animals can give rise to the practice of Indigenous laws and the revitalization of animal-Indigenous relationships. As Borrows writes: "Anishinabek law provides guidance about how to theorize, practice and order our association with the [E]arth, and could do so in a way that produces answers that are very different from those found in other sources."<sup>50</sup>

1. This paper was first written for Maneesha Deckha's class, "Animals Culture and the Law" at the University of Victoria's Faculty of Law. A copy of the original, full length paper is available from the author: rsforbes@alumni.sfu.ca
2. 35(1): "The existing [A]boriginal and treaty rights of the [A]boriginal peoples of Canada are hereby recognized and affirmed." The Supreme Court ruled in *R. v. Sparrow* ([1990] 1 SCR 107) that, before s.35 came into effect in 1982, Aboriginal rights existed through common law, which can be changed by legislation. Therefore, before 1982, Parliament could extinguish Aboriginal rights, whereas now these rights have constitutional protection and cannot be fully extinguished.
3. *R. v. Sparrow* [1990] 1 SCR 107.
4. E.g. *R. v. Van der Peet* [1996] 2 SCR 507; *Jack and Charlie v The Queen* (1986), 21 DLR (4th) 641 (SCC).
5. E.g. *R. v. Badger*, [1996] 1 SCR 771.
6. John Borrows makes a similar argument in, *Living Law on a Living Earth: Aboriginal Religion, Law, and the Constitution* [forthcoming]. He argues for recognition that the Earth is a living being with agency that is integral to the distinctive societies of Aboriginal peoples and thus is subject to protection through s.35 and/or s.2 of the Charter.
7. E.g., Regan would advocate a strictly abolitionist approach (*The Case for Animal Rights*, 1983); Turpel-Lafond would defy the legitimacy of s.35 at all (*Turpel-Lafond, M.E. 1991. "Home/Land." 18 Cdn.J. of Family Law 17*).
8. Meryman, J.H. 1985. *The Civil Law Tradition*. Stanford: Stanford University Press, 1. In *Law Commission of Canada (LCC). 2006. Justice Within: Indigenous Legal Traditions*. Ottawa: 4.
8. *Calder v. Attorney General of BC*, [1973] SCR 313: 346 - 347.
10. Chartrand, L. 2005. *Accommodating Indigenous Legal Traditions*. Prepared for Indigenous Bar Association of Canada: 9.
11. The *Enfranchisement Act 1869* and *Indian Act 1876* (and later editions) were 'tools' in putting these beliefs into practice.
12. The Nisga'a's Ayuuk is discussed in more detail in: Krech III, Shepard. 1999. *The Ecological Indian: Myth and History*. New York: W.W. Norton and Company: 7.
13. [1997] 3 S.C.R. 1010 (SCC).
14. (1991) 79 DLR (4th) 185 (BCSC): 455.
15. Borrows, personal communication, April 20, 2007.
16. The treaty is explained in *Crow, Owl, Deer et al. v. Anishinabek*. In Borrows, J. 2002. *Recovering Canada: The Resurgence of Indigenous Law*. Toronto: University of Toronto Press, chap. 1.
17. All law requires a translation process: White, J.B. 1990. *Justice as Translation*. Chicago: University of Chicago Press.
18. *Van der Peet*, note 4: 46. *Van der Peet* elaborated on how to define and scope a right, which *Sparrow* did not cover.
19. *R. v. Pamajewon*, [1996] 2 S.C.R. 821.
20. This tension can also exist between Indigenous peoples and academics, such as myself, who write about Indigenous beliefs and laws without ever having lived them.
21. *Van der Peet*, note 4. The infringement and extinguishment aspects of s.35 are addressed in the original paper.
22. For more on the limitations of s.35, see the original version of this paper and: Walkem A. and H. Bruce. 2003. *Box of Treasures or Empty Box?* Penticton: Theytus Books; Christie, G. 1998. "Aboriginal Rights, Aboriginal Culture, and Protection." *Osgoode Hall L.J.*, Vol.36, No.3, 450; *Turpel-Lafond*, note 8.
23. Imai, S. 1999. *Aboriginal Law Handbook*, 2nd Ed. Scarborough: Carswell Thomson Canada Ltd.: 47.
24. McNeil, K. 2004. "The Vulnerability of Indigenous Land Rights in Australia and Canada." *Osgoode Hall L.J. Vol.42, No.2: 300*.
25. Deckha, M. 2007. *Animal Justice, Cultural Justice: A Posthumanist Response to Cultural Rights in Animals*, unpublished: 1, and sources cited therein.
26. On the absence of animal considerations in cultural theory and in Canadian case law: Deckha, note 25.
27. *Jack and Charlie*, note 4: 651.
28. For example, Deckha, note 27.
29. Indigenous laws have at their core respect for Earth and all its inhabitants: if harm is done to animals or if the ecosystem becomes compromised, human animals will also suffer. Further, Indigenous peoples, such as the Anishinabek, do obtain consent from the animals prior to killing them.
30. *Criminal Code of Canada*, ss.446, 447.
31. E.g. *Species at Risk Act*, SC 2002, c.29.
32. Given the history of the Criminal Code provisions (L. Létourneau. 2003. "Toward Animal Liberation? The New Anti-Cruelty Provisions in Canada and Their Impact on the Status of Animals." 40: 4 *Alberta L.Rvw.*1041), and the failure of our domestic laws and international commitments, it is uncertain why there would be any less faith in Indigenous laws than in Canadian ones.
33. Including, perhaps, some Indigenous people.
34. Krech, note 13.
35. More on how animal rights theory can inform the Indigenous-animal relationship: Francione, G. 1995. "The Dominion of Humans over Animals, the 'Defects' of Animals, and the Common Law." *Animals, Property and the Law*. Philadelphia: Temple University Press, 33-46; Cavalieri, P. 2001. "Speciesism." *The Animal Question: Why Nonhuman Animals Deserve Human Rights*. Oxford: Oxford University Press, 69-86; Nussbaum, M. 2006. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge: Harvard University Press, 325-346.
36. Krech, note 13: 212.
37. Krech, note 13: 211.
38. Samson, C. and J. Petty. 2005. *Environmental and Health Benefits of Hunting Lifestyles and Diets for the Innu of Labrador*. Edinburgh: British Association of Canadian Studies' "First Nations, First Thoughts Conference."
39. One reason courts hesitate to recognize broad Aboriginal rights is because of the unknown scope and scale of the remedies that would follow. The adequacy and suitability of those remedies are another question altogether.
40. Magnotti, L. 2006. "Pawing Open The Courthouse Door: Why Animals' Interests Should Matter." 80 *St. John's L.Rvw* 455.
41. On reforming the place of animals in the legal system: Garner, R. "Liberalism, Property and the Representation of Animals in the Legal System" in *The Political Theory of Animal Rights* (Manchester: Manchester University Press, 2005) 39-53; G. Francione, note 37.
42. *Mabo v. Queensland [No.2]* (1992), 175 CLR 1. In Barsh, R. and J.S. Youngblood Henderson. 1997. "The Supreme Court's *Van der Peet* Trilogy: Naïve Imperialism and Ropes of Sand." 42 *McGill Law Journal* 993: 10.
43. For example, Canada is a signatory to the Universal Declaration of Human Rights but has voted against the UN Declaration on the Rights of Indigenous Peoples. For more, see Chartrand, ch.2, note 11.
44. Borrows, note 6:13-14; Tanner, A. 1979. *Bringing Home Animals: Religious Ideology and Mode of Production of the Mistassini Cree Hunters*. London: C. Hurst and Company, 109, 136-150; Francione, G. 2000. *Introduction to Animal Rights: Your Child or the Dog?* 109: 51.
45. Mandell, L. 2003. "Offerings to an Emerging Future." In Walkem, note 24.
46. *Law Commission of Canada*, note 9: 8.
47. Chartrand, note 11.
48. *Law Commission of Canada*, note 9: 10.
49. Deckha, note 27.
50. Borrows, note 6: 38.

You cannot buy the Revolution.  
You cannot make the Revolution.  
You can only be the Revolution.  
It is in your spirit, or it is nowhere.  
—Shevek, in *The Dispossessed*,  
by Ursula K. LeGuin

In a testament to his ability to draw on diverse authors and theories, Bob Torres opens the final chapter of *Making a Killing: The Political Economy of Animal Rights* with a quote from a science fiction novel, and in so doing he successfully draws together many of the themes of his work. LeGuin's character Shevek hails from a society organized by property-less relationships, complete gender equality and communal living. Shevek travels to the capitalist planet Urras and finds a materially wealthy society plagued by repression, alienation and radical inequality. His revolutionary ideas are quickly shot down. For Torres, Shevek represents a social anarchist perspective that entails a daily commitment to living and embodying the principles that one wants to see practiced in the world.

Far from beginning his academic career as an animal rights activist, Torres, assistant professor of sociology at St Lawrence University and co-host of the popular Vegan Freak Radio podcast, originally studied agricultural science. It was a "dairy production" class that initially led him to think more seriously about animal oppression, and the logistics of the commodification of sentient beings under capitalism. Torres was taught to view animals as producers. He learned how a farmer survives in the "go big or go home" world of agribusiness: by squeezing every last bit of production out of animals for the least possible input. Capitalism relies on alienation between "producers" (in this case, cows) and their "products" (their calves, their milk, and eventually, their own bodies), creating a mental distance between consumers and producers that obscures underlying power relations and exploitation. Torres' experiences with production agriculture disrupted this mental distance by revealing the process by which sentient beings become "living machines" for the profit and enjoyment of humans.

Torres situates his analysis of animal exploitation and advocacy within broader discussions of Marxist political economy, social ecology, social anarchism, and abolitionist animal rights theory. He challenges all of his readers, regardless of their political inclinations and thoughts on the status of nonhuman animals, to make connections between different forms of oppression, and to examine the power relationships that underlie their attitudes and consumer choices. He implores the Left to consider animals within broader liberation struggles but reserves some of his most powerful critique for the "animal rights" movement itself. He chastises animal advocates who fail to work in solidarity with other anti-oppression movements and whose means are inconsistent with their desired ends.

Torres maintains that if capitalism, commodification, and property relations are inextricably linked to animal exploitation, then working from within this paradigm is not a recipe for effective activism. According to Torres, the animal rights movement in its current incarnation as the "Animal Rights Industry" has lost sight of itself and its long-term goals and has been co-opted to the point where it can no longer target exploitation at its foundation. He argues that the movement has become dominated by multi-million dollar organizations with enormous operating budgets that work directly with agribusiness in pursuit of endless welfare reforms. He points to the ongoing "love affair" between animal protection organizations and corporations like Whole Foods, and argues that these alliances actually make animal exploitation more profitable. Despite all of the rhetoric about "compassion", corporations' primary responsibility is towards shareholders. For example, rather than encouraging concerned consumers to stop eating animal products, Whole Foods caters to a niche market willing to pay a premium for "happy meat". Drawing on the abolitionist animal rights theory of Gary Francione, Torres shows how this phenomenon actually perpetuates animal exploitation by reinforcing the idea that animals are property, thereby legitimating their commodification. As the (legal and conceptual) property of humans, animals' subjectivity, their interests in not suffering, and the fulfillment of their natural needs and behaviours all become secondary to the interests of property owners. For these reasons, welfare reforms and anti-cruelty laws inevitably fail to protect the interests of animals.

Having argued that we cannot buy a revolution for animals by donating to our favourite animal protection corporation or by purchasing ever more "humane" animal products, Torres maintains that anyone can use their own strengths and talents to bring about social change - all that is needed is a commitment to making a change consistent with one's own principles. Torres empowers his readers to seek affinity with other social movements and to strive for fundamental societal change that strikes at the roots of all hierarchy and domination. Recognizing animal exploitation as a needless form of domination, Torres advocates veganism as a direct refusal to participate in the consumption, enslavement, and subjugation of animals for human ends. Veganism is a daily, lived expression of that ethical commitment, and it embodies the change that animal rights movement seeks to implement.

**Book Review:**  
***Making a Killing*, Bob Torres**  
San Francisco, AK Press, 2007  
Reviewed by Elizabeth Hartnett

# Contributors

**Sami Abdelmalik** is a graduate student at the Faculty of Environmental Studies. With the intent to address and educate individuals about pertinent environmental issues, he has focused his academic area of concentration on local communities. Through the initiation of various multimedia projects, including print media, photography, and documentary film, he hopes to expose, inform, and empower individuals to critically question the relationship between humans and their many environments, whether natural or constructed.

**Nicole Bonner** is a graduate student in the Faculty of Environmental Studies at York University. Her work focuses on the intersection of gender, race and colonialism at the level of the natural world; challenging anthropocentrism; and examining how historical conceptions of what it means to be 'human' have, and continue to exclude a number of subjects while privileging others. This had led her to consider the necessity of broadening this definition in striving to create a nonviolent and post-colonial world.

**Lauren Corman** is a Ph.D. student in Environmental Studies at York University. Her dissertation research draws upon cultural studies to address "the question of animal" in relation to voice, representation, and politics. She has hosted and produced the "Animal Voices" radio program since 2001. Throughout her tenure, she has interviewed hundreds of activists and academics interested in animal issues, with an emphasis on coalition-building among social, environmental, and animal movements.

**Rachel S. Forbes** is currently finishing her law degree at the University of Victoria. She also holds a BA in Urban Geography and a minor in Communications from Simon Fraser. She is active in the Indigenous Law Club, Student Animal Legal Defense Fund and Environmental Law Centre at UVic, and is most appreciative of all the learning and laughter that she has gained from people at the faculty of law.

**Sue Lloyd** is a visual artist who lives and works in Toronto. One of her ongoing explorations is of the terms "wilderness" and "domestication", their use as metaphors and their relationship. She teaches at the University of Toronto in the Visual Studies Programme.

While **Jo-Anne McArthur** began photographing subject matter that close to home - companion animals, zoos, meat markets, etc, the project has grown significantly in scope, to the point that much of it is now being photographed globally. Her objective has been to photograph our interactions with animals in such a way that the viewer finds new significance in these ordinary, often unnoticed situations of use, abuse and sharing of spaces.

**Mara Steinberg** is an illustration student at the Ontario College of Art and Design and an animal care attendant at the Veterinary Emergency Clinic. Her work has been published in Side A: a music lovers anthology, Small Town/Big City, The Pilot Pocket Book 3, and the upcoming What's In The Box? anthology. She lives in Toronto where she can be found reading comic books and singing in the park. She once had a pet rat who she loved more than just about anything in the world.

**Jackson Tait** is a 2nd year Environmental Studies student at York University. He has a multifaceted arts background in theatre, video, and photography. He likes to encourage quiet rebellion in the animal kingdom whenever possible.

**Gavan P.L. Watson** is a PhD student in the Faculty of Environmental Studies at York University, where his dissertation research investigates the educational and ethical implications of the practice of birding. His academic interests lie at the intersection of environmental education, animal studies and environmental philosophy.

