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Colonial Animality: Canadian Colonialism and the Human-Animal Relationship

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Located at the juncture of critical animal studies and decolonial theory, this analysis contemplates the connections and entanglements between settler colonialism and animality in Canadian constitutional discourse. How are coloniality and anthropocentrism — and the borders they draw between humanity, infra-humanity, and non-humanity — (re)produced with and through one another in Canadian constitutional jurisprudence and discourse? The very concepts used to understand and dispute the legal status of non-human animals (property and personhood, humanity and citizenship, rights and sovereignty) are shot through with the coloniality of their genealogies (see, for example, Anghie 2007; Isin 2012). Canadian constitutional law and legal discourse — the juridical warp and woof of the settler colonial state — therefore serves as one productive site for investigating the underexplored relationship between settler colonialism and animality, and for thinking through the mutual salience of decolonial and animal liberation projects.

This intervention is particularly motivated by the dominant strand of thinking on legal protection of non-human animals, which tends to take the nation-state for granted as the natural forum for making and adjudicating law, for deliberating on the interests of various subjects and according them appropriate legal recognition. I am especially concerned by theorists working from states like Canada, who render invisible the settler colonial constitution of the legal apparatus appealed to in the name of granting rights to non-human animals. Here I focus specifically on the work of Will Kymlicka and Sue Donaldson. As Patrick Wolfe argues, settler colonialism should be understood as a 'structure not an event' (2006: 388) — as a political formation that continues to order relationships of power, and privilege particular modes of ontology, epistemology, and legality, rather than as a completed historical episode. Once settler colonialism is conceptualized as a field of power comprising multiple, interlocking juridico-socio-political relationships between human and non-human life-forms — and once the settler colonial state's particular investment in managing animal life and death is made visible — this inattention to the colonial nature of the state in non-human animal rights theorizing is rendered deeply problematic.

I begin by situating the figure of the animal in the context of Canadian settler colonialism. I then consider how the juridical power of the settler state is exercised through jurisprudence concerning non-human animals. This analysis of how law's power in regulating the human/non-human animal relationship is implicated in sustaining settler colonialism enables critique of projects like that of Donaldson and Kymlicka — projects which advocate for animal rights within the existing structure of the settler colonial state.

The Human and its Others in Canadian Settler Colonialism

The production of the 'human' in relation to its various infra-human and non-human others has been central to the project of European colonialism (Wynter 2003; Maldonado-Torres 2014). Indeed, the structure of settler colonialism in North America has been, and continues to be, constructed and stabilized through multiple biopolitical/necropolitical logics limning the borders of the 'human,' including race, gender, sexuality, and species. These logics intertwine and

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intersect, so that coloniality's hierarchies of racial, gendered, and sexual difference were (and are) understood and coded through the prism of species difference, and *vice versa* (Deckha 2006; 2008; Salih 2007).

'The biopolitical and geopolitical management of people, land, flora and fauna within the "domestic" borders of the imperial nation' (Tuck and Yang 2012: 4) was accomplished through distinctions drawn between non-Europeans and Europeans, between humans and animals, and between different types of animals ('domestic' versus 'wildlife') (Deckha and Pritchard 2016). The exertion of colonial power worked to supplant Indigenous ontologies, epistemologies, and legal orders, asserting its own set of categories as natural and universal. The failure of Indigenous societies to adhere to European ways of carving up the world for subordination, exploitation, and killing — for example, by not domesticating the proper animals for agriculture, or by hunting 'wild' animals for subsistence and not sport — was cited to justify the civilising mission using violence (Anderson 2004; Huggan and Tiffin 2010; Kim 2015). In this way, European settler colonialism in North America radically reconfigured the categorization of, and relationships between, the land's life-forms, dismantling and re-assembling human-nonhuman relationships within a matrix of Eurocentric-anthropocentric-androcentric power (Belcourt 2015; Zahara and Hird 2015).

European colonial discourse located non-European others in the liminal zone between complete humanity and animality; the Indigenous peoples of the 'New World' were represented as closer to 'nature' and 'animals,' and therefore less 'rational' and more 'primitive,' than Europeans (Plumwood 1993; Elder, Wolch, and Emel, 1998; Anderson 2000; Deckha 2008). 'Rendering Indians wild beasts of the forest proved crucial,' writes Claire Jean Kim (2015, 44),

first, to constructing an account of why English colonists and other Europeans had a right to appropriate the land, and second, to constructing an account of why they had a right to clear the Indians out, much as they killed wolves and cleared forests, in order to make way for civilization. ... They knew Indians were men but they thought them animal-like men, ... [and] they imagined them into the human-animal borderlands in ways that decisively shaped white-Indian relations into the twenty-first century.

The exclusion of Indigenous peoples from legal personhood disqualified them from exerting property rights over non-human life and land, leaving European colonizers free to claim sovereignty over what was declared to be *terra nullius* (Arneil 1996; Miller et al 2010).^[1] At the same time, the ambiguous status of Indigenous peoples — not fully included in humanity, but not always and entirely *excluded* from humanity either (and consigned to absolute animality) — enabled their interpellation as subjects of the Eurocentric-anthropocentric colonial legal order (see, for example, Anghie 1996).^[2] The apparent tensions and indeterminacies of European colonial discourse on the human and the non-human bolstered, rather than vitiated, the efficacy of colonial power by enabling its flexible exercise in the service of racial domination and territorial accumulation.

Non-Human Animals and Aboriginal Rights in Canadian Jurisprudence

The structure of anthropocentric settler colonialism is maintained in contemporary Canadian constitutional discourse recognizing 'Aboriginal rights' involving non-human animals (for example, rights to hunt and fish). 'The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada,' including hunting and fishing entitlements, have been enshrined in section 35 of the Canadian Constitution since 1982; this constitutional guarantee has sometimes been interpreted by legal actors and animal rights activists as endangering or undermining the protection of non-human animals. Reading constitutional discourse through the lenses of Glen Coulthard's critique of the colonial politics of recognition, and Samera Esmeir's analysis of the colonial production of juridical humanity, elucidates how the adjudication of Aboriginal rights to hunt and fish within the Canadian legal order entrenches the structure of settler colonialism.

In *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, Coulthard (2014: 3) argues that

instead of ushering in an era of peaceful coexistence grounded on the ideal of *reciprocity* or *mutual* recognition, the politics of recognition in its contemporary liberal form promises to reproduce the very configurations of colonialist, racist, patriarchal state power that Indigenous peoples' demands for recognition have historically sought to

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transcend.

In *Juridical Humanity: A Colonial History*, Esmeir (2012) likewise considers how colonial power has operated through selective processes of legal recognition, rather than simple exclusion, of the humanity of the colonized. Non-human animals featured significantly in the colonial production of human subjects. For British colonial authorities in nineteenth- and twentieth-century Egypt (the site of Esmeir's study), the purportedly inhumane treatment of animals was one (more) sign of the colonized's inferior humanity, requiring remediation by the humanizing effect of legal reforms. 'Humane reforms for preventing cruelty to animals reveal the extent to which nonhumans marked the humanity of Egyptians ... Nonhuman animals were not the other of the human; rather, their presence facilitated the cultivation of the particular colonial humanity of the Egyptians' (ibid.: 132). Esmeir shows how the imperative of establishing properly humane relationships between humans and animals — which did not preclude all violence, but only non-instrumental cruelty (ibid.:130) — rationalized the assertion of European juridical power over both human and non-human subjects, tethering both to the colonial state.

The Supreme Court of Canada's contemporary Section 35 jurisprudence reproduces the settler colonial polity's 'configurations of ... state power' in several inter-connected ways (regardless of the success or failure of the rights claim in question in any particular case). First, the process of adjudicating Aboriginal rights in Canadian courts consolidates the authority of a judicial system predicated on the erasure of Indigenous legal and social orders. 'In Canada, the state's claims to jurisdiction over Indigenous lands assume the authority to inaugurate law where law already exists,' observes Shiri Pasternak (2014: 160). '[T]o engage in the question of what it means to decolonize law, we must ask by what authority a law has the authority to be invoked and to govern' (ibid.). While the Supreme Court has officially repudiated the colonial doctrine of *terra nullius*^[3] — and acknowledges that Aboriginal rights derive from 'the fact that aboriginals lived on the land in distinctive societies, with their own practices, traditions and cultures'^[4] — it continues to implicitly rely on the idea of *terra nullius* in the absence of any alternative foundation for the establishment of Canadian sovereignty (Borrows 1999; 2012; 2015; Asch 2002).

In *R v Van der Peet* (1996, para. 31), a seminal case involving Aboriginal fishing rights, the Court held that the purpose of Aboriginal rights jurisprudence was to 'reconcil[e] the pre-existence of aboriginal societies with the sovereignty of the Crown'; the unquestioning acceptance of the legitimacy of Crown sovereignty precludes critical engagement with the colonialism that is its condition of possibility. While Aboriginal rights must be proven, the state's authority to adjudicate those rights is taken as given. But as Kanien'kehaka philosopher Taiaiake Alfred (1999: 57) asks:

To what extent does that state-regulated 'right' to food-fish represent justice for people who have been fishing on their rivers and seas since time began? ... To frame the struggle to achieve justice in terms of indigenous 'claims' against the state is implicitly to accept the fiction of state sovereignty.

Second, the legal recognition of discrete practices as Aboriginal rights dislocates activities like hunting and fishing from holistic Indigenous ontologies and epistemologies, instead insinuating them within the human-animal metaphysics and biopolitics of the colonial state. While the Supreme Court of Canada has defined Aboriginal rights as 'practice[s], custom[s], or tradition[s] integral to the distinctive culture of the aboriginal group claiming the right,'^[5] the process of adjudication and recognition tends to pluck isolated practices, customs, and traditions from the 'cultural' fabric that imbues them with meaning. Indeed, the Supreme Court has insisted that Aboriginal rights must be 'framed in terms cognizable to the Canadian legal and constitutional structure'^[6] — within which animals have the status of 'property' rather than 'persons' (Bisgould and Sankoff 2015: 115; Sankoff, Black, and Sykes 2015: 4). The absence of a complementary Court-issued requirement that the Canadian 'legal and constitutional structure' should be rendered 'cognizable' in Indigenous terms reinforces the supremacy of the settler legal *nomos*. In this largely unidirectional translation exercise, Indigenous understandings of the intricate webs of relationships linking human people and non-human people, including animals, are displaced by Canadian law's abstract, liberal framework of human persons' 'rights' over non-human animal 'property' (Bryan 2000; Metallic and Monture-Angus 2002; MacIntosh 2015). In the case of the 'wildlife' being fished or hunted, ownership effectively lies with the state before capture (Asch 1989). Thus, the recognition of Aboriginal rights with respect to the legal category of 'wildlife' reaffirms the settler colonial state's underlying entitlement to property rights over 'nature.'

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This ontological and epistemological displacement entrenches the 'superior positivity' (Chakrabarty 2000: 83) of Euro-Canadian beliefs and practices as capturing the 'objective truth' about humans, animals, and the relationship between them. Within this universalized framework, Indigenous hunting practices are vulnerable to being labelled 'cruel' and a potential abuse of 'animal welfare' or 'animal rights' (see, for example, Deckha 2007; Kymlicka and Donaldson 2014; 2015), marginalizing Indigenous perspectives which do not consider killing to be necessarily incompatible with appreciation of non-human animals' personhood (Nadasdy 2007; 2011; Brighten 2011; Gombay 2014). In the staged contest between Aboriginal rights and animal rights, Canadian law is taken for granted as the arbiter between the two (Kymlicka and Donaldson 2014; 2015). This naturalizes both the liberal ontology of rights, as well as the settler colonial state as the neutral site for recognition of rights and mediation between apparently competing interests.

Third, Aboriginal hunting and fishing rights, like all Aboriginal rights, are susceptible to significant limitation by the regulatory activity of the Canadian state. In the landmark case of *Delgamuukw v British Columbia*, the Supreme Court held that 'the development of agriculture, forestry, mining, and hydroelectric power, general economic development ..., protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims' could all qualify as legitimate governmental purposes for infringement of Aboriginal rights (para. 165). Aboriginal rights are excised from the structures of regulation and limitation internal to Indigenous legal orders (Borrows 1997). Their exercise is instead delimited by the technological rationality of the settler state's exploitation, management, and conservation of 'its' wildlife and natural resources (Willems-Braun 1997; Schneider 2013). The Court's assurance that infringement for the sake of conservation is in fact 'consistent with aboriginal beliefs and practices'^[7] disguises the coloniality of the assertion of Canadian state power by professing its compatibility with Indigenous world-views. Conversely, Indigenous peoples are depicted as potential traitors to their own ecological values (Nadasdy 2005), making the settler colonial state's efforts to protect 'the environment or endangered species' from over-zealous and exploitative exercise of Aboriginal rights ostensibly necessary.

In Canadian constitutional discourse on Aboriginal rights, settler colonialism is perpetuated through (mis)recognition of Indigenous peoples as potentially inhumane and irresponsible subjects of law, and animals as non-human objects of law — a formulation that reasserts Canadian law's sovereignty over Indigenous and animal others. The juridification of the relationship between Indigenous humans and non-human animals binds both to the settler colonial state. And the ambiguity of the status of Indigenous peoples and non-human animals from the perspective of Canadian law — the projection of both into liminal spaces at the borders of law's categories — facilitates the flexible imposition of colonial juridical power over the malleable field of the human/non-human. Indigenous peoples are (now) legal persons, but their full humanity is made suspect by virtue of their 'inhumane' practices with respect to animals; non-human animals are legal property, but like humans they are also sentient and capable of suffering from 'inhumane' treatment. Appeals to Canadian law — whether to grant humans rights over non-human animal property, or to limit the enjoyment of these rights to protect non-human animals from the threat of the inhumane — buttress the settler state's claims to a juridical monopoly.

The Colonial Zoopolis

Theoretical efforts to fundamentally re-constitute the relationship between human and non-human animals — represented as radically transformative visions of justice — may also replicate settler colonial logics, relationships, and political structures. *Zoopolis: A Political Theory of Animal Rights*, by Canadian academics Sue Donaldson and Will Kymlicka (2011), serves as an illuminating example. In *Zoopolis*, Donaldson and Kymlicka imagine domestic animals as citizens of human polities, feral animals as denizens, and wild animals as fellow sovereigns. Human multicultural citizenship (of which Kymlicka is a leading theorist^[8]) and Indigenous sovereignty are used as analogues for their zoopolitical theory. The limitations of liberal multiculturalism's colonial horizons (Alfred and Cornthassel 2005) are reinscribed in the extension of the theory to recognize non-human animals, circumscribing its liberating potential and foreclosing possible decolonial futures.

By representing the human-animal hierarchical binary as a virtually universal problematic^[9] requiring rectification through zoopolitical theorization, Kymlicka and Donaldson participate in the 'reproduc[tion of] colonial ways of

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knowing and being by enacting universalizing claims and, consequently, further subordinating other ontologies' (Sundberg 2014: 34). While the zoopolis is described as being compatible in many respects with Indigenous perspectives on human-animal relationships, these perspectives are not seriously engaged or drawn upon as intellectual and ethical traditions. Instead, the principal philosophical interlocutors and foundations for Donaldson and Kymlicka are Euro-American thinkers and theories.^[10] Indigenous cosmologies are, in the end, subjugated to non-Indigenous interpretations of what justice for animals requires. For example, the assertion that human hunting of non-humans should be absolutely impermissible in Rawlsian 'circumstances of justice' (Donaldson and Kymlicka 2011: 41) universalizes the particular (liberal animal rights) juridico-moral framework in which hunting is inevitably a violation of the 'right' to life (ibid.: 44–45). Indigenous hunting practices are implicitly demeaned as regrettable concessions to the non-ideal 'circumstances of injustice' within which Indigenous societies have lived (ibid.: 47), rather than expressions of conceptualizations of justice built on other-than-European foundations.

Moreover, the particular zoopolitical model proposed by Donaldson and Kymlicka reinforces anthropocentric settler colonial state power through the incorporation of non-human animals within its political structure — just as White supremacist settler colonial state power may be reinforced through multiculturalist incorporation of non-European human others (see, Hage 2000; Lawrence and Dua 2005; Thobani 2007). The enduring anthropocentrism of the Donaldson-Kymlicka zoopolis is evident in their more concrete explanations of how such a mixed human-animal political community would function. For instance, humans are expected to retain paternalistic prerogatives to control the sex and reproduction of domesticated animals;^[11] human surveillance of non-human animal citizens is recommended to prevent them from eating one another;^[12] and non-human political participation is envisioned as occurring primarily, if not entirely, through human mediation and proxy representation (ibid.: 152–154, 209).

While notions of citizenship and sovereignty are *adapted* for non-human animal subjects, these concepts still privilege Eurocentric, human modes of political subjectivity and organization as normative. 'The mythology of the state is hegemonic,' Taiaiake Alfred (1999: 57–58) argues,

and the struggle for justice would be better served by undermining the myth of state sovereignty than by carving out a small and dependent space for indigenous peoples within it. ... The unquestioned acceptance of sovereignty as the framework for politics today reflects the triumph of a particular set of ideas over others — and is no more natural to the world than any other man-made object.

Kymlicka and Donaldson cite Alfred's objection to the concept of sovereignty, but peremptorily dismiss it without argument (see, Donaldson and Kymlicka 2011: 172). Instead, the territorial nation-state (with its associated array of institutions, like citizenship) is projected as the universal framework for arranging political community,^[13] while non-Indigenous sovereigns are centred as the primary locus for non-human animals' — as well as non-White humans' — recognition, assimilation, and protection.

For example, state criminal law in the envisaged zoopolis is expanded to safeguard non-human animals from abuse and cruelty (see, ibid., 131–133). In settler states like Canada (where Donaldson and Kymlicka are writing from), this entails further entrenchment of colonial philosophies and institutions of criminalization (Nichols 2014). The state-centric carceral post-humanism embraced in *Zoopolis* is problematically embedded within settler colonial politico-juridical formations that remain largely un-interrogated. Another revealing example is the argument that wild animals are entitled to exercise sovereignty over their own territories assumes the power of human state governments to define the borders of non-human territories, and to accord recognition to the animal communities dwelling within them as sovereign.^[14] This mode of recognition is transparently anthropocentric. It also takes for granted the state's sovereign authority to allocate land to animal populations. This is a particularly problematic assumption in settler states, where sovereignty is a colonial artifact and the state's claims to territory (including the power to dispose of it) are fundamentally contested by Indigenous nations. The coloniality of this proposal is exacerbated by the suggested criterion for distribution of territory to non-humans: 'all habitats not currently settled or developed by humans should be considered sovereign animal territory' (Donaldson and Kymlicka 2011: 193), an articulation which bears ominous echoes to the standard employed to justify Indigenous dispossession of land 'insufficiently' settled and developed.

Ultimately, Kymlicka and Donaldson's treatment of racial justice (purportedly achieved through multiculturalism and

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recognition of Indigenous sovereignty) as a mere *analogy* for animal justice artificially positions race and species as separate systems of hierarchy. The entanglement of racial domination and species domination in sustaining settler colonialism is obscured. The result is an analysis which advocates for animal justice through inclusion of non-human species *within* the colonial structure of the settler nation-state.^[15] The explicitly 'forward-looking' orientation adopted in *Zoopolis* takes the settler colonial state as a *fait accompli*, precluding any deep critique or contestation of the political formation being zoopolized. As Donaldson and Kymlicka (2011: 192–193) write,

[f]rom the European conquest of the Americas to the Soviet colonization of the Baltic republics, the generations originally responsible for unjust colonization/settlement have given way to subsequent generations who know no other home, and have not themselves committed unjust acts of colonial occupation and conquest ... A plausible political theory of territory has to start from the facts on the ground (where people currently live, and the boundaries of existing communities and states).

Settler colonialism is imagined as an 'event' that has already happened in the past, rather than a 'structure' that is continuously and actively reconstituted in the present. For Donaldson and Kymlicka, the main source of injustice is exclusion from the political structure, not the coloniality of the structure itself; and so recognition, not decolonization, is seen as being the remedy. Coulthard's incisive indictment of the colonial politics of recognition lays bare the limitations of this approach: 'where "recognition" is conceived as something that is ultimately "granted" or "accorded" a subaltern group or entity by a dominant group or entity [this] prefigures its failure to significantly modify, let alone transcend, the breadth of power at play in colonial relationships' (Coulthard 2014: 30–31).

In *Zoopolis*, settler colonialism is solidified through the assimilation of non-human animals, while anthropocentrism is preserved through the reconfiguration of human-animal relationships within settler colonial governmentality. This illustrates the pitfalls and perils of de-anthropocentrizing ventures that are not also decolonizing. For neither non-human nor human colonial subjects can be 'recognized' into liberation by the settler state constituted through their subjugation.

References

Alfred, T. (1999) *Peace, Power, Righteousness*. Oxford: Oxford University Press.

Alfred, T. and Corntassel, J. (2005) Being Indigenous: Resurgences Against Contemporary Colonialism. *Government & Opposition* 40(4): 597–614.

Anderson, K. (2000) 'The Beast Within': Race, Humanity, and Animality. *Environ Plan D* 18(3): 301–320.

Anderson, V. D. (2004) *Creatures of Empire*. Oxford: Oxford University Press.

Anghie, A. (1996) Francisco De Vitoria and the Colonial Origins of International Law. *Social & Legal Studies* 5(3): 321–336.

Anghie, A. (2005) *Imperialism, Sovereignty, and the Making of International Law*. Cambridge, UK: Cambridge University Press.

Arneil, B. (1996) The Wild Indian's Venison: Locke's Theory of Property And English Colonialism In America. *Political Studies* 44(1): 60–74.

Asch, M. (1989) Wildlife: Defining the Animals the Dene Hunt and the Settlement of Aboriginal Rights Claims. *Canadian Public Policy / Analyse De Politiques* 15(2): 205–219.

Asch, M. (2002) From Terra Nullius To Affirmation: Reconciling Aboriginal Rights With The Canadian Constitution. *Canadian Journal of Law and Society* 17(2): 23–39.

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- Belcourt, B-R. (2014). Animal Bodies, Colonial Subjects: (Re)Locating Animality in Decolonial Thought. *Societies* 5(1): 1–11.
- Bisgould, L. and Sankoff, P. (2015). The Canadian Seal Hunt As Seen In Fraser's Mirror. In: Sankoff, P., Vaughan, B. & Sykes, K. eds. *Canadian Perspectives on Animals and the Law*. Toronto: Irwin Law. pp. 105-132.
- Borrows, J. (1997). Frozen Rights in Canada: Constitutional Interpretation And The Trickster. *American Indian Law Review* 22(1): 37–64.
- Borrows, J. (2000). Sovereignty's Alchemy: An Analysis Of Delgamuukw V British Columbia. *Osgoode Hall Law Journal* 37: 537–596.
- Borrows, J. (2012). (Ab)originalism And Canada's Constitution. *Supreme Court Law Review* 58: 351–397.
- Borrows, J. (2015). The Durability of Terra Nullius: Tsilhqot'in Nation V British Columbia. *University Of British Columbia Law Review* 48(3): p.701.
- Brighten, A. (2011). Aboriginal Peoples and the Welfare of Animal Persons: Dissolving The Bill C-10B Conflict. *Indigenous Law Journal* 10: 39–72.
- Bryan, B. (2000). Property as Ontology: On Aboriginal and English Understandings of Ownership. *The Canadian Journal of Law and Jurisprudence* 13(01): 3–31.
- Chakrabarty, D. (2000). *Provincializing Europe*. Princeton, N.J.: Princeton University Press.
- Coulthard, G. S. (2014). *Red Skin, White Masks*. Minneapolis: University of Minnesota Press.
- Dabashi, H. (2015). *Can Non-Europeans Think?* London: Zed Books.
- Deckha, M. (2007). Animal Justice, Cultural Justice: A Posthumanist Response to Cultural Rights in Animals. *Journal of Animal Law and Ethics* 2: 189–229.
- Deckha, M. (2008). Intersectionality and Post-Human Visions of Equality. *Wisconsin Journal of Law, Gender and Society* 23: 249–268.
- Deckha, M. (2006). The Salience of Species Difference for Feminist Theory. *Hastings Women's Law Journal* 17: 1–38.
- Deckha, M. and Pritchard, E. (2016). Recasting our Wild Neighbours: Contesting Legal Otherness in Urban Human-Animal Conflicts. *University of British Columbia Law Review* 49: 161–202.
- Donaldson, S. and Kymlicka, W. (2011). *Zoopolis*. Oxford: Oxford University Press.
- Elder, G., Wolch, J. and Emel, J. (1998). La Pratique Sauvage: Race, Place, and the Human-Animal Divide. In: Emel, J. & Wolch, J. eds. *Animal Geographies: Place, Politics, and Identity in the Nature-Culture Borderlands*. London & New York Verso. pp. 72-90.
- Esmeir, S. (2012). *Juridical Humanity*. Stanford, CA: Stanford University Press.
- Gombay, N. (2014). 'Poaching' – What's in a Name? Debates About Law, Property, and Protection in the Context of Settler Colonialism. *Geoforum* 55: 1–12.
- Hage, G. (2000). *White Nation*. New York, NY: Routledge.

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- Huggan, G. and Tiffin, H. (2010). *Postcolonial Ecocriticism*. London: Routledge.
- Isin, E. F. (2012). Citizenship After Orientalism: An Unfinished Project. *Citizenship Studies* 16(5-6): 563–572.
- Kim, C. J. (2015). *Dangerous Crossings: Race, Species and Nature in a Multicultural Age*. Cambridge: Cambridge University Press.
- Kymlicka, W. and Donaldson, S. (2014). Animal Rights, Multiculturalism, and the Left. *Journal of Social Philosophy* 45(1): 116–135.
- Kymlicka, W. and Donaldson, S. (2015). Animal Rights and Aboriginal Rights. In: Sankoff, P., Vaughan, B. & Sykes, K. eds. *Canadian Perspectives on Animals and the Law*. Toronto: Irwin Law. pp. 159-186.
- Lawrence, B. and Dua, E. (2005). Decolonizing Antiracism. *Social Justice* 32(4): 120–143.
- MacIntosh, C. (2015). Indigenous Rights and Relations With Animals: Seeing Beyond Canadian Law. In: Sankoff, P., Vaughan, B. & Sykes, K. eds. *Canadian Perspectives on Animals and the Law*. Toronto: Irwin Law. pp. 187-208.
- Maldonado-Torres, N. (2014). AAR Centennial Roundtable: Religion, Conquest, and Race in the Foundations of the Modern/Colonial World. *Journal of the American Academy Of Religion* 82(3): 636–665.
- Metallic, C. and Monture-Angus, P. (2002). Domestic Laws Versus Aboriginal Visions: An Analysis Of The Delgamuukw Decision. *Borderlands* 1 (2). Available at: http://www.borderlands.net.au/vol1no2_2002/metallic_angus.html
- Miller, R. J., Ruru, J., Behrendt, L. and Lindberg, T. (2010). *Discovering Indigenous Lands*. Oxford: Oxford University Press.
- Nadasdy, P. (2005). Transcending the Debate Over The Ecologically Noble Indian: Indigenous Peoples And Environmentalism. *Ethnohistory* 52(2): 291-331.
- Nadasdy, P. (2011). “We Don’t Harvest Animals We Kill Them”: Agricultural Metaphors And The Politics Of Wildlife Management In The Yukon”. In: Goldman, M.J., Nadasdy, P. & Turner M.D.. eds. *Knowing Nature: Conversations at the Intersection of Political Ecology and Science Studies*. Chicago: University of Chicago Press.
- Nadasdy, P. (2007). The Gift in the Animal: The Ontology of Hunting and Human-Animal Sociality. *American Ethnologist* 34(1): 25-43.
- Nichols, R. (2014). The Colonialism of Incarceration. *Radical Philosophy Review* 17(2): 435-455.
- Pasternak, S. (2014). Jurisdiction and Settler Colonialism: Where Do Laws Meet? *Canadian Journal of Law and Society* 29(02): 145-161.
- Plumwood, V. (1993). *Feminism and The Mastery of Nature*. London: Routledge.
- Salih, S. (2007). Filling Up the Space Between Mankind and Ape: Racism, Speciesism and the Androphilic Ape. *ARIEL: A Review of International English Literature* 38(1): 95-111.
- Sankoff, P., Black, V. and Sykes, K. (2015). Introduction. In: Sankoff, P., Vaughan, B. & Sykes, K. eds. *Canadian Perspectives on Animals and the Law*. Toronto: Irwin Law. pp. 1-8.
- Schneider, L. (2013). “There’s Something in the Water”: Salmon Runs and Settler Colonialism on the Columbia River. *American Indian Culture and Research Journal* 37(2): 149-164.

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- Sundberg, J. (2013). Decolonizing Posthumanist Geographies. *Cultural Geographies* 21(1): 33-47.
- Thobani, S. (2007). *Exalted Subjects*. Toronto, Ontario: University of Toronto Press.
- Tuck, E. and Yang, K. W. (2012). Decolonization Is Not A Metaphor. *Decolonization: Indigeneity, Education & Society* 1(1): 1-40.
- Willems-Braun, B. (1997). Buried Epistemologies: The Politics of Nature in (Post)Colonial British Columbia. *Annals of the Association of American Geographers* 87(1): 3-31
- Wolfe, P. (2006). Settler Colonialism and the Elimination of the Native. *Journal of Genocide Research* 8(4): 387-409.
- Wynter, S. (2003). Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation—An Argument. *CR: The New Centennial Review* 3 (3): 257-337.
- Zahara, A. RD. and Hird, M.J. (2015). Raven, Dog, Human: Inhuman Colonialism and Unsettling Cosmologies. *Environmental Humanities* 7(1): 169-190.

Cases

- Delgamuukw v British Columbia*, [1997] 3 SCR 1010.
- R v NTC Smokehouse LTD*, [1996] SCJ No 78.
- R v Sparrow*, [1990] SCJ No 49 at para 74.
- R v Tsilhqot'in Nation v British Columbia* [2014] SCJ No 44.
- R v Van der Peet*, [1996] SCJ No 77.

Notes

[1] Although according to John Locke, Indigenous peoples *could* claim ownership over *dead* non-human animals killed by hunting, since the act of killing constituted labour sufficient for exertion of property rights: 'this Law of reason makes the Deer, that *Indian's* who hath killed it; 'tis allowed to be his goods who hath bestowed his labour upon it, though before, it was the common right of every one' (Arneil 1996, quoting Locke).

[2] For example, Anghie (1995: 325–326) writes, '[sixteenth-century Spanish jurist Francisco de] Vitoria's characterization of the Indians as human and possessing reason is crucial to his resolution of the problem of jurisdiction. ... [I]t is precisely *because* the Indians possess reason that they are bound by *jus gentium* [the universal natural law system used to justify Spanish colonialism]. ... While appearing to promote notions of equality and reciprocity between the Indians and the Spanish, Vitoria's scheme finally endorses and legitimizes endless Spanish incursions into Indian society.'

[3] *R v Tsilhqot'in Nation v British Columbia* [2014] SCJ No 44.

[4] *R v Van der Peet*, [1996] SCJ No 77.

[5] *R v NTC Smokehouse LTD*, [1996] SCJ No 78.

[6] *Van der Peet*, [1996] 2 SCR 507 at para 49.

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[7] *R v Sparrow*, [1990] SCJ No 49 at para 74.

[8] Kymlicka's extensive writings on multiculturalism include *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1995), *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (2001), and *Multicultural Odysseys: Navigating the New International Politics of Diversity* (2007).

[9] See, for example, Kymlicka and Donaldson (2011: 5): 'Western (and most non-Western) cultures have for centuries operated on the premise that animals are lower than humans on some cosmic moral hierarchy, and that humans therefore have the right to use animals for their purposes. This idea is found in most of the world's religions, and is embedded in many of our day-to-day rituals and practices.'

[10] The Euro-American location of these thinkers and theories is never explicitly identified, perpetuating the projection of Western philosophizing as universal and untethered to the particularities of the time and place of its articulation (Dabashi 2015).

[11] See Donaldson and Kymlicka (2011: 146–147): 'Where animals do not or cannot self-regulate their reproduction ... imposing some limits on their reproduction is, we believe, a reasonable element in a larger scheme of cooperation. ... There are many relatively non-invasive ways in which we can control the reproductive rates of domesticated animals — birth control vaccines, temporary physical separation, non-fertilization of chicken eggs, etc.'

[12] See Donaldson and Kymlicka (2011: 149–150): 'Dog and cat members of mixed human-animal society do not have a right to food that involves the killing of other animals ... Cat companions are part of our community, and this means that insofar as we are able, we need to limit their ability to inflict violence on other animals — just as we would inhibit our children from doing so. In other words, part of our responsibility as members of a mixed human-animal society is to impose regulation on members who are unable to self-regulate when it comes to respecting the basic liberties of others.'

[13] See, for example, Donaldson and Kymlicka (2011: 13): 'According to contemporary theories of citizenship, human beings are not just persons who are owed universal human rights in virtue of their personhood; they are also citizens of distinct and self-governing societies located on particular territories. That is to say, human beings have organized themselves into nation-states, each of which forms an "ethical community" in which co-citizens have special responsibilities towards each other in virtue of their co-responsibility for governing each other and their shared territory.'

[14] For this argument, see Donaldson and Kymlicka (2011: 191–196).

[15] See, for example, Donaldson and Kymlicka (2011: 73): 'In this respect, the domestication of animals is like the importation of slaves from Africa, or of indentured labourers from India or China, who were brought into countries solely to provide labour, without the expectation of membership and without any right to become citizens. ... But whatever the original intent, the only legitimate response today – the only possible basis for reorganizing relationships on a just foundation – is to replace older relations of hierarchy with new relations of co-citizenship and co-membership in a shared community.' As well, see Donaldson and Kymlicka (2011: 79): 'The original process by which Africans entered America was unjust, but the remedy to that historic injustice is not to turn back the clock to a time when there were no Africans in America. Indeed, far from remedying the original injustice, seeking the extinction or expulsion of African Americans compounds the original injustice, by denying their right to membership in the American community. ... Similarly, there is no reason to assume that the remedy to the original injustice of domestication is to extinguish domesticated species. ... The remedy, rather, is to include them as members and citizens of the community.'

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Azeezah Kanji received her Juris Doctor from the University of Toronto's Faculty of Law, and LLM from the School of Oriental and African Studies, University of London. She serves as Programming Coordinator at Noor Cultural Centre, a Muslim academic and cultural institution in Toronto. She is also a regular contributor to Canadian media on issues of race and law, including in the *Toronto Star*, the *National Post*, and *Rabble*. Azeezah delivered University of Toronto's 2016 Hancock Lecture on national security, Islamophobia, and settler colonialism in Canada.