

# Confronting Animal Cruelty: Understanding Evidence of Harm Towards Animals

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## ABSTRACT

As society evolves, so too does the values and views of its citizens. While changing social values have allowed lawmakers to pass new laws and amend existing ones, our laws on animal abuse have changed very little. Sections 444 to 447 of the *Criminal Code* constitute Canada's primary federal animal protection legislation, and all provinces and territories have laws in respect to animal welfare. However, recent debate involving socio-legal and animal scholars alike agree that Canada's animal cruelty laws are considered the worst in the Western world. Drawing upon a litany of socio-legal and green criminological literature, this Paper examines the current understanding of 'animal cruelty' in Canadian federal legislation, the justifications for and against advancing progressive animal welfare reforms, and the necessary steps to be taken to further protect animals from harm and hold animal abusers accountable.

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## I. INTRODUCTION

As society evolves, so too do the values and views of its citizens. While changing social values have allowed lawmakers to pass new laws and amend existing ones, our laws on animal cruelty have changed very little. Socio-legal and criminological scholars are often asked to reflect upon abstract conceptions of justice and the criminal justice system yet for too long has a greater focus on animal cruelty and harms towards animals<sup>1</sup> remained ignored or received scarce attention.<sup>2</sup> One could presume that this is because mainstream criminological and legal analyses, respectively, view the general study of animal abuse, cruelty, and neglect to have little to no relevance of understanding and solving “the pressing interhuman problems of the day (“real” crime).”<sup>3</sup> However, if this presumption is correct, then it can no longer be the reality; opportunities and contemporary developments offer hope that positive action around issues of animal cruelty is possible, and must be adopted in proactive measures going forward.

Therefore, the aim of this Paper is to explore the concept of ‘animal cruelty’ within Canadian animal protection legislation and to see how

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<sup>1</sup> While I will refer to animals in this Paper, I am referring to nonhuman animals.

<sup>2</sup> With notable, international exceptions; see Piers Beirne, “Criminology and Animal Studies: A Sociological View” (2002) 10:4 *Society & Animals* 381 [Beirne 2002]; Piers Beirne, “From Animal Abuse to Interhuman Violence? A Critical Review of the Progression Thesis” (2004) 12:1 *Society & Animals* 39 [Beirne 2004]; Piers Beirne, *Confronting Animal Abuse: Law, Criminology, and Human-animal Relationships* (New York: Rowan & Littlefield Publishers, 2009) [Beirne 2009]; Piers Beirne, “Animal Abuse and criminology: introduction to a special issue” (2011) 55:5 *Crime, L & Soc Change* 349 [Beirne 2011]. See also James Gacek & Richard Jochelson, “Placing ‘Bestial’ Acts in Canada: Legal Meanings of ‘Bestiality’ and Judicial Engagements with Sociality” (2017) 6 *Annual Rev Interdisciplinary Studies* 236 [Gacek & Jochelson 2017a]; James Gacek & Richard Jochelson, “‘Animal Justice’ and Sexual (Ab)use: Consideration of Legal Recognition of Sentience for Animals in Canada” (2017) 40:3 *Man LJ* 337 [Gacek & Jochelson 2017b]; Richard Jochelson & James Gacek, “‘Ruff’ Justice: Canine Cases and Judicial Law-Making as an Instrument of Change” (2018) 24:1 *Animal L* 171 [Jochelson & Gacek 2018].

<sup>3</sup> Beirne 2002, *supra* note 2 at 383 [emphasis added].

alternative courses of action to redress animal abuse and harms in Canada can translate into concrete application. While evidence of harm towards animals is abound within academically empirical research, translating this evidence into a legal case to secure a criminal conviction is a different situation. In Canada there remains a lack of resources to investigate and enforce animal cruelty legislation,<sup>4</sup> even though there have been several judicial decisions in the past decade to suggest animal justice will be an issue with mounting prominence and support.<sup>5</sup>

The limits of Canadian criminal justice are standard fare within legal and criminological literature. What is less discussed, however, are the justifications for and against advancing progressive animal welfare reforms, and the necessary steps to be taken to further protect animals from harm and hold animal abusers accountable. Drawing upon a litany of literature from the disciplines of green criminology, socio-legal studies, and critical animal studies, this Paper suggests that a consideration of ‘ecocentric’ values and principles can be implemented within the legislative and criminal justice arenas,<sup>6</sup> among others. As discussed below, such a focus on ecocentrism contrasts the current anthropocentric logics at play within the criminal justice system, and would assist in the envisioning of legislation that better safeguards animals from unreasonable stress, injury, harm and cruelty in Canada.

This Paper begins by first reviewing current animal cruelty legislation in Canada, particularly focusing on the animal cruelty provisions within the *Criminal Code*. Concerns regarding these provisions and the challenges facing the definition of ‘animal cruelty’ in Canada are discussed. Building upon considerable green criminological and legal scholarship, I then discuss whether a green criminological and legal intersection, comprised of ‘ecocentric’ values can work to bolster support for alternative justice initiatives and progressive animal welfare reform. Such support is essential to proceeding animal justice forward, given the array of interdisciplinary literature highlighting the links between interpersonal violence and abuse

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<sup>4</sup> Holly Caruk “Animal cruelty laws rarely result in jail time: lawyer”, *CBC News* (30 March 2017), online: <[www.cbc.ca/news/canada/manitoba/animal-cruelty-laws-lawyer-1.4046654](http://www.cbc.ca/news/canada/manitoba/animal-cruelty-laws-lawyer-1.4046654)> [perma.cc/8BX7-P64U] [Caruk].

<sup>5</sup> For example, see generally Gacek & Jochelson 2017a, *supra* note 2; Gacek & Jochelson 2017b, *supra* note 2; Jochelson & Gacek 2018, *supra* note 2.

<sup>6</sup> Rob White, “Ecocentrism and criminal justice” (2018) 22:3 *Theoretical Criminology* 342 [White 2018].

towards animals, a focus of which I turn to in the third section of this Paper. Fourth, after drawing attention to the current state of animal cruelty legislation, I discuss potentials for ecocentric justice; more must be done to confront anthropocentric logics occurring both within and beyond the Canadian criminal justice system, such as encouraging multi-agency collaboration in the proper recording and collecting of evidence of animal cruelty harms; incorporating ecocentric principles into creating new crimes or case adjudication to hold animal abusers accountable for harms toward their nonhuman counterparts; and finally, investing time and resources in the education of Canadian citizens in the proper and humane treatment of animals. I conclude with reflections on the meaning of animal cruelty for Canadian society and the role interdisciplinary inquiry can provide in ameliorating these harms for animals.

## II. ANIMAL CRUELTY AND THE *CRIMINAL CODE*

The use and treatment of animals in Canada is presently regulated across the federal, provincial/territorial, and municipal governments.<sup>7</sup> Generally speaking, sections 444 to 447 of the *Criminal Code* constitute Canada's primary federal animal protection legislation, and all provinces and territories have laws in respect to animal welfare.<sup>8</sup> However, recent debate involving socio-legal and animal scholars alike agree that Canada's animal cruelty laws are considered the worst in the Western world. Animals are categorized and utilized by humans in many different ways, ranging from domesticated or companion animals, to service animals, laboratory animals, animals for factory farming (and eventual slaughter) to animals in the

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<sup>7</sup> Courtney Holdron, *The Case for Legal Personhood for Nonhuman Animals and the Elimination of their Status as Property in Canada* (LLM Thesis, University of Toronto Faculty of Law, 2013) [unpublished] [Holdron]. See also Lesli Bisgould, "Gay Penguins and Other Inmates in the Canadian Legal System" in John Sorenson, ed, *Critical Animal Studies: Thinking the Unthinkable* (Toronto: Canadian Scholars' Press Inc, 2014) 154 [Bisgould].

<sup>8</sup> The task of this Paper is to focus on federal animal cruelty legislation, however it is important to note that provinces and territories have enacted their own animal welfare legislation. While it is beyond the scope of the Paper, some provinces have enacted legislation that establishes humane societies or societies for the prevention of cruelty to animals, limiting their authority to cases of nonhuman animals in distress or have been abandoned, and for offences related to animal welfare. See Holdron, *supra* note 7 at 15-16; see generally Bisgould, *supra* note 7.

entertainment industry (i.e. aquariums and zoos, etc.).<sup>9</sup> In terms of the current Canadian justice system, especially its legal system, there exists an underlying assumption of human superiority and scant consideration of animal interests.<sup>10</sup> However, this assumption is problematic as it is supported on the claim that in order to determine what constitutes ‘humane’ treatment *supra* cruelty, the law generally looks to those who engage in nonhuman animal use for guidance, which presumes that these individuals would not impose more pain and suffering than is required for particular use.<sup>11</sup> As Holdron suggests, this approach is inconsistent with research that provides evidence that not only can nonhuman animals experience pain and pleasure, but that such animals can lead emotionally rich lives.<sup>12</sup> Furthermore, the approach is also inconsistent “with developments in legislation and policies...which recognize that nonhuman animals at the minimum have a morally significant interest in not suffering” at the hands of their human counterparts.<sup>13</sup>

In general terms, animal cruelty is defined depending on the jurisdiction, but in many cases animal cruelty is described through a list of acts of omission or commission instead of a specific legal definition of cruelty.<sup>14</sup> In Canada there exists a system of categorical protection for nonhuman animals in welfare legislation, which means that there are different standards of regulation for a companion animal versus wildlife in captivity, for example.<sup>15</sup> Since 1822, every province and territory has enacted some form of animal welfare legislation, with Quebec as the last province to enact its own legislation in 2015.<sup>16</sup> The *Criminal Code* (herein the *Code*)<sup>17</sup> is

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<sup>9</sup> See generally Karen M Morin, *Carceral Space, Prisoners and Animals* (New York: Routledge, 2018) [Morin].

<sup>10</sup> Holdron, *supra* note 7 at 13.

<sup>11</sup> *Ibid*; see also Gary Francione, *Animals as Persons: Essays on the Abolition of Animal Exploitation* (New York: Columbia University Press, 2008) at 8 [Francione 2008].

<sup>12</sup> Holdron, *supra* note 7 at 13.

<sup>13</sup> *Ibid*; see also Francione 2008, *supra* note 11 at 61.

<sup>14</sup> Rob White, “Inter-Species Violence: Humans and the Harming of Animals” in J Stubbs & S Tomsen, eds, *Australian Violence: Crime, Criminal Justice and Beyond* (Sydney: The Federation Press, 2016) at 179 [White 2016].

<sup>15</sup> Holdron, *supra* note 7 at 14; see also Bisgould, *supra* note 7.

<sup>16</sup> Holdron, *supra* note 7 at 14; see also The Canadian Press “Quebec passes animal protection law”, *The Star* (4 December 2015), online: <[www.thestar.com/news/canada/2015/12/04/quebec-passes-animal-protection-law.html](http://www.thestar.com/news/canada/2015/12/04/quebec-passes-animal-protection-law.html)> [perma.cc/VV6H-B4MM].

<sup>17</sup> *Criminal Code*, RSC 1985, c. C-46 [*Criminal Code*].

the main legal instrument for the protection of animals at the federal level, and its scope is not generally limited to specific categories of animals. By creating a list of offences that attempt to either limit or eliminate a nonhuman animal's exposure to pain and suffering, the *Code* sets out the minimum standard of permissible behaviour required concerning animals.<sup>18</sup> One could argue that the fact that we have animal cruelty legislation in Canada is an implicit indication that the law treats nonhuman animals as something to be protected, with a duty imposed upon humans to care about their nonhuman counterparts (especially as Canada's federal animal cruelty laws set out the country's concern for animal wellbeing). Unfortunately, such an argument is certainly not well-founded within the Canadian context. Canadian anti-cruelty legislation merely maintains the animal's existence as 'living property' which allows humans to treat their animals in ways that they are legally able to treat other forms of property.<sup>19</sup> There is no explicit recognition in the legislation that animal interests could reach beyond the property interests of humans, and therefore one must discern whether the law is doing enough to ensure that it no longer administers animals as mechanistic property to be oppressed, exploited or devalued. Indeed, the concern for animal wellbeing in the legislation "remains secondary and qualified in accordance with the interests of humans who own and have a financial interest in them as evidenced by the fact that anticruelty provisions were enacted in the part of the *Code* concerning property offences."<sup>20</sup>

It is significant to note that while the *Code* currently contains provisions in four separate sections (445.1, 446, 447, and 447.1)<sup>21</sup> that address cruelty

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<sup>18</sup> Holdron, *supra* note 7 at 15; see also Bisgould, *supra* note 7.

<sup>19</sup> Antonio Verbora, "The political landscape surrounding anti-cruelty legislation in Canada" (2015) 23:1 *Society & Animals* 45 at 62-63. [Verbora].

<sup>20</sup> Holdron, *supra* note 7 at 15; see also Bisgould, *supra* note 7. Like federal legislation, the concept of cruelty is the focus of the majority of provincial and territorial legislation. However, provincial and territorial legislation is problematic as there is a wide array of disparity currently existing across provinces and territories in terms of safeguarding nonhuman animals from harm. For examples, see Holdron, *supra* note 7 at 17-18.

<sup>21</sup> As outlined in the *Criminal Code*:

**Injuring or endangering other animals**

445 (1) Every one commits an offence who, wilfully and without lawful excuse,

(a) kills, maims, wounds, poisons or injures dogs, birds or animals that are not cattle and are kept for a lawful purpose; or

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(b) places poison in such a position that it may easily be consumed by dogs, birds or animals that are not cattle and are kept for a lawful purpose.

**Causing unnecessary suffering**

445.1 (1) Every one commits an offence who

(a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird;

(b) in any manner encourages, aids or assists at the fighting or baiting of animals or birds;

(c) wilfully, without reasonable excuse, administers a poisonous or an injurious drug or substance to a domestic animal or bird or an animal or a bird wild by nature that is kept in captivity or, being the owner of such an animal or a bird, wilfully permits a poisonous or an injurious drug or substance to be administered to it;

(d) promotes, arranges, conducts, assists in, receives money for or takes part in any meeting, competition, exhibition, pastime, practice, display or event at or in the course of which captive birds are liberated by hand, trap, contrivance or any other means for the purpose of being shot when they are liberated; or

(e) being the owner, occupier or person in charge of any premises, permits the premises or any part thereof to be used for a purpose mentioned in paragraph (d).

**Causing damage or injury**

446. (1) Every one commits an offence who

(a) by wilful neglect causes damage or injury to animals or birds while they are being driven or conveyed; or

(b) being the owner or the person having the custody or control of a domestic animal or a bird or an animal or a bird wild by nature that is in captivity, abandons it in distress or wilfully neglects or fails to provide suitable and adequate food, water, shelter and care for it.

**Keeping cockpit**

447. (1) Every one commits an offence who builds, makes, maintains or keeps a cockpit on premises that he or she owns or occupies, or allows a cockpit to be built, made, maintained or kept on such premises.

**Order of prohibition or restitution**

447.1 (1) The court may, in addition to any other sentence that it may impose under subsection 444(2), 445(2), 445.1(2), 446(2) or 447(2),

(a) make an order prohibiting the accused from owning, having the custody or control of or residing in the same premises as an animal or a bird during any period that the court considers appropriate but, in the case of a second or subsequent offence, for a minimum of five years; and

(b) on application of the Attorney General or on its own motion, order that the accused pay to a person or an organization that has taken care of an animal or a bird as a result of the commission of the offence the reasonable costs that the person or organization incurred in respect of the animal or bird, if the costs are readily ascertainable.

towards nonhuman animals, the *Code* itself does not provide a definition of cruelty.<sup>22</sup> Unfortunately, this leads to uncertainty in the judicial and legislative application of the relevant provisions. Such an issue can be witnessed in section 445 which prohibits the killing or injuring of animals, such as cattle for lawful purposes. Section 445 does not apply to stray nonhuman animals since “kept for a lawful purpose” contemplates a keeper of the nonhuman animal as well as a measure of control exercised by that person.<sup>23</sup> Not only does this leave nonhuman animals who are not owned without the benefit of the prohibition in the provision,<sup>24</sup> but it leaves open a relatively fluid quantum of control that may surreptitiously border cruelty. Section 445.1 is also problematic, as it requires the pain, suffering or injury of the animal to be “wilfull” and “unnecessary”.<sup>25</sup> As Holdron suggests, ‘unnecessary’ is generally interpreted as meaning “a person in pursuit of his or her legitimate purpose is obliged not to inflict pain, suffering or injury which is not inevitable but the purpose sought and the circumstances of the particular case are taken into account[,]”<sup>26</sup> which provides a low threshold for the determination of what is considered ‘unnecessary.’ Furthermore, Holdron, drawing upon the research and evidence of Bisgould, Humane Society International, and Animal Legal Defense Fund, outlines six main deficiencies with using the *Code* as a means of safeguarding nonhuman animals:

First, the term, [animal] cruelty, connotes a malevolent intention that creates a high threshold to pass in order to prove a significant element of the offence. Second, the application and scope of the current laws remain ineffective. Third, it is difficult to prosecute acts of cruelty under these provisions. Fourth, nonhuman animals do not receive equal protection under the *Code* as protections are given according to membership of an identified species of nonhuman animals. As previously shown, the *Code* offers virtually no protection for wild and stray animals. Fifth, the *Code* does not provide protection for nonhuman animals who are being trained to fight one another as it is not an offence to train nonhuman animals to fight. Last, the two most commonly applicable provisions are problematic as the

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<sup>22</sup> Holdron, *supra* note 7 at 15.

<sup>23</sup> *Ibid*; see also *Criminal Code*, *supra* note 17 at s 445.

<sup>24</sup> Holdron, *supra* note 7 at 15..

<sup>25</sup> *Criminal Code*, *supra* note 17 at s 445.1.

<sup>26</sup> Holdron, *supra* note 7 at 15; see also Edward Greenspan & Marc Rosenberg, annotated, *Martin’s Annual Criminal Code 2010* (Aurora: Canada Law Book, 2009) at 775 [Greenspan & Rosenberg].



term “wilful infliction of unnecessary suffering” in section 445.1(a) and “wilful neglect” in section 446(1)(b) require a high level of mens rea.<sup>27</sup>

Moreover, per Sankoff, the cruelty provisions in the *Code* were last reformed in 1955, maintaining “some of the archaic, outmoded language of that time, wording that trips up prosecutions on a fairly regular basis.”<sup>28</sup> However, on October 18<sup>th</sup>, 2018 the Minister of Justice and Attorney General of Canada, Jody Wilson-Raybould introduced Bill C-84, *An Act to Amend the Criminal Code (Bestiality and Animal Fighting)* in an attempt to both recognize and ameliorate gaps in the criminal law regarding bestiality as well as strengthen law around animal fighting.<sup>29</sup> At the time of writing, Bill C-84

<sup>27</sup> Holdron, *supra* note 7 at 16; see also Bisgould, *supra* note 7; Humane Society International, “Canada’s Criminal Code” (30 November 2012), online: *Humane Society International*

<[www.hsi.org/world/canada/work/puppy\\_mills/facts/criminal\\_code.html](http://www.hsi.org/world/canada/work/puppy_mills/facts/criminal_code.html)> [perma.cc/Y6TY-G2BV] [Humane Society International]; Animal Legal Defense Fund, “2017 Canadian Animal Protection Laws Ranking”(2017) at [x](#), online (pdf) : *Animal Legal Defense Fund* <[aldf.org/wp-content/uploads/2018/06/2017-Canadian-Rankings-Report-1.pdf](http://aldf.org/wp-content/uploads/2018/06/2017-Canadian-Rankings-Report-1.pdf)> [perma.cc/BP3W-FMSH].

<sup>28</sup> Peter Sankoff, “Canada still an animal welfare laggard”, *Policy Options* (13 October 2016) online: <[policyoptions.irpp.org/magazines/october-2016/canada-still-an-animal-welfare-laggard/](http://policyoptions.irpp.org/magazines/october-2016/canada-still-an-animal-welfare-laggard/)> [perma.cc/T3VR-A5W5] [Sankoff].

<sup>29</sup> Bill C-84, *An Act to amend the Criminal Code (bestiality and animal fighting)*, 1<sup>st</sup> Sess, 42 Parl, 2018 (first reading 18 October 2018) [Bill C-84]. As indicated in Bill C-84, proposed changes to the Criminal Code are as follows:

**“Section 160 (Bestiality)**

The Criminal Code prohibits, but does not define, bestiality. In 2016, the Supreme Court of Canada held in *R v DLW* that Canada’s bestiality offences did not prohibit non-penetrative sex acts with animals. The proposed amendments would add a definition of bestiality to clarify that it involves **any contact** for a sexual purpose between a person and an animal. Bestiality offences and their associated penalties, would not change.

These amendments will increase protections for children and other vulnerable individuals who may be compelled by another person to commit or witness sexual acts with animals. They will also better protect animals from violence and cruelty.

**Section 445.1(1)(b) and 447 (Cruelty to Animals)**

The Criminal Code includes a number of offences to address animal cruelty, particularly in the context of animal fighting. The proposed amendments will expand the existing provisions in order to protect all animals and capture all activities related to animal fighting. The changes will also prohibit:

had passed second reading and was to be referred to the Standing Committee in the House of Commons. While the introduction of this legislation is a formidable step in the right direction of fully protecting vulnerable populations “from all forms of abuse and violence”,<sup>30</sup> it remains to be seen whether Bill C-84 will be successful in passing into law in the near future. In the past, private members’ bills have been defeated in Parliament, and studies that have examined attempts to propose changes to anti-cruelty legislation demonstrate that industry groups and politicians within major political parties routinely resist these amendments.<sup>31</sup>

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- promoting, arranging, assisting, taking part in, or receiving money for the fighting or baiting of animals
  - breeding, training or transporting an animal to fight another animal
  - building or maintaining any arena for animal fighting, as current prohibitions are limited to building or maintaining a cockpit, which is a place used for cockfighting

Bill C-84 represents a common ground approach to ensuring the protection of children and animals from cruelty and abuse, while ensuring the law does not interfere with legitimate and traditional farming, hunting, and trapping practices, including Indigenous harvesting rights.”

<sup>30</sup> Department of Justice Canada, “Government announces measures to strengthen legal protections for children, vulnerable individuals, and animals.”, *Government of Canada* (October 18<sup>th</sup>, 2018), online: <[www.canada.ca/en/department-justice/news/2018/10/government-of-canada-announces-measures-to-strengthen-legal-protections-for-children-vulnerable-individuals-and-animals.html](http://www.canada.ca/en/department-justice/news/2018/10/government-of-canada-announces-measures-to-strengthen-legal-protections-for-children-vulnerable-individuals-and-animals.html)> [perma.cc/F9PD-Z2NQ]. Currently Bill C-84 is in second reading of the senate stage, and passed successfully through the House of Commons, online: <[openparliament.ca/bills/42-1/C-84/](http://openparliament.ca/bills/42-1/C-84/)> [perma.cc/6R8G-4TAX].

<sup>31</sup> See Lyne Létourneau, “Toward Animal Liberation? The New Anti-Cruelty Provisions in Canada and Their Impact on the Status of Animals” (2003) 40 *Alta L Rev* 1041 at 1046 (discussing parliamentary debates on enacting anti-cruelty legislation) [Létourneau]; John Sorenson, “Some Strange Things Happening in Our Country’: Opposing Proposed Changes in Anti-Cruelty Laws in Canada” (2003) 12 *Soc & Leg Studies* 377 at 388-89 [Sorenson 2003] (discussing the reception of anti-cruelty laws in Canada generally); Verbora, *supra* note 19 at 62 (discussing the failure of the Canadian legislature to update their animal-related criminal laws). See for e.g. Kasia Kieloch, “Bestiality! Loophole Closing Long Overdue” (22 May 2018), online (blog): *Robson Crim Legal Blog* <[www.robsoncrim.com/single-post/2018/05/22/Bestiality-Loophole-Closing-Long-Overdue](http://www.robsoncrim.com/single-post/2018/05/22/Bestiality-Loophole-Closing-Long-Overdue)> [perma.cc/DB9B-PAZC]. “Bill C-388 adds only one provision to s. 160 of the *Criminal Code* and is a line long. The provision states that bestiality means ‘any contract by a person, for a sexual purpose, with an animal’” (In December 2017, Conservative Member of Parliament Michelle Rempel introduced a private member’s bill titled Bill C-388, *An Act to Amend the Criminal Code (bestiality)*: Bill C-388, *An Act to Amend the Criminal Code (bestiality)*, 1<sup>st</sup> Sess, 42<sup>nd</sup> Parl, 2017 (first reading 13

Furthermore, Bill C-84 does not call into question the normalized relations between humans and animals, as it continues to permit “traditional farming, hunting, and trapping practices” (all of which could be construed as cruel) and the animal’s current status as property (i.e. as captive for humans’ desire for agricultural goals or for sport).<sup>32</sup>

In effect, Gacek and Jochelson indicate that unfortunately, “animals are under the control of people for their exclusive use, and as such, property owners have the right to use their property as they see fit.”<sup>33</sup> This has resulted in the interests of animals being given little to no legal consideration since at law they remain mere property.<sup>34</sup> Uses of animals span private purposes or commercial purposes, or are considered owned by the state and held in trust by the people (as in the case of ‘wildlife’ animals),<sup>35</sup> and the construction of ‘the animal’ in question “is always a pet or a laboratory animal, or a game animal... or some other form of animal property that exists solely for our use and has no value except that which we give it.”<sup>36</sup>

Indeed, the ontological status of nonhuman animals as defined and determined by humans has significant implications for the understanding of harm and prevention of violence against animals.<sup>37</sup> While legal definitions of animals vary greatly,<sup>38</sup> defining animals has generally started from a human-centred basis “even where the intent of the discussion is to

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December 2018)). Additionally, recall the defeat of Bill C-246, *Modernizing Animal Protections Act*. Among several proposed amendments included to acts dealing with shark finning, banning cat and dog fur, and requiring textiles made from animals to be labelled, the main proposition was to amend the *Criminal Code* to consolidate and modernize various offenses. However, this bill was defeated in Parliament. See Jochelson & Gacek 2018, *supra* note 2 at 180-181.

<sup>32</sup> Bill C-84, *supra* note 29. For a critical reconsideration of normalized human-animal relations, see also Morin *supra* note 9.

<sup>33</sup> Gacek & Jochelson 2017b, *supra* note 2 at 339; see generally Morin *supra* note 9.

<sup>34</sup> See generally Holdron, *supra* note 7. See also Gacek & Jochelson 2017a, *supra* note 2; Gacek & Jochelson 2017b, *supra* note 2; Bisgould, *supra* note 7; Lesli Bisgould & Peter Sankoff, “The Canadian Seal Hunt as Seen in Fraser’s Mirror” in Peter Sankoff, Vaughan Black & Katie Sykes, eds, *Canadian Perspectives on Animals and the Law* (Toronto: Irwin Law Inc, 2015) [Bisgould & Sankoff].

<sup>35</sup> White 2016, *supra* note 14 at 177.

<sup>36</sup> Gary Francione, “Law and Animals” in Marc Bekoff, ed, *Encyclopedia of Animal Rights and Animal Welfare*, vol 2 (California: Greenwood Press, 2010) 353 at 355 [Francione 2010].

<sup>37</sup> White 2016, *supra* note 14 at 177.

<sup>38</sup> For example, see Beirne 2009, *supra* note 2.

address issues of speciesism and animal rights.”<sup>39</sup> Even inanimate constructs such as churches and corporations have become legal persons able to assert their interests in courtrooms and legal settings,<sup>40</sup> yet animals remain the only sentient beings concretized as property in the law. While the fundamental premises of property law have not changed much since the seventeenth century, animals continue to be categorized as unfeeling chattels, insentient, and morally inferior, contrary to socio-legal and animal welfare evidence suggesting otherwise.<sup>41</sup>

There continues to be a growing amount of evidence demonstrating the “fundamental biological kinship between human beings and nonhuman animals” as well as the complex and sophisticated lives of nonhuman animals living within our ecosystems and communities.<sup>42</sup> Concomitantly we are witnessing a rise in evidence proving the intelligence and emotional complexity of nonhuman animals, which taken together suggests that humans must continue to reconsider their relationships with their nonhuman counterparts.<sup>43</sup> Indeed, a key part of animal welfare is the recognition and prevention of animal suffering, and acknowledging animal sentience demands a certain ‘duty of care’ on the part of humans to reinforce a conception of animals as having feelings that matter.<sup>44</sup> Such an acknowledgment also requires us to reconsider how we construct, record, and detail acts of animal cruelty and intention harm towards animals, and whether the accumulation of this evidence can shift our understandings of how to better protect and safeguard animals. Holdron has gone so far as to suggest that now is the time to form a new legal relationship between humans and other sentient life forms in order to remedy the significant concerns within Canadian animal welfare legislation at large.<sup>45</sup> Humans

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<sup>39</sup> White 2016, *supra* note 14 at 177.

<sup>40</sup> Gacek & Jochelson 2017b, *supra* note 2 at 337.

<sup>41</sup> See generally Gacek & Jochelson 2017a, *supra* note 2; see also Bisgould, *supra* note 7; Maneesha Deckha, “Critical Animal Studies and Animal Law” (2012) 18 *Animal L Rev* 207 [Deckha 2012]; Peter Sankoff, Vaughn Black, & Katie Sykes, eds, *Canadian Perspectives on Animals and the Law* (Toronto: Irwin Law Inc., 2015) [Sankoff et al.].

<sup>42</sup> Holdron, *supra* note 7 at 2; see also Bisgould, *supra* note 7.

<sup>43</sup> For example, see Chris Berdik “Should Chimpanzees have legal rights?”, *The Boston Globe* (14 July 2013) online: <[www.bostonglobe.com/ideas/2013/07/13/should-chimpanzees-have-legal-rights/Mv8iDDGYUFGNmWNLOWPRFM/story.html](http://www.bostonglobe.com/ideas/2013/07/13/should-chimpanzees-have-legal-rights/Mv8iDDGYUFGNmWNLOWPRFM/story.html)> [perma.cc/DP5Q-DLP9] [Berdik].

<sup>44</sup> White 2016, *supra* note 14 at 180.

<sup>45</sup> See generally Holdron, *supra* note 7.

have a moral imperative to change the legal classifications of nonhuman animals when post-Darwinian science challenges current ethical and legal treatment of animals, transforming knowledge from categorical distinctions between human and nonhuman animals to sliding scales of sentient, rights-bearing subjects.<sup>46</sup> Furthermore, “the common law can be said to have the liberty and duty to migrate to higher ground when facts and moral awareness dictate,”<sup>47</sup> suggesting that changes in the legal relationship between humans and animals are justified insofar as knowledge reflects their interests and inherent value. Perhaps now is the time to embark on this migration, and to transgress beyond humans’ current legal relationship with their nonhuman counterparts. As discussed below, green criminology and law can respectively and collaboratively bolster support for a moral imperative which favours progressive animal welfare reforms. With the growth of public interest in the matter of animal issues, such reforms remain paramount.

### III. THE ROLE OF GREEN CRIMINOLOGY AND LAW: TOWARDS ECOCENTRIC JUSTICE

Historically, criminology has afforded scant attention to environmental and animal-abuse issues, and when mainstream criminology has considered nonhuman animals it has been in relation to the needs of their human counterparts or reified as inferior, insentient property to own and control.<sup>48</sup> Concern for animals, and ecosystems comprised of animals, are inherently linked to environmental concerns. Green criminology fills this research lacunae by providing inter- and multidisciplinary engagements and approaches to environmental crimes and environmental harms that are often ignored by mainstream criminology. In so doing, green criminology redefines mainstream criminology “as not just being concerned with crime

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<sup>46</sup> See generally Bisgould, *supra* note 7.

<sup>47</sup> Holdron, *supra* note 7 at 5; see also Thomas G Kelch, “Toward a Non-Property Status for Animals” (1997-1998) 6 NYU Env’t LJ 531 at 535 [Kelch].

<sup>48</sup> James Gacek, “Species Justice for Police Eagles: Critiquing the Dutch ‘Flying Squad’ and Animal-Human Relations” (2017) 21:1 Contemporary Justice Rev 2 [Gacek]; see also Dale C Spencer & Amy Fitzgerald, “Criminology and animality: stupidity and the anthropological machine” (2015) 18:4 Contemporary Justice Rev 407 [Spencer & Fitzgerald].

or social harm falling within the remit of criminal justice systems.”<sup>49</sup> Indeed, as Brisman indicates, green criminological scholarship spans a wide variety of ‘green’ crimes, including but not limited to:

research on local, regional, international and transnational dimensions of: air pollution and water issues (access, pollution, scarcity); animal abuse, animal rights, and animal welfare; environmental justice and injustice (e.g., the disproportionate impact of environmental harms on marginalized populations); food and agricultural crimes; harm stemming from global warming and climate change; harm caused by the hazardous transport of e-waste; illegal disposal of toxic waste; the legal and illegal trade of flora and fauna; and violations of workplace health and safety regulations that have environmentally-damaging consequences.<sup>50</sup>

One could postulate that, rather than there being one distinct green criminology, green criminology is an umbrella term for a criminology concerned with the incorporation of green perspectives into mainstream criminology, as well as a growing concern with mainstream criminology’s general neglect of ecological issues.<sup>51</sup>

Furthermore, green criminology’s blossoming as a key area of debate was supplemented by legal scholarship turning towards environmental harms and the collateral damages such harms would have on ecosystems and neighbouring communities.<sup>52</sup> While there are times where green criminology will look beyond strict legalist/criminal law conceptions to examine questions of justice, rights, morals, and victimization, this is not to say that a green criminological and legal intersection cannot work together to progress interdisciplinarity forward and produce workable solutions. As indicated on an earlier occasion, “when paired together, green criminology and law have the potential to reconstitute the animal as something more than mere property within law; shed light upon the anthropocentric logics

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<sup>49</sup> Angus Nurse, “Comment: Green Criminology: shining a critical lens on environmental harm” (2017) 3:10 *Palgrave Communications* 1 at 2 [Nurse].

<sup>50</sup> Avi Brisman, “Tensions for Green Criminology” (2017) 25:2 *Crit Criminol* 311 at 319-320 [Brisman].

<sup>51</sup> See generally Michael J Lynch & Paul B Stretesky, “Exploring green criminology: Towards a green criminological revolution” (2015) 27:2 *J Envtl L* 368 [Lynch & Stretesky].

<sup>52</sup> See generally Matthew Hall, “The role and use of law in green criminology” (2014) 3:2 *Intl J for Crime, Justice & Soc Democracy* 96 [Hall 2014].

at play within the criminal justice system; and promote positive changes to animal cruelty legislation.”<sup>53</sup>

Public interest in animal issues is on the rise; socio-legal and animal scholars and activists, propelled by growing concerns for animal welfare, continue to mount pressure against social institutions in society.<sup>54</sup> These groups continue to issue calls for progressive animal welfare reforms, especially as the law is acutely relevant for constituting the animal and goes hand in glove with how humanness and animality are deeply imbedded in the construction of law and society—a consideration which green criminology brings to the fore.<sup>55</sup> There is nothing inherently natural or historically constant about our relationships with animals; such relationships are a social construction, comprising complex sets of rules, norms, behaviours, and controls that are aimed at inundating the human subject within their regulated social world.<sup>56</sup> For example, animals feature prominently in the belief and practices of Indigenous Canadians, yet there is wide variation in how animals participate in the human-animal relationship.<sup>57</sup> As Legge and Robinson suggest, Indigenous epistemologies

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<sup>53</sup> James Gacek & Richard Jochelson, “Animals as Something More Than Mere Property: Interweaving Green Criminology and Law Together” (forthcoming) Submitted to Soc Sciences [Gacek & Jochelson forthcoming].

<sup>54</sup> For examples, see Bisgould, *supra* note 7; Bisgould & Sankoff, *supra* note 34; Gacek & Jochelson 2017a, *supra* note 2; Gacek & Jochelson 2017b, *supra* note 2; Jochelson & Gacek 2018, *supra* note 2; Katie Sykes, “Rethinking the Application of Canadian Criminal Law to Factory Farming” in Peter Sankoff, Vaughan Black & Katie Sykes, eds, *Canadian Perspectives on Animals and the Law* (Toronto: Irwin Law Inc, 2015) 33 [Sykes]; Verbora, *supra* note 19.

<sup>55</sup> See generally Gacek, *supra* note 48.

<sup>56</sup> *Ibid*; see also Gacek & Jochelson forthcoming, *supra* note 53; John Sorenson, *About Canada: Animal Rights*, (Halifax and Winnipeg: Fernwood Publishing, 2010) [Sorenson 2010].

<sup>57</sup> Melissa Marie Legge & Margaret Robinson, “Animals in Indigenous Spiritualities: Implications for Critical Social Work” (2017) 6:1 J Indigenous Soc Development at 3 [Legge & Robinson]. For further examples of Indigenous perspectives on human-animal relations, see Anne-Christine Hornborg, *Mi'kmaq Landscapes: From Animism to Sacred Ecology* (Hampshire: Ashgate, 2013) [Hornborg]; Raven Sinclair, “Bridging the Past and the Future: An Introduction to Indigenous Social Work Issues” in Raven Sinclair, Michael Hart, & Gord Bruyere, eds, *Wicihitowin: Aboriginal Social Work in Canada* (Halifax: Fernwood Publishing, 2009) 19 [Sinclair]; Michael Anthony Hart, “Anti-Colonial Indigenous Social Work,” in Raven Sinclair, Michael Hart, & Gord Bruyere, eds, *Wicihitowin: Aboriginal Social Work in Canada* (Halifax: Fernwood Publishing, 2009) 25 [Hart].

view animals as significant for the emotionally rich kinships animals provide humans (with Indigenous people living ‘shoulder to shoulder’ with animals); as sources of wisdom and protection; as significant to Indigenous ceremonies and rituals; and as historically important to contemporary Indigenous peoples.<sup>58</sup> Taken together, unique relationships with animals feature centrally in many Indigenous spiritualities, and lessons derived from the interconnectedness of humans and animals can lead the focus and tactics of efforts for both present-day environmental and decolonization activism.<sup>59</sup>

Furthermore, privileging humans and human interests over and above those of their nonhuman counterparts is an essential premise of anthropocentrism.<sup>60</sup> Within the framework of green criminology, law’s assumptions are laid bare as apprised of anthropocentric logics. Unfortunately, traditional criminal justice systems are often inadequate to redress the impact of environmental and animal abuse harm. Indeed, such logics can be cruel and coercive; however, green criminologists like Hall,<sup>61</sup> have made a significant case for the wider utilization of restorative justice and mediation-based approaches for redress and remediation, as a means of “providing alternative or parallel justice mechanisms for both human and nonhuman victims of environmental crimes and broader environmental harms.”<sup>62</sup> Considerations of alternative justice initiatives are integral to green criminology’s critical approach. To supplement this discussion, a green criminological and legal intersection, comprised of ecocentric values (discussed below) can work to bolster support for alternative justice initiatives and progressive animal welfare reform, and shines a critical lens upon the anthropocentric logics at play in the criminal justice system.

Per White, ecocentrism refers to the view that the environment ought to be valued for its own sake apart from any instrumental or utilitarian value to humans, and “include notions of the intrinsic value of nature, the precautionary principle, the primacy of environmental well-being and

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<sup>58</sup> Legge & Robinson, *supra* note 57 at 3.

<sup>59</sup> *Ibid*; see also Sinclair, *supra* note 57; Hart, *supra* note 57.

<sup>60</sup> See generally Vito De Lucia, “Competing narratives and complex genealogies: The ecosystem approach in international environmental law” (2015) 27:1 J Envtl L 91 [De Lucia].

<sup>61</sup> Matthew Hall, “Exploring the cultural dimensions of environmental victimization” (8 Aug 2017), online (pdf): Palgrave Communications <[www.nature.com/articles/palcomms201776.pdf](http://www.nature.com/articles/palcomms201776.pdf)> [perma.cc/9GEW-RDLR] [Hall 2017].

<sup>62</sup> Nurse, *supra* note 49 at 3.



remediation for any harms done.”<sup>63</sup> Anthropocentrism, too, involves a range of philosophies and practices, “from disregard for the environment to stewardship models of environmental care. Nonetheless, the defining characteristic of anthropocentrism is that humans are ends-in-themselves, while other entities are only *means* to attain the goals of humans.”<sup>64</sup> In terms of animal cruelty, harms towards nonhuman animals is thus only of consequence when it is measured by reference to human interests and values. In relation to species justice, the kinds of questions we are forced to ask ourselves include which species are threatened and why, as well as why some species are favoured by human communities and some are non-valued.<sup>65</sup> Depending on human use, animal welfare and rights are protected differently, depending on species and circumstance, yet the underlining thread connecting these protections relate back to *human* interests at large.

In terms of manifesting ecocentrism within the criminal justice institutional sphere, White provides insightful commentary into how conceptions of ecocentric values can be translated into practical contexts.<sup>66</sup> Drawing upon the New South Wales Land and Environment Court (NSWLEC) in Australia—one of the oldest specialist environment courts in the world—White contends that the NSWLEC refers to five key indicators of ecocentrism (see Table 1.1). As part of its proceedings, the NSWLEC has the ability to carry out assessments of environmental harm, as well as sentencing offenders for criminal offences pertaining to environmental laws.<sup>67</sup>

Recognizing that there exists complexities and conundrums associated with ecocentrism, White goes on to state that, rightly, there still is merit in ecocentric evaluations based upon these indicators, because:

At the heart of this evaluation is ecology, involving a holistic understanding of the natural world. For judicial officers—and by extension others working in the criminal justice arena (such as police and correctional officers)—this requires a modicum of specialist expertise on environmental matters and an appreciation of the importance of ecological integrity. Fundamentally, it requires the elevation of

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<sup>63</sup> White 2018, *supra* note 6 at 343-344; see also Claire Williams, “Wild law in Australia: Practice and possibilities” (2013) 30 *Environmental Planning & LJ* 259 [Williams].

<sup>64</sup> *Ibid* at 345 [emphasis in original].

<sup>65</sup> See generally White 2016, *supra* note 14; see also Gacek, *supra* note 48.

<sup>66</sup> See White 2018, *supra* note 6; see also Rob White, *The sentencing of environmental offences involving non-human environmental entities in the NSW Land and Environment Court* (LLM Thesis, University of Tasmania, 2017) [unpublished].

<sup>67</sup> White 2018, *supra* note 6 at 348.

the intrinsic worth of nature (and its various component parts) to the level of first principles.<sup>68</sup>

A focus on animal cruelty, both in the legislative and criminal justice arenas, can include these ecocentric principles. As Gacek and Jochelson indicate, harms to animals “which are detrimental yet legal provides not only necessary attention to a contentious aspect of law but supplements a greater consideration for ‘green’ issues at large.”<sup>69</sup> For example, by recognizing the inherent worth of the nonhuman animal, the gravity or severity of the cruelty towards it, and the measures taken to restore and preserve its moral, legal and ecological integrity, we begin to acknowledge the animal’s right to live free from harm in the natural world. Indeed, the case can be made that further law reform, apprised of ecocentric principles, “has the potential to propagate societal understandings of human-animal relations and galvanize the discussion about appropriate and just treatment of animals in Western, liberal democracies.”<sup>70</sup>

As green criminological scholarship continues to study and investigate “those harms against humanity, against the environment (including space) and against nonhuman animals committed both by powerful institutions (e.g. governments, transnational corporations, military apparatuses) and also by ordinary people.”<sup>71</sup> Brisman, in a similar vein to White, rightly contends that all citizens “can play a role in how we *respond* to those harms through existing appendages of and new features within the criminal justice system.”<sup>72</sup> In this spirit, green criminological and legal studies apprised of ecocentric logics can not only take a modest step forward in interdisciplinarity, but develop workable outcomes for animal law, rights, and justice. By redressing evidence which attends to the linkages between animal abuse and interpersonal violence through an ecocentric lens, we

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<sup>68</sup> *Ibid* at 349.

<sup>69</sup> Gacek & Jochelson forthcoming, *supra* note 53.

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

<sup>71</sup> Piers Beirne & Nigel South, “Introduction: approaching green criminology” In Piers Beirne & Nigel South, eds, *Issues in green criminology: Confronting harms against environments, humanity and other animals* (Willan: Cullompton, 2007) at xiii [Beirne & South].

<sup>72</sup> Avi Brisman, “Of Theory and Meaning in Green Criminology” (2014) 3:2 *Intl J for Crime, Justice & Soc Democracy* 21 at 29 [emphasis in original] [Brisman 2014]; see also Rob White, ed, *Environmental Crime: A Reader* (Willan: Cullompton, 2009) [White 2009]; Rob White, *Transnational Environmental Crime: Toward an Eco-Global Criminology* (Abingdon: Routledge, 2011) [White 2011].

begin to acknowledge alternative constructions of ‘the animal’ while providing a more effective response to animal cruelty, a discussion of which I turn to next.

#### IV. RECONSIDERING THE CRUELTY CONNECTION: LINKING INTERPERSONAL VIOLENCE WITH ANIMAL ABUSE

Animal cruelty is a widespread phenomenon with serious implications for animal welfare, individual and societal wellbeing. Within veterinary pathological literature, “extensive research has identified acts of animal cruelty, abuse and neglect as crimes that may be indicators and/or predictors of crimes of interpersonal violence and public health problems.”<sup>73</sup> Such a consideration has also been a growing concern and gaining traction within disciplines like sociology, criminology, and critical animal studies.<sup>74</sup> Renewed interest in considering animal cruelty, not only as a crime against the welfare of animals, but also “as a bellwether and a gateway to possible acts of interpersonal violence has coincided with societal demand for increased prosecution and punishment of cruel acts against animals”.<sup>75</sup>

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<sup>73</sup> Randall Lockwood & Phil Arkow, “Animal Abuse and Interpersonal Violence: The Cruelty Connection and Its Implications for Veterinary Pathology” (2016) 53:5 *Veterinary Pathology* 910 at 910 [Lockwood & Arkow].

<sup>74</sup> For examples, see Beirne 2002, *supra* note 2; Beirne 2004, *supra* note 2; Beirne 2011, *supra* note 2; Cheryl L Currie, “Animal Cruelty by Children Exposed to Domestic Violence” (2006) 30:4 *Child Abuse & Neglect: Intl J* 425 [Currie]; Deckha 2012, *supra* note 41; Eleonora Gullone, “An Evaluative Review of Theories Related to Animal Cruelty” (2014) 4:1 *J Animal Ethics* 37 [Gullone]. In relation to green criminological scholarship contributions, see Nik Taylor & Amy Fitzgerald, “Understanding animal (ab)use: Green criminological contributions, missed opportunities and a way forward” (2018) 22:3 *Theoretical Criminology* 402 [Taylor & Fitzgerald].

<sup>75</sup> Lockwood & Arkow, *supra* note 73 at 911; for Canadian examples, see also Cara Melbye “Canada’s animal cruelty shame”, *NOWToronto* (31 August 2016) online: <[nowtoronto.com/news/canada-s-animal-cruelty-shame/](http://nowtoronto.com/news/canada-s-animal-cruelty-shame/)> [perma.cc/XV99-CPN2] [Melbye]; Sankoff, *supra* note 28; Camille Labchuk “Our animal cruelty laws need to catch up in 2018”, *The Globe and Mail* (25 February 2018) online: <[www.theglobeandmail.com/opinion/our-animal-cruelty-laws-need-to-catch-up-in-2018/article38109498/](http://www.theglobeandmail.com/opinion/our-animal-cruelty-laws-need-to-catch-up-in-2018/article38109498/)> [perma.cc/K5CB-S6JM] [Labchuk].

Kellert and Felthous outline a preliminary classification of nine distinct motives for animal cruelty,<sup>76</sup> which as Lockwood and Arkow suggest, can be helpful for medical professionals to be aware of so that they can better generate questions to ask or scenarios to evaluate when reviewing the available evidence of animal cruelty at hand.<sup>77</sup> The nine motives are as follows:

- (1) To control an animal – to control or shape an animal’s behaviour or eliminate presumably undesirable characteristics of an animal;
- (2) To retaliate against an animal – extreme punishment or revenge for a presumed wrong on the part of the animal;
- (3) To satisfy a prejudice against a species or breed – may be associated with cultural values;
- (4) To express aggression through an animal – instilling violence tendencies in the animal in order to express violent, aggressive behaviours toward other people or animals;
- (5) To enhance one’s own aggressiveness – to improve one’s aggressive skills or to impress others with a capacity for violence;
- (6) To shock people for entertainment – to ‘entertain’ friends;
- (7) To retaliate against another person – exacting revenge;
- (8) Displacement of hostility from a person to an animal – displaced aggression against authority figures; and
- (9) Nonspecific sadism – absence of any particular provocation or especially hostile feelings toward an animal.<sup>78</sup>

Does this mean that companion animals are more likely to be abused in a household experiencing interpersonal violence? Unfortunately, the answer is not that simple, as this question cannot be addressed in a similar manner that studies of other crimes are, namely, through qualitative and quantitative analyses of data. Currently in Canada there are no small- or large-scale studies of animal cruelty which have collected evidence to answer this question (as discussed below). While a good social scientist remains mindful that correlation does not equal causation (and so the cruelty

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<sup>76</sup> See generally Stephen R Kellert & Alan R Felthous, “Childhood Cruelty toward Animals among Criminals and Noncriminals” (1985) 38:12 Human Relations 1113 [Kellert & Felthous].

<sup>77</sup> Lockwood & Arkow, *supra* note 73 at 912.

<sup>78</sup> *Ibid* at 913.

‘connection’ is not concrete as such), this does not mean a focus on the cruelty connection is all for naught. What is known about the link between animal abuse and interhuman violence is that clearly, “family violence, including animal abuse, is a multifaceted phenomenon in which various forms of abuse often occur together and in which the presence of one form might signify the existence of others. It is likely, too, that some of the key sociological dimensions of animal abuse mirror those of interhuman violence.”<sup>79</sup> In many cases, acts of violence against animals “are modeled on the same dynamics of power and control that frequently mark the trajectory of intimate partner violence, sexual assault, child abuse, and other violent antisocial behaviour.”<sup>80</sup>

Taking into consideration the values of ecocentrism, an awareness of the cruelty connection has many significant benefits for the overall welfare of animals and for the further safeguarding of animals from future cruelty, abuse and neglect. For example, animal maltreatment, per Lockwood and Arkow, is one of most challenging diagnoses in clinical work, “requiring time, experience, emotional energy, sensitivity, tact, and not a small measure of courage” to grapple with the realities of animal suffering medical professionals witness.<sup>81</sup> According to the authors, awareness of the connection can assist attending veterinarians “make the strongest possible case for investing time and resources” needed to be able to tell the victim’s full story (whether human or nonhuman) in a court of law, and can provide valuable insights “into the possible risks the offender may pose to other animals or society in general” should the animal abuser not be held accountable for his or her actions.<sup>82</sup> By recognizing the inherent worth of the nonhuman animal, medical professionals provide further contextualization of the distinct harm the animal has suffered, of which may assist the judiciary in their adjudication and sentencing. Furthermore, such insights can be instrumental in aiding the court and mental health professionals “in determining the most appropriate intervention for those found guilty of animal cruelty”,<sup>83</sup> as well as what remediation is necessary to

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<sup>79</sup> Beirne 2004, *supra* note 2 at 42.

<sup>80</sup> Lockwood & Arkow, *supra* note 73 at 910.

<sup>81</sup> *Ibid* at 911; see also Phil R Arkow, “Recognizing and responding to cases of suspected animal cruelty, abuse, and neglect: what the veterinarians need to know” (2015) 6 *Veterinary Medicine: Research & Reports* 349 [Arkow].

<sup>82</sup> *Ibid* at 910.

<sup>83</sup> *Ibid*.

restore and repair the ecological integrity of the victim (whether human or nonhuman) within their living environment and community.

Furthermore, research on the cruelty connection will likely proceed apace, in part “because it is a reliable vehicle for criminologists to pierce the general veil of social inaction...The principal site of investigation of the link probably will continue to be family violence.”<sup>84</sup> While this research is timely, it is not the sole area criminological and legal studies should consider. As I discuss below, there are additional sites for social action to occur. These sites not only attempt to directly redress animal cruelty legislation in Canada, but extend beyond the legislative arena to illuminate potential recourse for progressive change in how humans understand nonhuman animals in our world.

## V. DISCUSSION: POTENTIALS FOR ECOCENTRIC JUSTICE?

As this Paper demonstrates, discussions concerning the further safeguarding of nonhuman animals from cruelty is by no means a simple discussion, nor is this Paper an exhaustive understanding for one to comprehensively understand the social construction of animal cruelty. Notwithstanding, an overarching theme which transcends these discussions continues to be how federal animal welfare legislation, specifically the cruelty provisions of the *Code*, require a serious reconsideration (if not radical overhaul) of reform to bring it up to the same level of progress as witnessed in other Western countries.<sup>85</sup> Ecocentrism can be a viable alternative to the current anthropocentric logics at play in the legislative and criminal justice arenas, and I address several potential implications for research, theory, and policy below.

First, encouraging multi-agency collaboration in the proper recording and collecting of evidence of animal cruelty harms would be a solid step in the right direction. Recognizing the inherent value of nonhuman animals and their interests to be safeguarded from harm, agencies like the Royal Canadian Mounted Police (RCMP), Statistics Canada and the provincial Societies for the Prevention and Cruelty to Animals (SPCAs) can draw upon ecocentric values and principles and work together to document instances of animal cruelty in a more comprehensive manner. Doing so will not only create comprehensive databases of animal cruelty evidence, but it will

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<sup>84</sup> Beirne 2002, *supra* note 2 at 384.

<sup>85</sup> See generally Sankoff, *supra* note 28; see also Jochelson & Gacek 2018, *supra* note 2.

encourage researchers and agencies like the RCMP, Statistics Canada, and SPCAs to use the data and evidence collected in relation to their own understandings of ecocentrism.

Furthermore, researchers examining and investigating animal cruelty must also pay urgent attention to data collection and methodological issues of collecting evidence of animal cruelty. For example, in both Canada and the United States, data on animal cruelty is scant, and when it is available it is thoroughly unreliable and difficult to standardize across jurisdictions.<sup>86</sup> There are few self-report studies of animal cruelty and there continues to be no large-scale victimization surveys that include questions on incidence, frequency, and severity of animal cruelty. As Beirne suggests, much existing empirical data “are compromised by the use of control groups of nonrandom composition and the uncritical constitution and haphazard analytical employment of such categories as ‘abuse’ or ‘cruelty.’”<sup>87</sup> Moreover, we know very little of the relationships between animal cruelty and key variables like gender, age, race, class, sexual orientation, political affiliation, and religiosity. All of these factors must be taken into consideration if we are to appropriately address the evidence drought.

Second, the creation of new crimes and harsher sentences in cases of animal cruelty has the potential to redress the necessity of holding animal abusers accountable for the cruel acts they commit against animals. For example, Davies contends that, given the linkages between animal cruelty and domestic violence, a new crime called ‘aggravated animal cruelty’ should be included in the *Code*. In terms of this crime, it recognizes that animal abuse and neglect often exist as part of a cycle of domestic violence, and so an offence is deemed aggravated animal cruelty when it is (1) performed in the presence of a minor; or (2) performed with the purpose of intimidating, coercing, or threatening another person, in which the penalty is an indictable offence upon conviction.<sup>88</sup>

Another shift in criminalization would be to engage in a more nuanced understanding of ‘willful neglect’ than what is currently provided in the *Code*. As Sankoff contends:

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<sup>86</sup> See generally Beirne 2002, *supra* note 2; see also Chris Davies, “Animal Cruelty Legislation Canada” (2013), online (pdf): <[www.terryslaw.ca/wp-content/uploads/2013/12/Animal-Welfare-Bill-Canada-V11.pdf](http://www.terryslaw.ca/wp-content/uploads/2013/12/Animal-Welfare-Bill-Canada-V11.pdf)> [perma.cc/36YS-2ANJ].

<sup>87</sup> Beirne 2002, *supra* note 2 at 384; see also Beirne 2011, *supra* note 2.

<sup>88</sup> Davies, *supra* note 86 at 23.

If you're having trouble conceptualizing what "willful neglect" could possibly mean, you're not alone. The courts struggle with it too. Every other negligence provision in the Code recognizes that the point of punishing neglect is to sanction people who don't mean to inflict harm, but who are acting so poorly compared to the "reasonable person" that they deserve to be held responsible anyway. But negligence in the animal cruelty context can only be committed when a person *intentionally* neglects an animal. So if you're simply an absent-minded oaf who doesn't feed your cat for three weeks, you're free to go. In Canada, you have to be *trying* to neglect your cat in order to run into problems with our criminal law.

It's no wonder that prosecutors have stopped bringing charges for neglect, most likely because they're embarrassed to have to explain this stupidity to judges.<sup>89</sup>

Sankoff goes on to state that in order to fix the shortcomings of 'wilful neglect', the *Code* could adopt the standard test for criminal negligence used in the rest of the *Code*. I concur with Sankoff in part, and would add that, given "the majority of cases that are reported to humane law enforcement agencies represent instances of neglect[,]"<sup>90</sup> it might be beneficial for the *Code* to distinguish neglect as incidental, short term, and easily resolved through educational or social service interventions from 'gross neglect,'<sup>91</sup> the latter referring to long term, large scale, and chronic neglect. While Sankoff indicates that by adopting the criminal negligence standard, criminal liability "would only flow in extreme circumstances where the person's conduct towards an animal was *dramatically* worse than what a reasonable person would have done[,]"<sup>92</sup> a clear and objective distinction between neglect and gross neglect could serve to be more easily communicable to judges in a criminal case.

A word of caution is necessary in this second potential implication, however; while new crimes and harsher sentences in animal cruelty laws may have a deterrent effect on would-be or repeat offenders,<sup>93</sup> Deckha contends that laws against animal cruelty "create proximity in the social constructedness of various forms of difference."<sup>94</sup> Put differently, while there may exist genuine concerns about animal suffering in the motivations

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<sup>89</sup> Sankoff, *supra* note 28 [emphasis in original].

<sup>90</sup> Lockwood & Arkow, *supra* note 73 at 914.

<sup>91</sup> *Ibid.*

<sup>92</sup> Sankoff, *supra* note 28 [emphasis in original].

<sup>93</sup> Haydn Watters "Animal Cruelty: Is jail a reasonable punishment?", *CBC News* (30 October 2016), online: <[www.cbc.ca/news/canada/nova-scotia/animal-cruelty-punishments-1.3823941](http://www.cbc.ca/news/canada/nova-scotia/animal-cruelty-punishments-1.3823941)> [perma.cc/UYU7-MDC8] [Watters].

<sup>94</sup> Maneesha Deckha, "Welfarist and Imperial: The Contributions of Anticruelty laws to Civilizational Discourse" (2013) 65:3 *American Quarterly* 515 at 516.



of legislators to vote on bills to amend animal cruelty laws (as demonstrated above, Bill C-84 is an example of this), the mandates of such laws continue to regulate animal exploitation rather than prevent it. Anticruelty laws which only reaffirm anthropocentrism (such as Davies' creation of aggravated animal cruelty) instead of ecocentrism "do not affect customary practices that are part of the social fabric or part of accepted institutional use of animals."<sup>95</sup> Therefore, in casting scrutiny on the efficacy of such laws we must task ourselves with the responsibility of calling into question institutionalized social practices where animal cruelty specifically and animal abuse at large "is routine, ubiquitous, and often defined as socially acceptable."<sup>96</sup>

In sum, criminalizing a behaviour such as animal cruelty should not be the only way to reduce the occurrence of the offence.<sup>97</sup> Although not always the case, criminalization can be seen as a 'back-end' process, whereby animals are either considered an afterthought to the law (i.e., 'add animals and stir'), or are considered significant only after the criminal act has occurred, when in fact there is more work to be accomplished (and can be achieved) through 'front-end' processes and issues. Indeed, as the third and final implication, I believe in the age-old adage that the pen is mightier than the sword; educating democrats on the humane treatment of animals has the potential to viably shift the winds of human-animal affairs away from the anthropocentric logics in legislation and criminal justice we have come to know. For example, the way we prescribe animal cruelty needs further context; a legal definition of animal cruelty would certainly clarify an already muddled area of legislation demonstrating a profundity of discursive and ancillary effects. Furthermore, citizens must no longer be treated as a befuddled herd of passive fools and hysterical hotheads;<sup>98</sup> instead, they must be accorded a window of opportunity to struggle with the complex trade-offs that animate decisions about how we continue to socially construct animal cruelty. Indeed, rhetoric matters to this education, and playing to criminology's self-image as a 'dismal science,' the strengths this discipline has for both animal welfare reforms specifically and reforming criminal

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<sup>95</sup> *Ibid* at 519.

<sup>96</sup> Beirne 2002, *supra* note 2 at 385; see also Morin, *supra* note 9.

<sup>97</sup> See generally Mark Halsey, "Against 'Green' Criminology" (2004) 44:6 *Brit J Crim* 833 [Halsey]; see also Brisman 2014, *supra* note 72.

<sup>98</sup> James Gacek & Richard Sparks, "The Carceral State and the Interpenetration of Interests: Commercial, Governmental, and Civil Society Interests in Criminal Justice" (forthcoming).

justice generally is profound. As Gacek and Sparks suggest, criminology's most powerful and compelling stories of change are narratives of decline and disaster, for it is within them that we document, warn, alert, and critique the social world as it is and reimagine what it could be for all of its citizens—where 'better' has the potential to mean more moderate, milder, rights-respecting, liberal, or principled reforms.<sup>99</sup> In this spirit, a green criminological and legal intersection, comprised of ecocentric principles and values, can draw upon these narratives to further educate the demos about the realities of animal cruelty our nonhuman counterparts face. Education is an invaluable asset to reconsidering animal cruelty in society, and time and resources must be invested to progress this cause and reach this distinct prize.

## VI. CONCLUSION

This Paper was an attempt to galvanize further attention towards Canada's federal animal cruelty legislation and confront the challenges facing amendments in favour of respectful and progressive reforms. Drawing upon green criminological insight, in particular ecocentrism, law has the potential to recognize the socio-political and anthropocentric machinations of the criminal justice system. There is significant purchase in ecocentric justice, as it allows us to reconsider the safeguards necessary to recognize the inherent value of animals in society and secure their safety from further abuse, cruelty, and neglect.

Conceptions of the animal in law are beginning to change. Some jurisdictions throughout the world are beginning to understand that animals are sentient beings, and through their laws they are imposing "a correlative duty...to deal with animals in ways that limit undue suffering. The passing of these laws suggest that even legal traditions that see animals as property can change as social conditions change."<sup>100</sup> As Gacek and Jochelson contend, whether laws alter, bend, break or inure:

there is constant reflection and refraction of the social in its compositions, and it is the tethering of the social and law that provides potentialities for progressive (and at times regressive) change. These tethering points provide ample

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<sup>99</sup> *Ibid.*

<sup>100</sup> Jochelson & Gacek, *supra* note 2 at 172; see also Peter Sankoff, "The Animal Rights Debate and the Expansion of Public Discourse: Is it Possible for the Law Protecting Animals to Simultaneously Fail and Succeed?" (2012) 18 *Animal L Rev* 281 at 302.

opportunity for animal welfare and cruelty legislation, and perhaps more progressive instruments of animal entitlements, to present opportunities for green criminological perspectives to inform the reconstitution and reform of these, at times, antediluvian strictures of law.<sup>101</sup>

Therefore, cognitive commitments towards progressive animal welfare reforms must be made a chief concern in Canadian society. The evidence and moral awareness outlined in this Paper suggest that now is the time for our common law system to migrate to higher moral ground. Taking green criminology and law together, it becomes clear that a continued lack of concern for animal cruelty and its subsequent harms in Canada will have serious ramifications for nonhuman animals. However, an ecocentric justice approach attempts to render animal cruelty more transparent, and supplements efforts to remediate the harms caused by humans.

Unless appropriate measures are put into place to grapple with the realities of the exploitive relationships between humans and their nonhuman counterparts, animal cruelty will continue. Canada remains an animal welfare laggard. There remain serious issues with the cruelty provisions in the *Code*. We can no longer accept this. As Lockwood and Arkow contend, “[t]here is overwhelming evidence that when animals are abused, people are at risk; when people are abused, animals are at risk.”<sup>102</sup> In effect, we must challenge ourselves to think about sites and institutions in society where epistemologies of harm towards animals is naturalized and made possible. We must continue to ask sharper questions about how animals are put at risk in the first place, and what steps we need to take as a society to ameliorate their current tragic circumstances. Finally, we must confront how animal cruelty legislation impacts citizens’ participation in harmful acts towards animals, and whether particular combinations of ecocentric values and principles can undergird shifts in legislative and criminal justice thinking. Evidence that showcases the realities of animal cruelty helps move and reposition the legal dial towards animal justice, and the associational life of impacted communities and ecosystems. For the sake of our nonhuman friends, this evidence can no longer be suppressed or evaded.

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<sup>101</sup> Gacek & Jochelson forthcoming, *supra* note 53.

<sup>102</sup> Lockwood & Arkow, *supra* note 73 at 916.

Table 1.1 Indicators of Ecocentrism <sup>103</sup>	
Indicator	Example
The extent to which the intrinsic value or worth of the non-human environmental entity is taken into consideration	Laws and judgements which acknowledge the rights of nature
The use of ecological perspectives to estimate the degree of harm to non-human environmental entities	References to ecological criteria by courts in assessing the degree and nature of environmental harm
The kinds of expertise mobilized within and demonstrated by a court to capture adequately the nature and complexities of the environmental harm	Expert knowledge of judicial officers in regards to ecological integrity, environmental health and sustainability
The gravity of the offence against the non-human entity as reflected in the penalties given	The quantum and type of penalty, as well as the judicial rationales for the penalty given
The measures taken to ensure the maintenance, restoration or preservation of ecological integrity	The imposition of orders that involve remediation activities

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<sup>103</sup> White, *supra* note 6 at 349 [drawing from White (2017). Reproduced with permission by author].