

## INTERSECTIONALITY AND POSTHUMANIST VISIONS OF EQUALITY

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### PART I. INTRODUCTION

The turn toward intersectionality has spread across critical theory scholarship in a relatively short amount of time.<sup>1</sup> While the practical challenges of implementing intersectionality persist, the theoretical commitment to recognizing how multiple axes of differences coalesce to shape human experiences of injustice (and otherwise) is well established in feminist legal theory and other critical thinking.<sup>2</sup> Critiques of intersectionality today center not so much on resisting calls for inclusion of marginalized experiences and subaltern identities, but on exploring possible limitations of the theory to fully understand differences and their operation.<sup>3</sup> With this paper, I seek to add to these discussions by excavating a difference that is still only marginally discussed in critical theory and infrequently included when intersectionality is discussed.<sup>4</sup> The difference is species. Our identities and experiences are not just gendered or racialized, but are also determined by our species status and the fact that we are culturally marked as human. More importantly – and this is the point I wish to stress – experiences of gender, race, sexuality, ability, etc., are often based on and take shape through speciesist ideas of humanness vis-à-vis animality.

Elsewhere, I have discussed the salience of species difference for feminist theory in a paper of the same title.<sup>5</sup> There, drawing on the formative work of

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1. Kathy Davis, *Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes A Feminist Theory Successful*, 9 FEMINIST THEORY 67, 67-68 (2008); Ange-Marie Hancock, *Intersectionality, Multiple Messages, and Complex Causality: Commentary on Black Sexual Politics by Patricia Hill Collins*, 9 STUD. GENDER & SEXUALITY 14, 15-16 (2008).

2. Laura Gillman, *Beyond the Shadow: Re-scripting Race in Women's Studies*, 7 MERIDIANS 117, 118-20 (2007). See generally Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701 (2001) (discussing the concept of intersectionality).

3. Carbado & Gulati, *supra* note 2, at 703.

4. ZOONTOLOGIES: THE QUESTION OF THE ANIMAL 1 (Cary Wolfe ed., 2003).

5. Maneesha Deckha, *The Salience of Species Difference for Feminist Theory*, 17 HASTINGS WOMEN'S L.J. 1 (2006).

Carol J. Adams and Josephine Donovan,<sup>6</sup> I sought to demonstrate how species as a locus of hierarchy resembled, in its structure and effect, other hierarchical markers of differences, such as gender and race, that feminists and other critical theorists routinely and passionately discussed.<sup>7</sup> I outlined three reasons for this resemblance: (1) the socially constructed nature of the human/animal boundary; (2) the naturalization of the species hierarchy through reliance on Cartesian dualisms; and (3) the way in which popular feminist issues were informed by species difference and popular nonhuman animal ethics issues contained gendered and racialized dimensions.<sup>8</sup> To avoid arbitrariness with one's critique, I argued that these logical similarities should lead feminists to routinely include and care about species as a site of exploitation in their analyses.<sup>9</sup>

With this article, I seek to add to this work revealing connections between feminist and posthumanist theories. As I discuss, much of the institutional racism, sexism, homophobia, ageism, etc., that intersectionality addresses stems from the residue of imperial discourses; particularly social Darwinist views about the value of different cultures, races, and human beings. Understanding the ways in which species and ideas about animals and animality figured into these discourses and continue to shape the *actual concepts* of culture, gender, and race shows the need for intersectionality to actively incorporate species difference in its theoretical and practical purview.<sup>10</sup>

The argument continues in Part II by laying out the intersectional dimensions of a foundational example of the construction of human/nonhuman identity in Western thought. It explains the tight connections between race, culture, and species in the discourses of Civilization. The rise of social Darwinism is revealed as a theoretical mechanism that managed anxiety about race and culture differences, but also articulated species difference through a shifting human/animal boundary. In Part III, I show how this foundational and thus historical example continues to permeate contemporary discourse around racial and cultural superiority that would be of keen interest to intersectional theorists. The focus here is twofold. One point of inquiry is the current

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6. ANIMALS AND WOMEN: FEMINIST THEORETICAL EXPLORATIONS (Carol J. Adams & Josephine Donovan eds., 1995).

7. Deckha, *supra* note 5, at 3.

8. *Id.* at 4. While it is important to highlight the social constructedness of the human/animal binary by noting that humans are animals too, as the term "nonhuman animals" does, I refer to nonhuman animals as "animals" throughout this paper to promote an economy of word use. This is not meant to erase the political dimensions of choosing one term over another. Indeed, even the term "nonhuman animals" and "other animals" have their shortcomings in this regard. See Carol J. Adams & Josephine Donovan, *Introduction, in THE FEMINIST CARE TRADITION IN ANIMAL ETHICS* 1 (Carol J. Adams & Josephine Donovan eds., 2007); ERICA FUDGE, *ANIMAL* 159-165 (2002).

9. Adams & Donovan, *supra* note 8.

10. To be sure, there are feminist arguments against this type of conclusion calling for strong posthumanist feminist critiques. See, e.g., Kathryn Paxton George, *Should Feminists be Vegetarians?* 19 SIGNS: J. WOMEN CULTURE & SOC'Y 405 (1994). See Sheri Lucas, *A Defense of the Feminist-Vegetarian Connection*, 20 HYPATIA 150 (2005) (critiquing George's stance against vegetarianism as a logical position for feminists to adopt).

imaginings of cultural and racial difference and the constitutive role the human/animal border plays in them. Another is identifying the ways in which constructs of gender and race inform cultural ideas about animals and certain species. Having set out the historical and contemporary presence of species difference in the gender-race-culture matrix structuring colonial and postcolonial orders, Part IV contemplates the main reasons for rejecting species as part of the intersectional mix in any given analysis and explains why these reasons are not ultimately compelling.

#### PART II. INTERSECTIONALITY AND SPECIES: A FOUNDATIONAL EXAMPLE

A principal way to understand the importance of species difference in intersectional discussions is to illuminate how species as a concept is formatively shaped by the standard intersectional concerns of gender and race difference. This point comes into sharp relief when discourses of Civilization are examined. These discourses, steeped as they were in gender and racial hierarchies, were central to constructing Western understandings of a human/animal divide premised on species difference. In his meticulous treatment of the rise of scientific taxonomies distinguishing humans from other apes, Raymond Corbey sets out this relationship between these axes of difference.<sup>11</sup> He explains how the genesis of social Darwinism came from biological Darwinism's threat to the Eurocentric human-dominated world order that characterized the 19<sup>th</sup> century.<sup>12</sup> When Darwin introduced his theories regarding human continuity with animals and the descent of humans from apes he did so with trepidation.<sup>13</sup> Corbey notes that Darwin was acutely aware of the cosmological worldview of his 19<sup>th</sup> century culture that, while sufficiently influenced by Enlightenment thought to place a premium on Reason and scientific "discoveries", was still shaped by an unyielding sense of hierarchy and an exclusive version of dignity reserved for humans only.<sup>14</sup> Despite the increased understanding of human kinship with apes (facilitated by imperial expansion and ape "discovery"), this biological proximity was not yet perceived to "taint" human origins with actual nonhuman components.<sup>15</sup> Darwin's theories fundamentally challenged this perception, instigating an anxiety within social, cultural, and political discourses over species boundaries.<sup>16</sup>

The Darwinian challenge to presumed impermeable species identities was met with cultural resistance. Corbey notes how the anxiety generated was allayed through the social harnessing of Darwin's biological findings.<sup>17</sup> In order

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11. RAYMOND CORBEY, *THE METAPHYSICS OF APES: NEGOTIATING THE ANIMAL-HUMAN BOUNDARY* (2005).

12. *Id.* at 33-34.

13. *Id.* at 65.

14. *Id.* at 68-69.

15. *Id.* at 122.

16. *Id.* at 61.

17. *Id.* at 34.

to preserve the myth of human specialness and humans as the singular legitimate claimants of dignity, the idea of the ascent to Civilization and social Darwinism developed.<sup>18</sup> Through these discourses, European, propertied males could retain their claim to specialness and humanness by distancing themselves from their ape ancestors and the bestial origins they wished to disavow.<sup>19</sup> This distancing was primarily accomplished by inserting “inferior” cultural and gendered Others between themselves and animals.<sup>20</sup> While not a precise calibration, the ascent to Civilization was an index of bestiality/humanness wherein the ascent toward Civilization was also an ascent toward humanness.<sup>21</sup> As racial, cultural, and gendered Others proved themselves more or less civilized under an imperial gaze, they were seen as correspondingly more or less human.<sup>22</sup> As Sara Salih has traced in her work on popular natural histories of the time, these Othered humans were, in turn, animalized such that the construction of race contained within it assumptions about animals and species difference.<sup>23</sup>

The cultivation of ideas of race, culture, gender, and species was thus interactive and mutually constitutive. Corbey’s own summary of his work is apt in this regard:

In summary, human identity in European societies was articulated in terms of animal alterity. Traditional cosmological schemes were at play here, and had moral implications. People defined and redefined themselves through exclusion of what was perceived to be low and dirty. Concealment, stereotyping, and various other devices served for “distancing” beings which were put to human use, made to suffer or killed. Undesirable other humans were perceived as “apish” or “bestial.” The various aspects of attitudes to animals . . . were part of a typical modern “habitus” of the European middle classes . . . : a corporally embedded regime of appreciation and feeling, which includes opinion as well as uneasiness, shame or disgust regarding what is considered improper or unbecoming to the “civilized” citizen.<sup>24</sup>

What may be evinced here is the interactive generation of multiple sites of difference. If it is impossible to understand gender difference independently of imperial conceptualizations of race and culture, as is commonly accepted by postcolonial feminist theorists, then the same claim can be made regarding

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18. *Id.* at 61.

19. *Id.* at 25.

20. *Id.* at 30.

21. *Id.* at 66.

22. *Id.* at 34.

23. Sara Salih, *Filling Up the Space Between Mankind and Ape: Racism, Speciesism and the Androphilic Ape*, 38 *ARIEL* 95 (2007).

24. CORBEY, *supra* note 11, at 29-30.

species.<sup>25</sup> The management of species difference and human dignity relied deeply on racial and cultural constructs. Put yet another way, what it meant to be human was as much a matter of species as it was of race, culture and gender.

### PART III. RACE-CULTURE-GENDER-SPECIES SYSTEM TODAY

The interactivity among race, culture, gender, and species categories is also a contemporary phenomenon instanced through current cultural ideas of certain animals and their appropriate cultural role, function, and space. By exploring how cultural ideas about animals influence and are influenced by cultural ideas about humans, with all their gendered and racialized dimensions, this Part presents two methods of accessing the currents of the race-culture-gender-species matrix today.

#### *A. Racialization through Animals and Animality*

Race is a powerful force of social and cultural construction not only in how we think about humans, but also animals. In her path-breaking work, Carol Adams coins the term “sex-species” system to describe the intersectional nature of gender and species constructs in constructing our ideas of both women and animals.<sup>26</sup> Like many posthumanist feminist scholars, Adams highlights the formative force Cartesian dualisms have had and continue to exert in structuring oppression against women and animals.<sup>27</sup> While Adams importantly includes and highlights race and racism in this intersectional critique, she does not include it explicitly in the name of the system she identifies as objectionable. I add it here, in addition to culture, to illustrate a contemporary example of how these forces move together.

Glen Elder, Jennifer Wolch, and Jody Emel’s research in this area is an instructive starting point.<sup>28</sup> In their work, they unpack how the use of animal bodies constitutes and cements imperial notions of cultural and racial differences. Whereas historic narratives regarding race, gender, and species assigned cultures along the spectrum of the ascent to Civilization according to their imagined *biological closeness* to animals (through morphological features and the like), a biological index of bestiality and primitiveness is no longer socially acceptable.<sup>29</sup> In its place, is an index that continues to stratify and

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25. See, e.g., Ratna Kapur, *Human Rights in the 21<sup>st</sup> Century: Take a Walk on the Dark Side*, 28 SYDNEY L. REV. 665 (2006).

26. Carol J. Adams & Josephine Donovan, *Caring about Suffering*, in BEYOND ANIMAL RIGHTS: A FEMINIST CARING ETHIC FOR THE TREATMENT OF ANIMALS 170, 174-78 (1996). Adams has authored numerous works on the connections between feminism and speciesism, the most influential perhaps being CAROL J. ADAMS, *THE SEXUAL POLITICS OF MEAT: A FEMINIST-VEGETARIAN CRITICAL THEORY* (2000).

27. ADAMS, *supra* note 26, at 50.

28. Glen Elder, Jennifer Wolch & Jody Emel, *Le Pratique Sauvage: Race, Place, and the Human Animal Divide*, in ANIMAL GEOGRAPHIES: PLACE, POLITICS, AND IDENTITY IN THE NATURE-CULTURE BORDERLANDS 72, 81 (Jennifer Wolch & Jody Emel eds., 1998).

29. *Id.*

racialize cultures along a civilizational spectrum, but this time through their *use* of animal bodies.<sup>30</sup> Elder, Wolch, and Emel point to case law where minority groups' use of certain animals have come under criminal scrutiny to illustrate the hegemonic representation of that use as barbaric and threatening to the liberal order.<sup>31</sup> The sidewalk ritualistic sacrifice of chickens, goats, lambs, etc., of the Santeria, a poor, racialized immigrant Afro-Cuban group practicing their religion in Florida, is perhaps the best-known and most highly litigated example of this phenomenon.<sup>32</sup>

The imperial aspects of this phenomenon come into focus when one realizes that the hegemonic culture uses and abuses animal bodies in equally painful and mutilating ways.<sup>33</sup> What identifies an animal practice for mainstream legal and other scrutiny is not the level of suffering involved, but the degree of Otherness permeating the practice from the perspective of the mainstream based on normalized ideas of "the animal species [involved], human actor(s), rationale for and methods of harm, and site of action involved in the practice."<sup>34</sup> It is these factors, set from hegemonic standards of animal uses, that "construct immigrant others as uncivilized, irrational, or beastly, and their own [white Western] actions as civilized, rational, and humane."<sup>35</sup> The operation of the race-culture-gender-species system inhabits this categorization. The authors write:

What makes one animal practice acceptable and another a potent symbol of savagery that can be used to dehumanize those who engage in it?... Specific forms of human-animal interactions, legitimized and rationalized over time, are part and parcel of the repertoire of "civilized" behavior that defines the human-animal divide. Those who do not stay within this field fall over the human-animal boundary or at least into the netherworld of "savagery"; if the practices are too far over the line, they can be interpreted as cannibalism, the ultimate act of inhumanity. Policing the human-animal boundary through the regulation of animal practices is

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30. *Id.*

31. *Id.* at 78-80.

32. By highly litigated, I refer to the level of court reached by the litigation, in this case, the United States Supreme Court in *Church of the Lukumi Babalu Aye, Inc., v. City of Hialeah*, 508 U.S. 520 (1993).

33. See e.g., CATHARINE GRANT, *THE NO-NONSENSE GUIDE TO ANIMAL RIGHTS* (2006); LYLE MUNRO, *CONFRONTING CRUELTY: MORAL ORTHODOXY AND THE CHALLENGE OF THE ANIMAL RIGHTS MOVEMENT* (2005). See generally CHARLOTTE MONTGOMERY, *BLOOD RELATIONS: ANIMALS, HUMANS, AND POLITICS* (2000) (discussing the exploitation of animals and the suffering they endure).

34. Elder et al., *supra* note 28, at 73.

35. *Id.* at 82.

necessary to maintain identity as humans and, not coincidentally, to sustain the legitimacy of animal practices of dominant groups.<sup>36</sup>

These cultures are, to use Ratna Kapur's terms, "troubling subjects" to the liberal state due to their non-dominant animal practices.<sup>37</sup> The practices are "troubling" because they violate the normalized animal/human boundaries set by the mainstream in a given context.<sup>38</sup> These boundaries and the ideas of species inherent to them have become critical organizers for racial and cultural difference in current postmodern conditions.

#### *B. Animals as Racialized and Gendered Objects*

Yet, the operation of the race-culture-gender-species system is also apparent in the differentiated treatment allotted to different animals. Recall that one of the influential factors in the list above of what determines which animal practices overstep the animal/human boundaries is the species involved. This contingency reveals the differential cultural attitudes and responses we cultivate toward different animals. As Andrea Gullo, Unna Lassiter, and Jennifer Wolch explain:

How do social constructions of animals take shape? At one level, personal and contextual characteristics of individuals influence the nature of environmental values, ideas about appropriate human-animal relations, and the extent of knowledge of and experience with various types of animals. But animals are also socially constructed/reconstructed by dynamics at the societal and institutional levels. Here, the negotiation of human-animal boundaries is expressed in public discourse about the "character" and behavior of animals, the management problems they present for humans, their ecological and economic roles, and their rights. There are many sites of this public discourse.... Together, individual-level factors and the tenor of public discourse create the "animal" – a mediated characterization, imbued with value according to political and social conditions. As the mix of public attitudes shifts in response to (for example) episodic events or new scientific understandings or policy moves, public discourse itself is affected and individuals' ideas about animals and their relationships with the nonhuman world change. Thus, in an iterative cycle, social constructions of animals alter over time and space, and in turn

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36. *Id.* at 83.

37. Kapur, *supra* note 25, at 675.

38. Elder et al., *supra* note 28, at 80.

ultimately shape and reshape public policy, which affects animal life chances.<sup>39</sup>

The authors outline the syncretic process by which humans filter experiences (or lack thereof) with animals and the identities animals then come to assume for humans. There exist, undoubtedly, an array of factors that collectively create a social construction of a particular animal, but part and parcel of both individual and institutional projections are hierarchies of difference based on gender, race, culture, etc., that are so formative still within conditions of postmodernity.

That our attitudes and responses to animals are produced through force fields of race, culture, and gender may be illustrated through multiple examples.<sup>40</sup> It is instructive to focus in depth on one example here. In their article, "Retrofitting Frontier Masculinity for Alaska's War Against Wolves," Sine Anahita and Tamara Mix track how Alaskan wildlife policies were directed by gendered cultural anxieties over frontier masculinity.<sup>41</sup> As perceived threats to frontier masculinity grew in Alaska with changing economic conditions and gendered work patterns and demographics, wolves received a feminized characterization and became the repository for frontier masculinity misogyny.<sup>42</sup> Regulations over hunting were changed to reflect this gendered imbalance by increasing the access of hunters (overwhelmingly male) to wolves to recuperate and restore the paternalistic and patriarchal frontier male identity.<sup>43</sup> As the authors note so well at the opening of their work:

Masculinities shape relationships among people. They also shape people's relationships with nonhuman animals. In the long history of humanity's control of wolves, masculinity has determined the manner in which wolves are targeted, whether and how they are killed, and to what extent governments are involved. Alaska's recent reinstitution of aerial wolf control, in which wolves are shot from a low-flying airplane or helicopter, or from aircraft that land after

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39. Andrea Gullo, Unna Lassiter & Jennifer Wolch, *The Cougar's Tale*, in ANIMAL GEOGRAPHIES 139, 140-41 (Jennifer Wolch & Jody Emel eds., 1998).

40. One need only consider a sampling of prominent television commercials to witness this phenomenon in popular culture as well. Cats are frequently feminized in this medium, in contrast to dogs who are masculinized through their association with women (usually single, young, and middle-class). While there are dog food commercials of women caring for dogs, those dogs are typically feminized by being small, white and cute. Although there are examples of iconic male cats in popular culture, cats and "cat people" are contrasted with dogs and "dog people." For more on this distinction, see Erin Armstrong, *Feline [Ap]prehensions: A Feminist Analysis of Why Dogs Will Feel The Justice of the Law before Cats* (Apr. 23, 2008) (unpublished manuscript, on file with the author).

41. Sine Anahita & Tamara L. Mix, *Retrofitting Frontier Masculinity for Alaska's War Against Wolves*, 20 GENDER & SOC'Y 332, 335 (2006).

42. *Id.*

43. *Id.*

tracking wolves from the air, dramatically illustrates these gender issues.<sup>44</sup>

To understand their argument, it is necessary to recognize that a hegemonic myth surrounding Alaska is that its identity is one of an untamed wilderness prime for domination by rugged, individualist, aggressive, and unbridled white masculinity.<sup>45</sup> This idea of frontier masculinity, typified by the icon of the white cowboy, harnesses the social construction of “nature” and “wilderness” as distinct from “culture” and “urban” places.<sup>46</sup> This itself is a construction that enables gender assignment to place in which the wilderness is gendered as male while the cities are gendered as domesticated and feminized spaces.<sup>47</sup>

With the decline in “traditional Alaskan frontiersmen occupations”<sup>48</sup> related to mining and fur industries, the economic importance of frontier masculinity has eroded and along with it, its cultural stature. As Anahita and Mix argue, the management of wildlife policies so as to provide more opportunities for subordinating nature through a renewed and robust program targeting wolves and other animals is an attempt to salvage and “retool” frontier masculinity in order to help “embattled” (white) Alaskan men to “craft new ways to be men”.<sup>49</sup> Through an examination of news media sources, Anahita and Mix document how primary cultural sources served the state in promoting this masculinist agenda.<sup>50</sup> Although wolves have long been “scapegoated” internationally,<sup>51</sup> their particular gendered identity in the frontier cultural milieu marked them as objects to be controlled and dominated to secure a certain code of human masculinity. The treatment of these wolves is a prime example of the race-culture-gender-species mix at work.

The wolf is just one example of an animal that has disproportionately suffered from a negative public image in Western culture while other animals enjoy an almost “superstar” positive spin in the media; the white polar bear and light-skinned dolphin being prime among this category.<sup>52</sup> We can understand

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44. *Id.* at 332.

45. *Id.* at 334.

46. *Id.* See BRUNO LATOUR, *POLITICS OF NATURE: HOW TO BRING THE SCIENCES INTO DEMOCRACY* (Catherine Porter trans., 2004).

47. Anahita & Mix, *supra* note 41, at 334.

48. *Id.* at 338.

49. *Id.* at 339-40.

50. *Id.* at 341-43.

51. *Id.* at 336.

52. See, e.g., Jody Emel, *Are You Man Enough, Big and Bad Enough? Wolf Eradication in the US*, in *ANIMAL GEOGRAPHIES* 91 (Jennifer Wolch & Jody Emel eds., 1998) (marginalization and hatred of wolves generally); Patricia Williams, *On Being the Object of Property*, in *THE ALCHEMY OF RACE AND RIGHTS: DIARY OF BLACK LAW PROFESSOR* 216 (1991) (preferred status of polar bears, including the importance of whiteness to this western cultural disposition); John Fraser et al., *Dolphins in Popular Literature and Media*, 14:4 *SOC'Y & ANIMALS* 321 (2006) (cultural analysis of dolphins);

this differentiated response to animals as influenced by multiple axes of difference similar to how differential responses to Othered humans are structured. Whether an animal is killed or loved by humans, domesticated, runs “free”, is caged for life, sleeps in our beds, or performs tricks for us at entertainment venues is a product of a complex cultural paradigm which “arranges its species significations on a kind of grid.”<sup>53</sup> As Cary Wolfe notes, the effect is that these differences among animals creates a similar hierarchy for animals (as well as humans).<sup>54</sup>

Wolfe begins the explanation of this grid by drawing our attention to the depth of subalterity in this matrix – the level of “animalized animals” – which are the animals we eat, wear, mutilate, probe, cage, enslave, and otherwise exploit.<sup>55</sup> Up one level are the humanized animals.<sup>56</sup> Although still lacking human status and the legal protections of personhood, these animals enjoy an elevated cultural status primarily due to the human features our particular culture projects onto them; companion animals such as dogs and cats are emblematic of this category as are “boundary animals” such as primates, dolphins and whales to whom we impute a higher cultural, albeit not legal status, due to our associations of affinity with them.<sup>57</sup> The third level in Wolfe’s grid is occupied by “animalized humans,” human beings who are positioned as superior to all categories of animals, but are Othered by one or more construction of difference that ties them “back” to their mere, nonhuman “bodily, organic existence.”<sup>58</sup> Finally, on top of the grid, are the “humanized humans,” a term referring to those humans whose humanity is in no way impugned by constructions of difference that would associate them with the bodies, nature, and the realm of the animal.<sup>59</sup> As Wolfe eloquently puts it, the humanity of these humans is “sovereign and untroubled.”<sup>60</sup> While more local and individual factors may affect into which category a human or animal being is assigned, the social location we occupy as the result of multiple hegemonies

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Jessica Sickler et al., *Social Narratives Surrounding Dolphins: Q Method Study*, 14:4 SOC’Y & ANIMALS 351 (2006).

53. CARY WOLFE & JONATHAN ELMER, *Subject to Sacrifice: Ideology, Psychoanalysis, and the Discourse of Species in Jonathan Demme’s The Silence of the Lambs*, in ANIMAL RITES: AMERICAN CULTURE, THE DISCOURSE OF SPECIES, AND POSTHUMANIST THEORY 97, 101 (2003).

54. *Id.*

55. *Id.*

56. *Id.*

57. Marie Fox, *Reconfiguring the Animal/Human Boundary: The Impact of Xeno Technologies*, 26 LIVERPOOL L. REV. 149, 158 (2005) (citing DONNA HARAWAY, PRIMATE VISIONS: GENDER, RACE AND NATURE IN THE WORLD OF MODERN SCIENCE 1-3 (1992)).

58. WOLFE & ELMER, *supra* note 53, at 101.

59. *Id.*

60. *Id.*

around difference help animate the grid's logic.<sup>61</sup> The result is an intersectional species grid that organizes so many conditions of modernity.<sup>62</sup>

With the historical and current examples of the race-culture-gender-species matrix identified, it becomes challenging to proceed with intersectional theory without adverting to species. Yet, resistance persists to adopting species in any full-fledged way into intersectional theorizations; the *posthumanist* turn is not as popular as the postmodern one. The next Part considers main objections cultivating this resistance and assesses their ultimate persuasive force.

#### PART IV. PROBLEMS WITH POSTHUMANISM?

Having identified the connections of race, culture, and gender—standard ingredients of an intersectional analysis—with species, the theoretical suitability of referring to an intersectional matrix that includes species as one of its constitutive elements should now make sense. The logical nature of these connections may still not lead to the conclusion I have advanced here, however, of including species within intersectional analyses. This Part explains several reasons why critics might object to this conclusion despite accepting the connectedness claim above, and why such objections would be misguided.

##### A. Fragility of Human Rights

Despite considerable logic for including species as a socially relevant difference, as noted at the outset, it remains heavily excluded from cultural analyses. A prime objection to including animals within the intersectional purview is the threat “animal rights” and posthumanist pleas for deconstructing the animal/human boundary are seen to pose to still fragile human subjectivities.<sup>63</sup> This sensibility may have a variety of precipitators and manifestations. One may think of objections that marginalized humans have to representations drawing similarities between the exploitation of animals and the exploitation of marginalized humans,<sup>64</sup> the internalized assignment of abject status to animals that the hegemonic worldview promotes,<sup>65</sup> and/or the avid disavowal of feelings and empathy toward animals (a recognition of which might prompt questioning of this worldview) for fear that their own newly recognized human status will be called into question.<sup>66</sup> While the desire to stay

61. Salih, *supra* note 23, at 108-09.

62. See WOLFE & ELMER, *supra* note 53, at 105 (citing examples from Wolfe's brilliant analysis of the characters in the film, THE SILENCE OF THE LAMBS (Orion Pictures 1991)).

63. Cathryn Bailey, *We Are What We Eat: Feminist Vegetarianism and the Reproduction of Racial Identity*, 22 HYPATIA 39, 41-42, 52 (2007).

64. Lesli Pace, *Image Events and PETA's Anti Fur Campaign*, 28 WOMEN & LANGUAGE 33 (2005).

65. *Id.* at 38.

66. Marti Kheel, *License to Kill: An Ecofeminist Critique of Hunters' Discourse*, in ANIMALS AND WOMEN: FEMINIST THEORETICAL EXPLORATIONS 85, 101-02 (Carol J. Adams & Josephine Donovan eds., 1995).

within the realm of dignity and rights by not interrogating the animal/human boundary may be understood, it is ultimately ineffective. A species hierarchy is always already racist and colonial. It may be argued to be many more things as well. The point is made passionately by Wolfe who writes:

It is understandable, of course, that traditionally marginalized peoples would be skeptical about calls by academic intellectuals to surrender the humanist model of subjectivity, with all its privileges, at just the historical moment when they are poised to “graduate” into it. But the larger point I stress here is that as long as this humanist and speciesist *structure* of subjectivization remains intact, and as long as it is institutionally taken for granted that it is all right to systematically exploit and kill nonhuman animals simply because of their species, then the humanist discourse of species will always be available for use by some humans against other humans as well, to countenance violence against the social other of *whatever* species - or gender, or race, or class, or sexual difference.<sup>67</sup>

If it is correct to read species as inextricably entwined with constructs of race, gender, and culture to the extent all such differences are born of one another and grow together in meaning, then residing within humanist confines will prove counterproductive for any emancipatory project. What is more, the analysis offered will be incomplete.

Additionally, we need to ask whether *dehumanization* per se is really the problem. Does the act of *dehumanizing* someone really represent what is objectionable when we talk about various examples of human exploitation? If nonhumans were treated well and humans not, would we frame the issue as one of dehumanization? Probably not. Rather, the concept of dehumanization signifies a set of other practices that are at the core of our concerns—exploitation, marginalization, oppression, and violence for example. Instead of relying on an exclusively humanist discourse, it is possible to go underneath the problem of dehumanization to talk about that which we really care about when we complain about dehumanization: injustice and exploitation. The point I am making is not new. It finds parallels in feminist legal theory about the differences between “equality” and “justice”. For example, Radha Jhappan has criticized the focus on equality as opposed to justice.<sup>68</sup> Her argument traces the

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67. WOLFE & ELMER, *supra* note 53, at 7-8.

68. Radha Jhappan, *The Equality Pit or the Rehabilitation of Justice?*, in *WOMEN'S LEGAL STRATEGIES IN CANADA* 175 (Radha Jhappan ed., 2002). Since the writing of her article, section 15 jurisprudence has gone through some twists, turns, and reversals. Importantly, the comparator group analysis emerged within s. 15 jurisprudence and changed the test Jhappan analyzed, though likely not her critique. See *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, 547-52 (Can.). The first part of the Law test (differential treatment) assessed whether a distinction was being drawn on the basis of personal or group characteristics. Direct discrimination may have been found if discrimination was apparent on the face of the challenged law/policy. Alternatively, adverse

contorted trajectory of equality jurisprudence in Canada in which the success of a constitutional equality violation claim rests on debates about the meaning of equality.<sup>69</sup> Justice, for her, is the more appropriate response because that term really captures and embodies what feminists are after in an equality action.<sup>70</sup> Why then, she asks, use the problematic discourse of equality if one can avoid it?<sup>71</sup>

Jhappan's concern about language in the human equality/dignity context applies to posthumanist concerns. We must ask: why demote animals if you can avoid it? Even if feminists after contemplation of posthumanist concerns decided not to address the objectification of animals, it would not make much difference to feminist advocacy to say that "women are being treated badly and that is wrong" rather than "women are being treated like animals and that is wrong." There is no inherent need to compare ourselves to animals to underscore the objectionable treatment. Why not simply suggest that this treatment is wrong? This would be a more egalitarian theory of the wrong because it does not restrict the injustice to the sense of being compared to inferiors, of being lowered to their status, but of getting at the real wrong here: a denial of the special uniqueness of each individual, her inherent quality as a person.<sup>72</sup> In approaching discourse this way, feminists are not purchasing one group's freedom at the expense of another.

### B. Competition

A second objection to including species difference in an intersectional analysis stems from the concern that human and animal rights (or other mechanism of legal recognition) cannot possibly coexist. This concern is not so much that one's human status is precious and must be safeguarded against encroachments by beings desirous of subjecthood, but that extensions of legal

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effects discrimination occurred where the discrimination appeared facially neutral, but had a differential impact on the basis of a prohibited ground of discrimination. Secondly, it was determined whether there was a distinction based on the enumerated or analogous grounds found in s. 15 of the Charter, starting with the comparator group that the claimant offered. This group should have mirrored the claimant in all characteristics with the exception of the criteria that was at issue. It was then determined if the distinction was discriminatory by assessing if a violation of human dignity had occurred. Choice sometimes affected how much one's dignity was affected (religion, marriage, etc.). This was to be analyzed flexibly using four contextual factors: (a) pre-existing disadvantage; (b) the relationship between the grounds and the claimant's characteristics/circumstances; (c) the ameliorative purpose or effects; and (d) the nature/scope of the interest affected. This comparator group development met with even more feminist critique. *See, e.g.,* Daphne Gilbert & Diana Majury, *Critical Comparisons: The Supreme Court of Canada Dooms Section 15*, 24 WINDSOR Y.B. ACCESS JUST. 111 (2006). Very interestingly and recently, the Supreme Court of Canada has again refined the equality test, largely re-emphasizing the analysis at the time of Jhappan's writing. *See R. v. Kapp*, [2008] 294 D.L.R. 1 (Can.).

69. Jhappan, *supra* note 68, at 180-91.

70. *Id.* at 194.

71. *Id.*

72. Bailey, *supra* note 63, at 43-44.

or other interests to animals will intrude upon human rights.<sup>73</sup> When rights or another legally recognized interest conflict, the mainstream assumption is that human rights should prevail over animal ones.<sup>74</sup> It is beyond the scope of this Article to sort through the complex issues involved in unpacking such an assumption.<sup>75</sup> What I wish to note here is the conflicting nature of human rights themselves. While disrupting the animal/human boundary will have monumental implications for the current distribution of private property rights, it is not necessarily the case that the same disruptive impact will inhere for those constitutional rights typically associated with marginalized subjects (equality, security of the person, indigenous rights, etc.,).

But even if we could contemplate a significant impact on human rights from animal rights, it is not clear that the plausibility of rights conflicting is a compelling reason to deny rights to one party (i.e., animals). As feminists know too well, the obstacle to the realization of a particular right may not be so much government inaction or apathy, but the assertion of another right perceived to be competing with the “feminist” right claimed, typically equality. Examples abound of litigation where equality rights and rights to security of the person are positioned against freedom of religion or expression.<sup>76</sup> Multiculturalism and the group rights they have generated are also perceived by some to be in conflict with women’s equality rights.<sup>77</sup> Whether actual or imagined, competing human rights has never been a reason to deny the idea of human rights in the first place. We are confident (or at least hopeful) in the ability of the liberal legal order to manage all of these rights, competing though they may be. And while we may criticize the problematic tenets of this order, and note the failings in actualizing rights, the lament is not that the system is too competitive and thus too inclusive and therefore must curtail the subjects it recognizes. It would appear to be a speciesist logic that fosters the fatalistic response to conflicting rights when animals are concerned.

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73. TED BENTON, NATURAL RELATIONS: ECOLOGY, ANIMAL RIGHTS AND SOCIAL JUSTICE 71 (1993).

74. *Id.* at 72-76.

75. See MARTHA C. NUSSBAUM, FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP 401-05 (2006) (seeking to include animals in her capabilities approach, she starts to navigate this complicated terrain); Elisa Aaltola, *Animal Ethics and Interest Conflicts*, 10 ETHICS & ENV’T 19 (2005) (an even more comprehensive treatment is given to the issue).

76. See, e.g., *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203 (Can.); *Adler v. Ontario*, [1996] 3 S.C.R. 609 (Can.); *R. v. Keegstra*, [1990] 3 S.C.R. 697 (Can.).

77. Leti Volpp, *Feminism versus Multiculturalism*, 101 COLUM. LAW. REV. 1181 (2001). There are a range of views among feminists regarding the relationship between feminism and multiculturalism. Many even question the positioning of the two as separate and opposed, stressing that gender and cultural equality are symbiotic and compatible. For an overview of various feminist legal approaches to this question, see Maneesha Deckha, *Is Culture Taboo? Feminism, Intersectionality, and Culture Talk in Law*, 16 CANADIAN J. WOMEN & L. 14 (2004).

*C. The Limits of Human Rights in Any Case*

A third objection to incorporating species into an intersectional matrix arises from the seemingly Utopian character of the demand. The call for a more thoroughgoing intersectionality – one that does not stop the power of its critique at the animal/human boundary – is, by any current measure, a radical idea. It is radical in the sense that existing private property arrangements may need to be wholly realigned (if the property status of animals is replaced by personhood) or at least reconceptualized (if the property status of animals is redefined to place more responsibilities on the human/corporate owner).<sup>78</sup> Yet, it may be misguided to assume that the current liberal legal order is foundationally effective in dealing with *human-to-human* injustice and exploitation and does not already require a conceptual and practical overhaul to address questions of human justice. In other words, a radical reworking of the current order may be needed irrespective of animal concerns such that what is required to realize justice for animals may not seem so extreme or starkly different in comparison. The imagined disruption to society of extending legal recognition to animals thus seems less overwhelming. By reworking, I am not merely speaking of the resource-kind wherein global resources are redistributed to remove the alarming disparities that are currently normalized. A reworking would also include direct attention to the politics of whose interests are included in the decision-making.<sup>79</sup> The conceptualization of which beings matter in any given legal order and how they are represented matter immensely to what justice means.<sup>80</sup>

If we accept that this type of reworking is already needed to address human-to-human injustices, then the characterization of restructuring society may appear less Utopian to a critic than it otherwise would when animals are the focus. But *is* this type of reworking already needed? Postcolonial feminist Ratna Kapur would insist that it is. She notes that the present conceptualization of human rights is a prime example of a legal order that is ineffective and unjust at its conceptual core.<sup>81</sup> Kapur provides a trenchant critique of human

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78. For a proposal for animal personhood, see Gary L. Francione, *Reflections on Animals, Property, and the Law and Rain Without Thunder*, 70 LAW & CONTEMP. PROBS. 9 (2007). For proposals for a new understanding of ownership and property rights in animals as a way to actualize justice for animals, see David Favre, *Integrating Animal Interests into our Legal System*, 10 ANIMAL L. 87 (2004). For other proposals see ANIMALS RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds., 2004).

79. Rainer Forst, *Two Pictures of Justice* (Mar. 14, 2008) (unpublished manuscript on file with author). Forst's main argument is to convince us that justice is not a redistribution of resources question, but a matter of whose interests count and are recognized and who, consequently, participates in the decisions of what a just arrangement of the social order looks like. While Forst does not include animals in his vision of justice, the importance of the political (as opposed to the resource) question is the point I wish to take from him and apply here.

80. *Id.*

81. Kapur, *supra* note 25.

rights discourse and the liberal foundations that underlie it in her work.<sup>82</sup> She wishes to expose the “dark side” of human rights discourse, which is overwhelmingly presented and consumed as “progressive, emancipatory and liberating.”<sup>83</sup> She questions the ability of human rights discourse to deliver universal human rights on three main grounds.

First, she notes the imperial dimensions of the “narrative of progress” that is critical to the discourse.<sup>84</sup> It is a narrative that imagines the world on a linear line of progression from primitive to civilized, with the spread of human rights a marker of this progress, and the origin of this civilizing force “emanate[ing] from the heart of Europe” with the assumption being that “[i]t has mostly been achieved except in some of the outposts of the empire.”<sup>85</sup> Through historic and current examples, Kapur reveals the Western discourse to be “permeated by imperial ambition, assertions about moral and civilisational superiority, as well as religious evangelicalism.”<sup>86</sup> While Kapur herself does not connect her critique to posthumanist ends, the imperial origin she unearths also has a strong species dimension as discussed above.<sup>87</sup> More to the point, though, just as human rights cannot be divorced from these imperial origins as much as we seek to rehabilitate the concept and apply it to “truly” emancipatory ends, the animal/human boundary also is inseparable from its imperial origins.

Kapur’s second concern with human rights is with its universal claim.<sup>88</sup> She notes that the roots of the universal claim emerge from the Enlightenment where values such as liberty and justice for all were clearly, yet paradoxically, asserted in the face of severe exclusions and injustice.<sup>89</sup> Now, this historical paradox is looked at as extractable from current instantiations of liberalism such that “[t]he exclusions of the past are regarded as moments of profound inconsistency in what liberalism stands for and how it has operated”; when properly applied, the theory is assumed to be fine.<sup>90</sup> Kapur explains why hoping to salvage the good from this past is naïve:

Assertions about the universality of human rights simply deny the reality of those whom it claims to represent and speak for,

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82. *Id.* See also RATNA KAPUR, *EROTIC JUSTICE: LAW AND THE NEW POLITICS OF POSTCOLONIALISM* (2005).

83. Kapur, *supra* note 25, at 669. When I asked Kapur about her choice of the image “dark side” in the title and body of her article at the end of a public lecture she gave at the University of Victoria Faculty of Law on March 6, 2007, she happily conceded that it might not be the most reflective of her argument and commitment to an anti-racist and postcolonial ethic. Communication with Ratna Kapur, Director of the Centre for Feminist Legal Research (Mar. 6, 2007).

84. Kapur, *supra* note 25, at 668.

85. *Id.*

86. *Id.* at 671.

87. See *supra* text accompanying notes 10-18.

88. Kapur, *supra* note 25, at 673.

89. *Id.*

90. *Id.*

disclaiming their histories and imposing another's through a hegemonising move. Thus, the liberal tradition from which human rights have emerged not only incorporates arguments about freedom and equal worth but — and this is the core of my argument — it also incorporates arguments about civilization, cultural backwardness, racial and religious superiority. Further, human rights remain structured by this history. This dark side is intrinsic to human rights, rather than something that is merely broken and can be glued back together.<sup>91</sup>

Kapur insists that the human rights regime, as much as best intentions may surround it now to be universal, is still indelibly marked with an imperial organizing dichotomy. Any attempt to “spread” human rights to a truly universal state will be marred by this originating claim grounded in hierarchy, subordination, and exclusion until this claim is properly interrogated. To Kapur's list of inherent exclusions in human rights discourse, we can add animals. As much as intersectionalists may wish to create a vision of human specialness that does not exclude other humans, this desire will remain frustrated because it rests on exclusions (of animals and other non-humans) that rely on hierarchies of race, culture, and gender for their logical sway.

The exclusionary aspect of human rights for humans and nonhumans both lead to the third fundamental flaw Kapur finds in the discourse of human rights: its reliance on Othering.<sup>92</sup> For all its claims to justice for all, the liberal human rights project is premised on the classic liberal actor – unencumbered, separate, rational, and autonomous.<sup>93</sup> Not only is this actor a fiction, but also it is an image of the self that depends on Othering and then domesticating or expelling those who do not conform to its parameters.<sup>94</sup> Kapur elicits multiple examples of how contemporary human rights projects instantiate the classic liberal actor as model citizen and require Other subjects to assimilate or face suppression in response.<sup>95</sup> She writes:

“[i]n all these instances we are declaring new non-humans, or lesser humans, as well as super-humans. These hierarchies and rankings are produced in and through the discourse of rights, which produces the human and social subject.”<sup>96</sup>

Here, Kapur makes the parallel to nonhumans explicit. Kapur's argument also demonstrates Wolfe's point highlighted earlier:<sup>97</sup> Regardless of how much

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91. *Id.* at 674.

92. *Id.* at 675.

93. *Id.*

94. *Id.*

95. *Id.* at 676-80.

96. *Id.* at 681.

97. WOLFE & ELMER, *supra* note 53, at 101.

human rights discourse is modified, its organizing logic is one of exclusion (of nonhumans) and as long as it continues with this logic, liberalism will always already invite rankings among humans.

I have detailed Kapur's critique to make the following two points: (1) the problems she identifies with liberalism's discourse of human rights are the product of a *species-gender-race-culture* system; and (2) if we accept Kapur's characterization of human rights discourse as fundamentally flawed, yielding a humanist parameter on rights and justice claims to address animal issues becomes a less intimidating prospect. Put differently, if realizing justice for all humans requires a complete reworking of our imaginations and discourses and narratives of justice in any case, we should not hesitate to insert the claims of nonhumans into the mix. I wish to reiterate here that this is not meant to discount the very real concerns that liberalism's cultural Others may harbor of losing personhood if animals enter the mix.<sup>98</sup> Indeed, this fear – that including animals means reinforced animalization of marginalized humans – underscores the foundational example of social Darwinism I have highlighted here.<sup>99</sup> Rather, what I have sought to accomplish with this Part is to canvass and reply to these objections and place into focus the limits of the current hegemonic discourse of human rights for animals and humans alike.

#### PART V. CONCLUSION

The turn toward intersectionality within feminist legal theory and beyond has been a productive development within critical theorizations. It has cultivated sophisticated sensibility of the multidimensionality of the workings of power and the mutually constitutive dynamics of differences in producing our social locations and experiences of the world. Paradoxically, however, intersectionality creates its own areas of exclusion by specifying which differences matter. Like most humanist theory, intersectional theory relies on the fictive animal/human boundary that formatively inhabits Western thought in general. The zone of critique is typically the human with the animal Other, on which the idea of the human relies, left suppressed and subordinated. While this critique could logically be leveled at the whole gamut of critical humanist theory, intersectionality is especially vulnerable to it due to the emphasis on interrogations of unexamined difference that intersectionality itself champions. Whereas, say, Marxism never purported to extend primacy to all differences but rather elevate one – class – in its analysis, intersectionality insists on the relevance to all sites of difference in exploring and imagining in/justice.<sup>100</sup>

Intersectionality rightly highlights the multiplicity and interactivity of differences of gender, race, class, culture, age, ability, etc. To follow its own

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98. For a discussion of this phenomenon, see Maneesha Deckha, *Animal Justice, Cultural Justice: A Posthumanist Approach to Cultural Rights in Animals*, 2 J. ANIMAL L. & ETHICS 189, 196. (2007).

99. See *supra* text accompanying notes 11-25.

100. Carbado & Gulati, *supra* note 2.

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logic regarding difference, however, intersectionality needs to resist the comfort of the humanist paradigm and reach across the species divide to consider species as a force of social construction, experience formation, and source of difference. Just as feminism has turned toward intersectionality, intersectionality itself must now turn toward posthumanism and integrate species into its analysis. It will then yield a sharper ability to detect and correct the workings of the race-culture-gender-and-species system that continue to fundamentally shape questions of in/justice across human and nonhuman cultural terrains.