

Animals in Prison

Collateral Damage and Commodities of “Rehabilitation”

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15.1 INTRODUCTION

On November 25, 2019, the president of the United States signed the bipartisan Preventing Animal Cruelty and Torture Act (PACT). Given the bill was unanimously supported by both the House of Representatives and the Senate, it would seem incarceration is becoming the preferred solution to specific forms of abuse against certain animals. Prior to PACT, there was no US federal *felony* law prohibiting animal cruelty. PACT does “not apply to people who slaughter animals for food or to those who hunt, trap and fish,” nor does it apply to non-human animals threatening human life or property, subject to scientific experimentation, or under veterinary care.¹ Instead, it makes a federal crime the “crushing, burning, drowning, suffocating, impaling or sexual exploitation” of animals that would fall outside of state legal jurisdiction.² This broadens previous federal legislation prohibiting the sale of “crush videos” by criminalizing not just the sale but the actions these videos capture. It has been celebrated by animal protectionists as a reflection of “American values” and as a mechanism that will enhance the investigatory power of animal protection groups to “truly bring justice for the animals . . . by ensur[ing] some of the most horrific acts of animal cruelty are prosecuted to the fullest extent of the law.”³

If convicted under PACT, offenders can be fined or sentenced to a maximum of seven years in prison. Animal cruelty legislation in all fifty US states includes felony provisions. While what constitutes a “felony” varies across states, it often refers to

¹ Laura M. Holson, *Animal Cruelty Moves One Step Closer to Being a Federal Crime*, N.Y. TIMES (Nov. 6, 2019), <https://www.nytimes.com/2019/11/06/us/politics/animal-cruelty-pact-bill.html>.

² Federal jurisdiction is applicable in instances of interstate commerce and/or events occurring in locations under US territorial jurisdiction. See also *Laws that Protect Animals*, ANIMAL LEGAL DEFENSE FUND (2021), <https://aldf.org/article/laws-that-protect-animals/>.

³ Mihir Zaveri, *President Trump Signs Federal Animal Cruelty Bill into Law*, N.Y. TIMES (Nov. 25, 2019), <https://www.nytimes.com/2019/11/25/us/politics/trump-animal-cruelty-bill.html>.

sentences of incarceration that are more than twelve months and that can be served at either state or federal institutions. PACT is meant to allow for the prosecution of cases not captured by state law, such as those involving multiple state jurisdictions or occurring on federal grounds. The establishment of PACT could also result in more resources for the investigation and prosecution of violence against animals, thereby adding to available laws that drive incarceration. Animal protection groups have been instrumental in lobbying for the institution of new animal cruelty legislation and the strengthening of extant law.⁴ Like the laws themselves, the supposed “justice”/“benefit” achieved would be almost explicitly limited to companion animals. As I argue in this chapter, these laws will not benefit animals writ large. Instead, such laws will bolster the intertwined logics of race and species that underpin the caging and incarceration of those categorized as sub-/non-humans.

In the Americas, race and species are inseparable. Indigenous theorists, Black studies scholars, and political theorists have argued that the making of race and animality have been integral to colonialism and the transatlantic slave trade.⁵ This does not mean that we ought to analogize between the experiences of racialized individuals and non-human animals, but to instead “focus on interspecies connectiveness” as “the history of the animal and the Black in the black Atlantic is connected, rather than simply comparable.”⁶ In this sense, race is “a permanent presence inextricably part of the animal question.”⁷ In her work on race and animality, Claire Jean Kim shows that taxonomies of life rely on the subjugation of animality and blackness.⁸ It is upon this mutual subjugation that “the human” is established. For Kim, “blackness is a species construct (meaning ‘in proximity to the animal’), and animalness is a racial construct (meaning ‘in proximity to the Black’), and the two are dynamically interconstituted *all the way down*.”⁹ A clean separation between race and species is, according to Kim, impossible because their mutual constitution is foundational to how “the human” is ontologized: “the anti-black social order that props up the ‘human’ is also a zoological order, or what we might call a *zoologo-racial order*.”¹⁰

⁴ See Tené Johnson, *House and Senate Pass Bill Making Animal Cruelty a Federal Offense*, JOURNAL OF LAW AND SOCIAL PROBLEMS (Nov. 20, 2019), <http://jlsplaw.columbia.edu/2019/11/20/house-unanimously-passes-bill-making-animal-cruelty-a-federal-offense/>; ANIMAL LEGAL DEFENSE FUND, *supra* note 2.

⁵ See APH KO, *RACISM AS ZOOLOGICAL WITCHCRAFT: A GUIDE TO GETTING OUT* (2019); BÉNÉDICTE BOISSERON, *AFRO-DOG: BLACKNESS AND THE ANIMAL QUESTION* (2018); CLAIRE JEAN KIM, *DANGEROUS CROSSINGS: RACE, SPECIES, AND NATURE IN A MULTICULTURAL AGE* (2015); COLIN DAYAN, *THE LAW IS A WHITE DOG: HOW LEGAL RITUALS MAKE AND UNMAKE PERSONS* (2013).

⁶ BOISSERON, *supra* note 5, at xx.

⁷ *Id.* at 2.

⁸ See KIM, *supra* note 5; Claire Jean Kim, *Murder and Mattering in Harambe’s House*, 3 POLY & ANIMALS 1 (2017).

⁹ KIM, *supra* note 5, at 10.

¹⁰ *Id.* at 10; see also KO, *supra* note 5.

In the Americas the prison is a colonial and racial project. Prior to colonization of what are now called the Americas, responses to harm did not include confinement or incarceration. Lisa Monchlin demonstrates that specific to “the Indigenous cultures of the northern hemisphere, no First Nations practiced methods of incarceration and no communities used holding cells for punishment.”¹¹ For Katherine McKittrick, the prison “twins” and continues the placelessness constituted by plantation slavery as it is a location of racialized spatial violence premised on “displacement, surveillance, and enforced slow death.”¹² Projects of colonialism also entail the intentional placelessness of nonhuman animals who remain targeted by violent and racialized geographies.¹³ The prison remains a place of racialized and animalized encounters¹⁴ that maintains the singularity of colonial rule.¹⁵

Nonhuman animals are part of prison life in various manners: as food, as “pests,” as therapy and/or companion animals, as commodities in penal agricultural programs, and as those liminal to the grounds. Some examples include those used in prison rodeos,¹⁶ in penitentiary agriculture,¹⁷ and those who live with and amongst prisoners as “pests.”¹⁸ Prison-animal programs (such as “puppy programs”) have also become popular in the United States and Canada since the late 1990s.¹⁹

¹¹ LISA MONCHALIN, *THE COLONIAL PROBLEM: AN INDIGENOUS PERSPECTIVE ON CRIME AND INJUSTICE IN CANADA* 39 (2016).

¹² Katherine McKittrick, *On Plantations, Prisons, and a Black Sense of Place*, 12 *SOC. & CULTURAL GEOGRAPHY* 947, 956 (2011).

¹³ Heather Davis & Zoe Todd, *On the Importance of a Date, or Decolonizing the Anthropocene*, 16 *ACME: AN INT'L J. OF CRITICAL GEOGRAPHIES* 761–80 (2017); Billy-Ray Belcourt, *Animal Bodies, Colonial Subjects: (Re)Locating Animality in Decolonial Thought*, 5 *SOCIETIES* 1–11 (2014); VIRGINIA ANDERSON, *CREATURES OF EMPIRE: HOW DOMESTIC ANIMALS TRANSFORMED EARLY AMERICA* (2004).

¹⁴ See Kathryn Gillespie, *Placing Angola: Racialization, Anthropocentrism, and Settler Colonialism at the Louisiana State Penitentiary's Angola Rodeo*, in *COLONIALISM AND ANIMALITY: ANTI-COLONIAL PERSPECTIVES IN CRITICAL ANIMAL STUDIES* 250 (Kelly Struthers Montford & Chloë Taylor eds., 2020); KAREN M. MORIN, *CARCERAL SPACE, PRISONERS AND ANIMALS* (2018).

¹⁵ See, e.g., Kelly Struthers Montford & Dawn Moore, *The Prison as Reserve: Governmentality, Phenomenology, and Indigenizing the Prison (Studies)*, 21 *NEW CRIM. L. REV.* 640 (2018); Heidi Kiiwetinepinesik Stark, *Criminal Empire: The Making of the Savage in a Lawless Land*, 19 *THEORY & EVENT* (2016); Robert Nichols, *The Colonialism of Incarceration*, 17 *RADICAL PHILOSOPHY REV.*, 435–55 (2014).

¹⁶ See Gillespie, *supra* note 14.

¹⁷ See Kelly Struthers Montford, *Land, Agriculture, and the Carceral: The Territorializing Function of Penitentiary Farms*, 22 *RADICAL PHILOSOPHY REV.* 113 (2019); Amy J. Fitzgerald, *Doing Time in Slaughterhouses: A Green Criminological Commentary on Slaughterhouse Work Programs for Prison Inmates*, 10 *J. FOR CRITICAL ANIMAL STUDIES* 12 (2012).

¹⁸ See Yvonne Jewkes & Dominique Moran, *The Paradox of the “Green” Prison: Sustaining the Environment or Sustaining the Penal Complex?*, 19 *THEORETICAL CRIMINOLOGY* 451 (2015).

¹⁹ For Canadian context: COLLEEN DELL ET AL., *ACCESSING RELATIONAL CONNECTIONS IN PRISON: AN EVALUATION OF THE ST. JOHN AMBULANCE THERAPY DOG PROGRAM AT STONY MOUNTAIN INSTITUTION* 17 (2019). For American context: Jennifer Furst, *Prison-Based Animal Programs: A National Survey*, 86 *THE PRISON J.* 407–30 (2006).

Animals who live on or near prison grounds have often had their habitats destroyed or irreparably altered by building the prison in the first place, and prisons are a source of ongoing environmental harm associated with their operation.²⁰

While animal cruelty laws are promoted on the basis that they “protect” animals, I argue that they, rather unwittingly, participate in and further promote harm to animals – harms that are enacted by the prison through its racialized logic of caging those deemed subhuman.²¹ I do so by examining the prominent human-animal relationships produced in the context of incarceration: liminal animals, farmed animals who are prison property and industry, and animals used in rehabilitative/therapeutic programs. The examples that follow are by no means exhaustive, but they provide a précis of specific human-animal relationships occurring in Canadian and US prisons. It is then the case that in the bid to denounce animal cruelty, PACT and other legal mechanisms that drive incarceration also drive the forms of animal cruelty that remain culturally acceptable. Criminalization measures such as these find their footing in flawed notions of rehabilitation and justice. As this chapter shows, it is not possible for a prison to rehabilitate animal cruelty when it itself requires and practices animal cruelty.

15.2 ANIMALS IN PRISON

15.2.1 *Liminal Animals*

The prison, like other human activities, can be a form of human encroachment into animal environments, destroying their habitats and/or polluting their sources of sustenance such that life is untenable.²² While life becomes impossible for some animals because of the prison, others come to inhabit and/or access the prison.

²⁰ See *Prison Ecology Project: Facts*, NATION INSIDE (2021), <https://nationinside.org/campaign/prison-ecology/facts/>; *Government Announces Plans to Build Four More Mega-prisons*, CORPORATE WATCH (July 1, 2020), <https://corporatewatch.org/newprisons/>; *Prison Island: A New Report on Prison Expansion in England, Wales and Scotland—Download Now*, CORPORATE WATCH (Aug. 15, 2018), <https://corporatewatch.org/prisonisland/>; Keith ‘Malik’ Washington, *Horrible Conditions for Live-Stock Animals in Texas Prisons Exposed*, COMRADE MALIK (June 8, 2017), <https://comrademalik.com/2017/06/08/horrific-conditions-for-live-stock-animals-in-texas-prisons-exposed/>; Jewkes & Moran, *supra* note 18.

²¹ Andrew Diltz, *Carceral Enjoyments and Killjoying the Social Life of Social Death*, in BUILDING ABOLITION DECARCERATION AND SOCIAL JUSTICE 196–224 (Kelly Struthers Montford & Chloë Taylor eds., 1st ed. 2021); Kelly Struthers Montford & Eva Kasprzycka, *The “Carceral Enjoyments” of Animal Protection in BUILDING ABOLITION DECARCERATION AND SOCIAL JUSTICE* 227–47 (Kelly Struthers Montford & Chloë Taylor eds., 1st ed. 2021); Claire Jean Kim, *Abolition in CRITICAL TERMS FOR ANIMAL STUDIES* (Lori Gruen ed., 2018); Cf. JUSTIN MARCEAU, *BEYOND CAGES: ANIMAL LAW AND CRIMINAL PUNISHMENT* (2018).

²² See, e.g., Prison Ecology Project, *Facts: Background on Mass Incarceration and the Environment*, NATION INSIDE (2021), <https://nationinside.org/campaign/prison-ecology/facts/>; Elizabeth A. Bradshaw, *Tombstone Towns and Toxic Prisons: Prison Ecology and the Necessity of an Anti-Prison Environmental Movement*, 26 CRITICAL CRIMINOLOGY 407–22

Examples include feral cats, pigeons, gulls, rabbits, rats, prairie dogs, and coyotes.²³ For these animals, it is a matter of opportunity and peril, with some targeted for eradication by the prison administration, whereas others are “adopted” and provided for by prisoners. Donaldson and Kymlicka define liminal animals as those who border divisions between the “domesticated” and “wild.”²⁴ While they live near or amongst humans, humans do not enforce ongoing and direct control over them as they do “farmed” animals or those who are “members” of our society such as companion animals. Liminal animals are better understood as ferals:

opportunistic animals and niche specialists . . . [who] may have adapted to urban and suburban environments when humans encroached on their wild territories, or they may have migrated opportunistically to cities and suburbs when they realized that these spaces offered steady means of sustenance and fewer predators.²⁵

While not domesticated, these animals and their future generations become dependent on human-made environments for their survival. Perhaps, it is then most apt to consider prison “pests” as liminal animals who enter the prison not because they are brought in by the administration, but who enter on their own volition to some degree, with a context of prison-building leaving them little other choice.

Calvin Smiley shows that in real life and as depicted in films, animals such as birds, mice, and rats feature as those with whom prisoners are in relationships of mutual care. Prisoners at Rikers Island have also identified and expressed solidarity with liminal canines in or around the prison grounds whom they indicate as similarly situated carceral subjects. Reflecting on his volunteer work, Smiley writes:

In the spring of 2019, while volunteering at Riker’s Island, I spotted a creature in the wooded-area next to the bridge onto the island. At first, I thought it was a dog, but quickly noticed this canine was not a household pet. Its grey markings, wolf-like face, big ears, and large paws indicated she was a wolf, coyote, or hybrid. I began to exclaim about what I was seeing but quickly muffled my voice when a correctional officer walked by. Yet, the officer had already seen my expressive face and remarked, “They are all around here.” When I got to the classroom, I told the participants what I witnessed. After class, a student told me that he knew which “wolf-dog” I was describing as his work detail brought him outside the jail to clean

(2018); CORPORATE WATCH, *PRISON ISLAND: PRISON EXPANSION IN ENGLAND, WALES & SCOTLAND* (2018).

²³ See Calvin Smiley, *Coexistence as Resistance: Human and Non-human Animals in Carceral Settings*, in BUILDING ABOLITION DECARCERATION AND SOCIAL JUSTICE 294–95 (Kelly Struthers Montford & Chloë Taylor eds., 1st ed. 2021); Dominique Moran, *Budgie Smuggling or Doing Bird? Human-Animal Interactions in Carceral Space: Prison(er) Animals as Abject and Subject*, 16 SOC. & CULTURAL GEOGRAPHY 634, 645 (2015); Alan Mobley, *Killing Time on the Prairie*, 10 J. FOR CRITICAL ANIMAL STUDIES 114, 116 (2012).

²⁴ SUE DONALDSON & WILL KYMLICKA, *ZOOPOLIS: A POLITICAL THEORY OF ANIMAL RIGHTS* 210–50 (2011).

²⁵ Kelly Struthers Montford & Chloë Taylor, *Feral Theory: Editors’ Introduction*, 6 FERAL FEMINISMS 5, 5 (2016).

up trash in the area. He told me that he would occasionally smuggle small pieces of bread to leave behind for her and her pups. When I asked if he was ever afraid, he shook his head and said, “Nah that’s the homie.”²⁶

Contra to Smiley’s positive reflections on liminal animals in prison settings, Moran writes that those often categorized “pests,” such as insects, rats, and mice, remain both abject – categorized as undesirable to share space with. While abject they are still revered as “formidable adversaries” against whom prisoners go to great lengths to prevent from entering their cells.²⁷ Because of this orchestrated antagonism, prisoners attribute some degree of subjectivity to pests such as cockroaches.²⁸ The presence of these abject animals, especially when their presence is categorized as an “infestation,” is used to demarcate inhumane conditions of confinement, with some courts finding this to constitute cruel and unusual punishment as prohibited by the US Constitution.²⁹ With their habitats destroyed or altered by the presence of the prison, the prison then provides a stable supply of sustenance for liminal animals, bringing them into relationships of survival, danger, and/or companionship with the prison and prisoners. Liminal animals, while certainly effected and/or targeted for extermination by the prison to various extents, are not subject to the same constraints, targeted transformations, or disavowal of subjectivity as those whose legal status is property. It is to non-human animals specifically brought in for prison industry – animals that are intentionally targeted and transformed by the prison – that this chapter now turns.

15.2.2 *Animals as Prison Industry and Property: Deaded Life*

As a carceral institution in and of itself, animal agriculture requires and reproduces the property status of farmed animals. This property status leads to farmed animals being conceptually positioned as “deaded life”: as those who in life are imagined only as the products they will become in death. Often this takes the form of their being reduced to input-output machines. As deaded life they exist as “living meat,” “egg machines,” “milk machines,” and the like.³⁰ In agribusiness modes of production, nonhuman animals are “both *producing* or *being produced* as commodities.”³¹ Morin argues that the prison exacts a specific form of property relationship over humans, too. Drawing on the fact that plantation grounds are now prison grounds, as well as the fact that slavery remains legal as a form of punishment under the Thirteenth Amendment, Morin claims that “if the prison is more or less tantamount

²⁶ Smiley, *supra* note 23, at 295.

²⁷ Moran, *supra* note 23, at 649.

²⁸ *Id.*

²⁹ *Id.* at 648.

³⁰ James Stanescu, *Beyond Biopolitics: Animal Studies, Factory Farms, and the Advent of Deading Life*, 8 PHAENEX 135, 155 (2013).

³¹ MORIN, *supra* note 14, at 101.

to the plantation, and the prisoner is tantamount to the slave, the prisoner also can be thought of as the *de facto* property of the state.”³² What then does it mean to have prisoners working in animal agriculture as mandated by the state? How can we understand the overlapping yet divergent forms of carcerality and property at work in these interstices? I suggest that prison-based animal agriculture is best understood as a location that produces ontologies of life, such as the human and the animal, to serve the ends of profit and settler colonial territorialization. It does so by continually using land and animals in a way that perpetuates the colonial project of settling the new world in the image of the old.³³ Prison-based animal agribusiness is rendered possible due to its capacity for trafficking in a pastoral idealism. These enterprises purport that access to “nature” will reform the offender and train individuals for the market economy. These claims lack empirical evidence.³⁴ Instead, penal agribusinesses continue settler-colonial and plantation-slavery projects, in which the subjugation of blackness, indigeneity, and animality have been integral and mutually produced.

Morin argues that these subjugations remain integral to the exploitation of prisoner and animal labour, especially in the location of the prison animal farm:

The carceral logic of prisoners as animal – or prisoners as “Blackened” which itself begets animalization – further enables their enslavement within the prison. Exploitation of labour (and killing itself) within the prison is enabled by animalizing the human and “isolating the nonhuman within the human,” since animal bodies can be exploited and killed without the commission of a crime. Humanness, then, is made a political, conceptual category rather than a biological fact.³⁵

15.2.3 *Prison Agribusiness in Canada*

Canadian penitentiary agribusiness predates confederation in 1867 and was present in all institutions for men until 2010. These programs closed after ceasing to be profitable. There was also a dearth of evidence suggesting this “vocational training” resulted in commensurable employment once prisoners were released.³⁶ Their operations entailed meat, dairying, and egg industries, including having prisoners work in abattoirs. While carceral agribusiness programs in Canada stopped in 2010, the Joyceville Institution in the Kingston, Ontario, area kept their abattoir. Named Wallace Beef, this abattoir is part of a “co-venture” in that it is privately owned by an individual and staffed by CORCAN. CORCAN is the federal prison industry “rehabilitation” program. Following the announcement that penal agribusiness

³² *Id.* at 109.

³³ See, e.g., Montford, *supra* note 17, at 117–19.

³⁴ *Id.* at 130.

³⁵ MORIN, *supra* note 14, at 110.

³⁶ Montford, *supra* note 17, at 113.

would cease to operate, community members – especially farmers – campaigned for their continuation. They were immediately successful in having the slaughterhouse remain operational, claiming the Correctional Service of Canada had “recognized the importance of the abattoir to the local community and the local food system and in terms of what they needed to satisfy public safety and inmate training.”³⁷ The local community to which they refer includes the “150 local farmers, [and] 300 local businesses including the prisons” who contract their slaughter to Wallace Beef via CORCAN.³⁸ As of 2017, prisoners employed by CORCAN were paid approximately \$1.95 per day after deductions. Between the years of 1993 and 2017, CORCAN operated at a loss of 66% during these fiscal years. Its programming/“training” has been found to have no impact on recidivism rates.³⁹

A collective of community members in favour of animal-based prison agriculture, “Save Our Prison Farms,” continues to campaign for the re-opening of animal farms on penitentiary grounds, which have begun to re-open in two penitentiaries for men in the Kingston, Ontario, area. Smaller-scale cow dairy operations have resumed, with planning ongoing for large-scale goat dairies to supply a growing demand in China.⁴⁰ Again, these farms are a CORCAN venture and will also include the slaughtering and butchering of male animals not “useful” to dairying.⁴¹ These organizers repeatedly mobilized a rhetoric of community safety and that prisoners would build empathy. Their campaigns included improperly cited academic research in an effort to boast purported benefits to prisoners who are given the opportunity to work in animal agriculture. The literature cited was in fact about the benefits of prison-animal programs such as puppy and dog training and was explicit that these findings not be applied to animal agriculture given the very different dynamics and outcomes occurring in these relationships.⁴² The majority of prisoners surveyed by another community-based group – Evolve Our Prison Farms, who advocate for plant-based agriculture and animal sanctuaries rather than animal agriculture – reported a preference (75%) for the former.⁴³ Prisoners have described that working in animal-agriculture is re-traumatizing, involves dangerous working

³⁷ Jeff Green, *Abattoir*, FRONTENAC NEWS (May 28, 2009), <https://www.frontenacnews.ca/2009-archives/item/4713-abattoir> (quoting Peter Dowling).

³⁸ *Id.*

³⁹ Claire Brownell, *Prisoners Making \$1.95 a Day Want a Raise. Taxpayers Want a Break*, FINANCIAL POST (Sept. 1, 2017), <https://financialpost.com/news/court-challenge-to-inmate-pay-places-prison-labour-program-in-the-crosshairs>.

⁴⁰ The goat dairies are currently on hold due to the COVID-19 pandemic. See, e.g., Ian MacAlpine, *CSC Suspends Plans for Goat Farm at Joyceville Institution*, KINGSTON WHIG STANDARD (Mar. 5, 2021), <https://www.thewhig.com/news/csc-temporarily-suspends-plans-for-goat-farm-at-joyceville-institution>.

⁴¹ Montford, *supra* note 17, at 115.

⁴² Gennifer Furst, *Prison-Based Animal Programs: A National Survey*, 86 PRISON J. 407, 425 (2006).

⁴³ *Prisoner Perspectives*, EVOLVE OUR PRISON FARMS (2021), <https://evolveourprisonfarms.ca/prisoners/>.

conditions, and that animal abuse is ubiquitous.⁴⁴ Prisoners have also reported that they cannot meaningfully refuse to work as this is often met with threats to be sent to solitary confinement because such a refusal would represent disobeying their correctional plan. In obeying the prison's demand for performing agricultural labour, prisoners are more likely to be seen as engaging their "rehabilitation" plan and are more likely to cascade down to lower-security facilities and/or be granted parole.⁴⁵

15.2.4 *Prison Agribusiness in the United States*

Based on available data, US penal agribusiness appears to be ubiquitous and is likely increasing.⁴⁶ US agriculture relies on migrant and undocumented labour, and it is likely that, of the 1.2 million agriculture workers in the United States, 70% are undocumented.⁴⁷ Recent anti-immigration policies have decreased the available labour supply, meaning that another pool of vulnerable individuals will be used to support this industry: prisoners. Doing so remains the latest iteration of using prisoner labour to support dominant interests. During US Reconstruction – and especially in the South – convict leasing was instituted to bolster economies that were built on slave labour and to maintain Black subjugation. Ultimately, convict labour was a mechanism to maintain white supremacy; laws were instituted to ensure Black persons were criminalized and therefore legally available to be commercially exploited by the state and the white capitalists who leased these prisoners for their companies. By the late 1800s, convict leasing was so profitable that some states garnered revenues that were 400% of the operational cost of the prison system. Unsurprisingly, convict labour was deeply racialized. During a period of mass incarceration between 1870 and 1910, close to 90% of those leased in Georgia were Black individuals.⁴⁸

Concerns of convict leasing undercutting the open market, coupled with the economic depression of the 1930s, led to the passing of laws prohibiting leasing programs as well as the sale of prison-manufactured goods. This did not stop prison systems from requiring prisoners to labour in agriculture. Instead, it meant that the food produced by prisoners could only be used by the prison or state workers. This would last until the late 1970s, when foreign manufacturing threatened US domestic markets and agricultural industries again sought cheap domestic labour. Again, lobbyists campaigned for legal changes which, yet again, allowed private companies to hire prisoners. Prisoners were mostly used in manufacturing and service sectors.

⁴⁴ *Id.*

⁴⁵ Brownell, *supra* note 40.

⁴⁶ Stian Rice, *Convicts Are Returning to Farming—Anti-immigrant Policies Are the Reason*, THE CONVERSATION (June 7, 2019), <https://theconversation.com/convicts-are-returning-to-farming-anti-immigrant-policies-are-the-reason-117152>; MORIN, *supra* note 14, at 94.

⁴⁷ Rice, *supra* note 47.

⁴⁸ *Id.*

At this time, agriculture continued to rely on migrant workers. During the fifty years following the re-establishment of convict leasing, the imprisonment of Black persons has quadrupled.⁴⁹

Comprehensive accounts of penal agribusiness are not available. The following discussion includes examples reported by investigative journalists, correctional administrations, non-profit organizations, and academic researchers. Some reports estimate that approximately 30,000 prisoners in the United States work in the food system. Heal Food Alliance, for example, reports that forty-six states have prison-based agriculture, with 20% of states having large-scale agricultural operations.⁵⁰ The majority of prison agricultural labour is state administered (~76%), with industry-run operations representing approximately 21%.⁵¹ State-run examples include the sale of prison-produced products at market prices. At the Louisiana State Penitentiary, which is built on the grounds of the Angola Plantation, prisoners perform agricultural labor, which entails the hand-cultivation of plant crops and the raising of 2,000 steers who will be consumed as beef. They are paid between four and twenty cents per hour.⁵² Industry-run examples include the Arizona Corrections Industry having a labour contract worth \$5 million with Hickman's Family Farms, the United States' fourth-largest egg producer.⁵³

At present, convict leasing remains very lucrative and increasingly relied on by agricultural industries. During their 2015–16 fiscal year, for example, the California prison industry state system's agriculture and food sector posted a \$2 million profit.⁵⁴ Courts have ruled that prisoners are not employees and therefore cannot organize for better pay or working conditions. Nor are prisoners protected by various labour laws, including minimum wage requirements, making them "leasable" at very low rates. To compare, note that, in Arizona, the minimum wage for farm workers is \$11 per hour. Meanwhile, Arizona Correctional Industries pays prisoner agricultural labourers \$3–4 per hour. Most prisoners' wages are subject to deductions that "offset" the costs of incarceration or go toward victim restitution. Others receive no remuneration.⁵⁵ Research has shown that across all US states, "Black men represented the highest percentage of men participating in agriculture and facility service assignments, while a higher percentage of White men worked in public

⁴⁹ *Id.*

⁵⁰ *Food, Race and Labor: A Brief Explainer*, HEAL FOOD ALLIANCE (2021), <https://healfoodalliance.org/a-brief-explainer-on-food-and-labor/>.

⁵¹ HEAL FOOD ALLIANCE, *THE PRISON INDUSTRIAL COMPLEX AND AGRICULTURAL LABOUR* (2021), available at https://drive.google.com/file/d/4ZWdBH5zIKbV6K6subbGMm4nUMY3_ZZgJ/view.

⁵² Gillespie, *supra* note 16.

⁵³ *Id.*

⁵⁴ HEAL FOOD ALLIANCE, *supra* note 51.

⁵⁵ Rice, *supra* note 47.

works and prison industries.”⁵⁶ Men imprisoned in the southern states are also more likely to be assigned to agricultural labour than other sectors, and are less likely to be paid. Not only does prison agriculture generate profits for the prison, it also is a cost-saving measure as it produces food for the prison itself – a practice that in effect sustains and makes the prison viable.⁵⁷ This broader context of convict leasing, anti-immigration policies, and the ongoing use of penal labour as a mechanism of racial organization then situates and informs prison-based animal agriculture. Because I was unable to find a comprehensive account of federal- and state-based penitentiary agribusiness programs, I focus on a few state prison systems as examples of the scale and breadth of prison-based animal agriculture.

The Colorado Department of Corrections currently runs a diverse agribusiness program as part of sixty programs run by Colorado Correctional Industries (CCi).⁵⁸ The agribusiness program began in 1874, and CCi claims “farming [continues to] help...address inmate idleness, provided food products for the prison and was a means of generating revenue from surplus crops sold to outside markets.”⁵⁹ Agribusiness now spans three areas – farming, fisheries, and vineyards – that comprise twenty programs that depend on the labour of approximately 800 prisoners. Framed as honouring the department’s “heritage,” farming programs occupy 560 acres across eight Colorado state prisons. Of this, 30 acres are used to grow vegetables for state prisons, whereas the remaining 530 acres grow corn used by CCi dairying operations. This breakdown of land use demonstrates the staggering inefficiency of growing plant-based foods to supply animal-based food markets. Information on CCi dairying, however, is not provided on the website. They do not indicate whether dairy products supply prison and/or external markets, nor do they mention what happens to the male cows not useful to dairying. Despite limited information on their website, journalists in 2015, for example, reported that some prisoners in Colorado were working for agricultural companies that supplied Whole Foods with buffalo mozzarella, goat cheese, and tilapia. Prisoners were paid \$1.50 per hour.⁶⁰ Following media attention, Whole Foods announced that it would cease selling products made using prisoner labour.⁶¹

⁵⁶ Courtney A. Crittenden et al., *Being Assigned Work in Prison: Do Gender and Race Matter?*, 13 *FEMINIST CRIMINOLOGY* 359, 374 (2018).

⁵⁷ Montford, *supra* note 17, at 129.

⁵⁸ *General Information*, CCi (2021), <https://www.coloradoci.com/bin-htm/generalinfo.html?intro>.

⁵⁹ *Agribusiness*, CCi (2021), <https://www.coloradoci.com/manufacturers/agriculture/index.html?intro>.

⁶⁰ Graeme Wood, *From Our Prison to Your Dinner Table*, *PACIFIC STANDARD* (June 14, 2017), <https://psmag.com/economics/from-our-prison-to-your-dinner-table>.

⁶¹ Allison Aubrey, *Whole Foods Says It Will Stop Selling Foods Made with Prison Labor*, *NPR* (Sept. 30, 2015), <https://www.npr.org/sections/thesalt/2015/09/30/444797169/whole-foods-says-it-will-stop-selling-foods-made-by-prisoners>.

CCi has industrially farmed fish for decades, with their brochure promoting this as “netting marketable skills.”⁶² CCi advertises that “Fish Rearing continues to be one of our most successful programs.”⁶³ This program supplies pond industries with live koi and goldfish. They also rear trout, tilapia, catfish, and freshwater red claw lobster for the food industry. For example, their trout production process “holds an average of 135,000 gallons of pure Rocky Mountain spring water. . .with a maximum of 115,000–130,000 fish swimming in a rearing unit.”⁶⁴ CCi claims that this constitutes a “stress free existence” for the fish and is an environmentally responsible approach as they “recycle fish waste and repurpose the water throughout our numerous agricultural programs.”⁶⁵ Fish are referred to in much the same way as farmed land animals – desubjectified property imagined as the commodity they will become when killed. References to “fish husbandry and processing,” “humane handling,” and “meat retaining its natural colour” demonstrate that these aquatic animals are subject to the carcerality of agriculture and property law in which they are deemed prison property.⁶⁶

In Pennsylvania, animal agriculture occurs in both federal and state institutions. At the federal USP-Lewisburg, prisoners farm “poultry, dairy cattle, hay, corn, clover, soybeans, alfalfa, sorghum and potatoes.”⁶⁷ While federal prison industries claim to “provide meaningful work for inmates,”⁶⁸ merely 10% of those able to work did so and were paid between \$0.23 and \$1.15 per hour. The state correctional industry – PCI – branded as “Big House Products,” also entails slaughterhouse labour. Morin analyzed a 2005 audit of PCI operations and found that during that year approximately 1,600 prisoners (3.9%) of its 41,000-person prison population were assigned to this program while being paid \$0.59 per hour.⁶⁹ PCI industries include the manufacturing of licence plates, workboots, laundry services, and the “process[ing of] 4.1 million pounds of beef, pork, turkey, and fish.”⁷⁰ While prison labour is ubiquitously marketed as a way to decrease idleness, provide income, and aid in re-entry, the 2005 audit concluded that this program was “a phenomenal waste of taxpayer dollars, and [contained] evidence that the programs had no impact whatsoever on prison recidivism despite aims to instill skills and a work ethic in prisoners.”⁷¹

⁶² COLORADO CORRECTIONAL INDUSTRIES, NETTING MARKETABLE SKILLS (2021), https://www.coloradoci.com/bin-pdf/Off_agriculture/Fishery_Brochure.pdf.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ MORIN, *supra* note 14, at 94.

⁶⁸ *Id.* at 112.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 113.

The state of Texas too has a robust and profitable agribusiness program.⁷² The Texas Department of Public Safety reported:

About 10,000 inmates work in the system's agriculture jobs which last year produced almost \$50 million worth of edible crops, livestock and cotton for the prison system on 139,000 acres of farm and ranch land. Prison units that don't have enough land to be in the agricultural program still produce several million pounds of fresh vegetables each year to donate to local food banks for the needy.⁷³

The kinds of foods produced by prison labour shape prison diets. The Texas Department of Public Safety further described:

Most meals consist of ground beef dishes, chicken, or pork. The ground beef is bought with proceeds from the sale of prison-raised cattle. Although the prisons have more than 250,000 hens, they are used only for egg production. It is less expensive to buy chicken meat at market. The system raises and serves its own pork products.⁷⁴

Farmed animal products are the commodities produced and sold by the prison, *and* it is this profit that the prison then uses to purchase more animal-based foods. Prison industries and diets can be understood as largely prescribing specific relationships between humans and other animals. Quite literally, the prison sustains itself on the backs of prisoners and nonhuman animals.

Currently incarcerated activist and investigative journalist Keith "Malik" Washington has described the abuse suffered by farmed animals in Texan prisons and its attendant detrimental impact. He writes that the Texas Department of Criminal Justice (TDCJ) has consistently refused to allow or institute the independent oversight of "these prison plantations" as it is to their benefit to remain "immune to any oversight of any regulatory agency."⁷⁵ Washington recounts having a visceral reaction to how farmed animals are treated and to the scale of the operations:

I smelled the large hen warehouse before we actually got right up on it . . . Hens were packed like sardines. Underneath the cages were virtual mountains of bird feces. . . The cages are so small, hens cannot turn around or spread their wings. Our job was to remove the fecal matter. The smell of ammonia was very strong. Some birds I noticed had burns on their feet and legs, this from being housed in filth.⁷⁶

⁷² See Washington, *supra* note 20; Fight Toxic Prisons, *Horrible Conditions for Live-Stock Animals in Texas Prisons Exposed and Other Updates from Malik Washington*, FIGHT TOXIC PRISONS (Feb. 12, 2018), <https://fight-toxic-prisons.org/2018/02/12/horrible-conditions-for-live-stock-animals-in-texas-prisons-exposed-and-other-updates-from-malik-washington/>; LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY (2009).

⁷³ WACQUANT, *supra* note 74, at 180.

⁷⁴ *Id.* at 180–81.

⁷⁵ Washington, *supra* note 20.

⁷⁶ *Id.*

The TDCJ does not even meet the minimal spatial requirements that exist for chickens: half a square foot per bird. Washington reports that the prison puts two to three birds in spaces prescribed for one. Like animal agriculture operations outside of prison walls, prison agriculture also considers it more efficient to have its animals routinely die than it is to improve conditions and treatment. Washington confirms this by writing that “many birds at Wynne die of asphyxiation and dehydration. Decomposing corpses are found in cages with live birds every day.”⁷⁷

At another Texan institution in which Washington was imprisoned, the Coffield Unit, a prison for men in Tennessee Colony, there are three large units where hog and cattle rearing take place alongside slaughterhouse labour. Washington reports that the scale of these operations has affected the surrounding environment, with runoff polluting nearby rivers and lakes and contaminating the prison’s water supply. In one of the units in particular, Washington reports that significant levels of coliform bacteria were regularly present in water that prisoners had to drink because there were no alternative sources. At Eastham, a prison for men in Lovelady, Texas, Washington describes a massive egg-laying operation where hens lay “80,000 eggs per week. It is a 24-hour-a-day operation, the lights never go out.”⁷⁸ This operation generates approximately \$100,000 a week for the TDCJ. Another unit at Eastham routinely houses 3,000 hogs and 600 sows, in addition to selling 21 piglets a week. Washington aptly highlights the prison’s financial interest in its “livestock.” Whereas air-conditioning is rare in Texas prisons and where heat-related prisoner deaths are not uncommon, the TDCJ has invested “\$175,000 for a cooling system for the pigs. The pigs are being preserved for slaughter so TDCJ can benefit. TDCJ does not have any concern for animal rights or human rights. Its main focus is profits by any means.”⁷⁹

Inasmuch as Washington describes deplorable and dangerous working conditions in prison animal agriculture, the state has been explicit that prisoner refusal in labour will be met with “cell confinement,” the conditions of which exceed international legal definitions of solitary confinement. The Department writes:

Offenders who refuse to work lose their privileges and are placed on “cell restriction.” Cell restriction means remaining in the cell 24 hours a day, with no trips to the day room, commissary, or recreation yard. Meals are also eaten in the cell. Personal property is taken away.⁸⁰

Generally, solitary confinement entails being in-cell for twenty-two hours or more a day and without meaningful interaction. Solitary confinement can meet the threshold for torture if mitigation efforts – such as personal belongings, access to current

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ WACQUANT, *supra* note 74, at 180.

events, the ability to exercise, and the like – are not provided.⁸¹ To refuse to labour for the prison is then to face conditions of confinement that can cause irreversible psychological and physical impacts. Effects (aka “SHU syndrome”) include the development of mental illness, uncontrollable anger, pacing, dissociation, violence to the self and others, anxiety when in the presence of others, back pain, and the decreased effectiveness of psychotropic medications.⁸² A Canadian court has accepted the effects of solitary as a matter of judicial notice. In other words, expert witnesses should no longer have to testify as to the harms of segregation; it being a matter of judicial notice means that it is so widely known to be true that a court does not need to adduce evidence on the matter.⁸³

We might then say that prison labour is irrevocably transformative regardless of whether prisoners “participate” or not. Prisoners are required to act upon animals in a manner that transforms the animals, but which also subjects prisoners to the detrimental psychological effects of violent work.⁸⁴ If they refuse to work, they are in turn subjected to extremely repressive conditions of confinement.

The transformation of carceral subjects is perhaps the core tenet of human-animal relations in these spaces. As Morin writes:

What happens in the space can never be undone, the subject can never be transformed back ... [I]f the carceral space does not kill – e.g., transforming a sentient being to a commodity such as a piece of meat or lab specimen – the action performed within carceral space will nonetheless change the subject, transforming a wild creature to a domesticated or rescued animal.⁸⁵

Specific to prison farm animals, their entire lives will be spent in prison for them to be transformed into food. There are other animals, however, such as those brought in for training purposes who will spend only part of their lives in the prison. It is to the latter mechanics of transformation to which I turn next.

15.2.5 *Rehabilitated Animals as Lively Communities*

Many animals are temporary “guests” of the prison.⁸⁶ Those brought into the prison for spectacle, such as prison rodeos, are selected *because* of their “liveliness.” Morin

⁸¹ See Kelly Struthers Montford et al., *The Use of Solitary Confinement and Prisoner Rights, in* CANADIAN PRISONS: UNDERSTANDING THE CANADIAN CORRECTIONAL SYSTEM 271, 274–75 (Carla Cesaroni ed., 2021).

⁸² *Id.*

⁸³ Montford et al., *supra* note 83, at 283 (citing *R. v. Roberts* [Richard], No. 2018/04159 A1, 2018 WL 06345027, at *34 [Ct. App. Dec. 6, 2018]).

⁸⁴ Cf. Amy J. Fitzgerald et al., *Slaughterhouses and Increased Crime Rates: An Empirical Analysis of the Spillover from “The Jungle” into the Surrounding Community*, 22 ORGANIZATION & ENV’T 158, 158 (2009).

⁸⁵ MORIN, *supra* note 14, at 116.

⁸⁶ See Moran, *supra* note 23, at 642.

argues that Collard's concept of "lively commodities" describes the "value" of prison rodeo animals.⁸⁷ It is their liveliness that at once presents a physical threat to participating prisoners and it is this liveliness that is to be dominated as the very point of the rodeo. In this case, their "active demonstrations of being full of life – their labor – is more important to their value than even their sentience."⁸⁸ Other temporary "guest" animals include those brought into the prison for Prison Animal Programs (PAPs). To make claims about the possibility of rehabilitation, the prison requires the undisciplined "liveliness" of "untrained" dogs and "wild" horses in order to intervene and transform them into acceptable workers and companions. It is this aspect of their liveliness that makes them valuable to the prison. I suggest that animals subjected to "rehabilitation" in prisons be thought of as "lively commodities" who, with prisoners, are to be transformed into pro-social creatures. The commodity relationship is also important as their transformation ("training") by prisoners and eventual adoption or sale generates income for the prison. Moreover, prisoners are ideal and cheap trainers given prison schedules provide long periods of unstructured time.⁸⁹

Beginning in the 1980s, PAPs have become increasingly widespread in prison settings. The majority are dog training programs, but PAPs also include cat care and wild horse training. Dog programs now exist across the United States, Canada, Australia, New Zealand, and Italy.⁹⁰ Overwhelmingly, the literature on PAPs does not question the ethics of animal captivity or instrumentalization. Instead, through discourses of mutual saviour/rehabilitation, administrations position these as benevolent endeavours for all parties. At the same time, PAPs operate within a broader context in which nations have used non-human animals in various projects of social control. The use of bloodhounds in slave patrols for tracking fugitive slaves has transmuted into the continued use of police dogs as tools of racial subjugation.⁹¹ Some police dogs are trained by prisoners. For example, the Pelican Bay State Prison in California – an institution notorious for its extremely repressive supermax unit where prisoners are held in solitary confinement for years with zero human contact, no phone calls, and in windowless cells – also has a prison dog training program. This program trains canines to become police attack dogs.⁹² Dogs "working" for the prison are also used to track and hunt escaped prisoners, many of whom attempt to flee prisons located on former plantation grounds. On the basis of rehabilitation, dogs, who are themselves incarcerated, are trained and deployed to

⁸⁷ MORIN, *supra* note 14, at 103.

⁸⁸ *Id.*

⁸⁹ See Furst, *supra* note 43, at 413.

⁹⁰ *Id.*; Dana M. Britton & Andrea Button, *Prison Pups: Assessing the Effects of Dog Training Programs in Correctional Facilities*, 9 J. OF FAMILY SOCIAL WORK 79, 79 (2005).

⁹¹ See MORIN, *supra* note 14, at 97–98; Larry H. Spruiell, *Slave Patrols, "Packs of Negro Dogs" and Policing Black Communities*, 53 PHYLON 42, 42 (2016).

⁹² MORIN, *supra* note 14, at 97.

keep those who are legally enslaved on former plantation grounds. The use of dogs in PAPs then carries a particular historical significance that remains unaddressed by those in favour of such programs.⁹³ For the purposes of this chapter, I focus on Colorado's dog training and wild horse programs, which I supplement with research from other jurisdictions.

The Colorado Department of Corrections began their "Prison Trained K-9 Companion Program" in 2002. Their website describes it "as a perfect marriage of ideas – saving humans through saving dogs."⁹⁴ As a result of participating, prisoners are meant to acquire skills, self-esteem, compassion, caregiving, and a salary. Prisoners can also become certified in Canine Behaviour Modification, thereby expanding their vocational opportunities once released. The puppies and dogs come from shelters, rescues, and individual surrenders. The dogs subject to such programs are said to "get a new 'leash on life'" as they are transformed into "wonderfully trained family pets and many move on to become very sophisticated assistance dogs which perform a variety of tasks for their human partners."⁹⁵ Services provided through this canine program include in-prison boarding, adoption and alumni training should dogs need re-correction. The CCI is explicit that this program is self-sustaining based on its fees and does not rely on taxpayer monies. Photos of adoptable dogs on the program's website feature a blue backdrop speckled with pawprints; the dog's name is followed by "CI: [number]." The staging and composition of the photos reference mugshots, and "CI" presumably refers to "Colorado Inmate." One can infer that these dogs too are Colorado Inmates, reformed by the prison and ready for pro-social re-entry into the broader community.

CCI's description is consistent with most of the literature that frames prison dog programs as a form of "co-rehabilitation." The purported benefits of PAPs – which are largely anecdotal – include improved institutional behaviour and engagement in therapeutic programs, lower rates of depression and aggression amongst prisoners, increased morale amongst prisoners and staff, improved self-reported social skills, and lower rates of re-offending upon release.⁹⁶ Prisoner participants have also reported that their participation is a way for them to contribute to society.⁹⁷ Others have suggested that interacting with animals in programs such as these provides support and validation that prisoners require to transform themselves into law-abiding citizens.⁹⁸ I would caution, however, that this presumes that offending is merely the result of individual behaviour rather than broader structures of inequality

⁹³ See *id.*

⁹⁴ *About Our Dog Program*, CCI (2021), <https://www.coloradoci.com/serviceproviders/puppy/index.html?p=aboutDogsDiv>.

⁹⁵ *Id.*

⁹⁶ Laura Wheaton, *Prison-Based Animal Programs: A Critical Review of the Literature and Future Recommendations* 79 & 83 (July 26, 2013) (Ph.D. dissertation, Pacific University).

⁹⁷ *Id.*

⁹⁸ See, e.g., Furst, *supra* note 43, at 425.

and marginalization. Moran observes that like animal assisted therapy programs (AATs), in PAPs “the animal is present purely for the therapeutic benefit of the human involved, and which draw on the observed physical and emotional benefits for humans of interactions with animals.”⁹⁹ In this sense, animals function as “devices through which to enable positive change in the inmates.”¹⁰⁰ Unlike AATs, however, PAPs are framed as having distinct community benefits, whether these be the training of service dogs for drug and explosives detection, or to assist those experiencing disability.

Some argue that, because humans and canines domesticated one another, prison dogs might not experience incarceration negatively. Moran, for example, suggests that dogs in PAPs “may experience prison programming in much the same way as domestic dogs experience being family pets, benefitting from human company and engaging in the kind of kinesthetic empathy widely observed amongst companion dogs.”¹⁰¹ Does this then mean that these programs constitute ethical human-animal relationships? Alexandra Horowitz argues that domestication is foundational to the species of *canis familiaris*. Put simply, there are no true “wild” dogs because the evolution of their species has meant that humans and other dogs are part of their social groups. According to Horowitz, freedom for dogs does not simply equate to freedom from humans.¹⁰² Instead, Horowitz suggests that our obligation to this species is to provide the conditions in which they can be the freest and flourish. In practice, this may ask that humans respect their “dogness,”¹⁰³ rather than trying to train it out of them due to its transgression of our human expectations around “civility.” Allowing dogs to be entirely themselves would require an ethical approach that has as its goal that humans impose their cultures onto dogs as little as possible. It is then worth asking to what extent training programs such as these are the imposition of human culture. Do such programs support the flourishing of dogs or represent their ongoing subordination to human norms? Do these programs – designed to transform wayward dogs into perfect family pets, service dogs, and “carceral canines”¹⁰⁴ – not then represent the epitome of the application of human culture to nonhuman others? PAPs also raise the question about the trauma that is experienced when dogs are separated from their prisoner handlers as the dogs are adopted. Within a foundationally speciesist society, it is also the case that these are

⁹⁹ Moran, *supra* note 23, at 643.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 644.

¹⁰² Alexandra Horowitz, *Canis familiaris: Companion and Captive*, in *THE ETHICS OF CAPTIVITY* 7, 11–12 (Lori Gruen ed., 2014).

¹⁰³ See COLIN DAYAN, *WITH DOGS AT THE EDGE OF LIFE* 162 (2015).

¹⁰⁴ “Carceral canines” is a term used by Paula Cepeda Gallo and Chloë Taylor to describe those put to work by the criminal punishment system, such as police dogs and prison dogs. See Paula Cepeda Gallo & Chloë Taylor, *Carceral Canines: Racial Terror and Animal Abuse from Slave Hounds to Police Dogs*, in *BUILDING ABOLITION: DECARCERATION AND SOCIAL JUSTICE* 248–68 (Kelly Montford & Chloë Taylor eds., 2021).

dogs who might otherwise be destroyed if not part of these programs. This is a tension and reality upon which these programs are founded and highlight to promote and sustain themselves.

Both New Mexico and Colorado state Departments of Corrections began “wild horse” programs in the late 1980s. New Mexico’s program ran from 1988 to 1992. While prisoners and staff reported this program to be successful in decreasing recidivism and institutional misconduct, especially amongst prisoners deemed to be violent offenders and/or those who were simultaneously participating in substance abuse programming, empirical evidence does not support all of these claims. Specifically, the relationship between the program and recidivism is inconclusive.¹⁰⁵ Colorado’s Wild Horse Inmate Program (WHIP) was established in 1986 as a partnership between CCI and the Bureau of Land Management.¹⁰⁶ Up to 3,000 horses can be housed at a time at the facility located in Canon City, Colorado,¹⁰⁷ an isolated town that is also home to thirteen prisons. In true colonial fashion, the promotion of this program adopts iconic symbols of pastoral life and a toughened frontier spirit of cowboys. The marketing of WHIP uses a narrative trifecta dependent on the relationship between mustang horses, frontier masculinity, and settler colonialism. CCI writes:

Mustangs played a vital role in the settling of our American West. These noble creatures carried cowboys up the Chisholm Trail, mountain men through the Tetons, trappers into Oregon, native Americans into buffalo hunts and settlers from the east coast to the west. Today these mustangs are helping troubled men make a new beginning with an old craft – horse training.¹⁰⁸

In his description of WHIP, former commissioner of the Colorado Department of Corrections Rick Raemish gestures to their “new” role in sustaining the prison:¹⁰⁹ “today these intelligent, loyal creatures *continue* to forge new beginnings, playing an important role in inmate rehabilitation.”¹¹⁰ Despite the prison’s explicit failure to rehabilitate,¹¹¹ the institution continues to traffic in rehabilitative rhetoric to justify its existence. Wild horses are then captured and transformed by prisons in the name

¹⁰⁵ See Judy L. Cushing & James D. Williams, *The Wild Mustang Program: A Case Study in Facilitated Inmate Therapy*, 22 J. OF OFFENDER REHABILITATION 95, 95 (1995).

¹⁰⁶ CCI, *Wild Horse Inmate Program*, COLORADO CORRECTIONAL INDUSTRIES (2021), <https://www.coloradoci.com/serviceproviders/whip/>.

¹⁰⁷ *Cañon City Wild Horse Inmate Program*, BUREAU OF LAND MANAGEMENT (2021), <https://www.blm.gov/programs/wild-horse-and-burro/adoption-and-sales/adoption-centers/canon-city-inmate-program>.

¹⁰⁸ COLORADO CORRECTIONAL INDUSTRIES, *supra* note 108.

¹⁰⁹ Andrew Dilts argues that the prison, through disenfranchisement, applies racial categories, and is an act of racialization.

¹¹⁰ Rick Raemisch, *Insight Inside: WHIP—Taking the Reins*, INTERNATIONAL CORRECTIONS & PRISONS ASSOCIATION (2021), <https://icpa.org/insight-inside-whip-taking-the-reins/> (emphasis added).

¹¹¹ See ANGELA DAVIS, *ARE PRISONS OBSOLETE?* (Greg Ruggiero ed., 2003).

of rehabilitation, a practice that occurs within a broader context of ideologically and economically sustaining the prison and the racial relations it produces.

More than 5,000 horses have been adopted to “qualified applicants” through this program. Like the canine programs, both prisoners and horses are positioned as those given “second chances” through these programs. The horses are trained over a period of 90 days¹¹² and prisoners receive 200 hours of “on-the-job training” that allows them to “develop a good work ethic, animal husbandry skills, and respect – creating a better future for themselves and the mustangs.”¹¹³ Seven to ten horses are trained on a monthly basis. The rationale as to *why* “wild” horses require second chances and training is not explained. Mustangs, the quintessential symbol of free-living horses, become carceral subjects and are then “rehabilitated” and adopted out for personal and state use. Some horses are trained and adopted to trail riders, while a proportion of younger horses are reserved and trained for the US Border Patrol,¹¹⁴ again, highlighting the link between the prison, prison animals, and state repression. Whereas dogs might not experience their time in prison as such, previously free-living horses “may be subject to a kind of double or two-fold carcerality.”¹¹⁵ In the case of free-living horses, it is likely the case that “‘multispecies justice’ might be found in distance rather than proximity and intimacy.”¹¹⁶

15.3 CONCLUSION

It is a gruesome irony that incarceration is positioned both by lawmakers and the animal protection movement as a mechanism to achieve justice for non-human animals. The prison as structure harms surrounding waters, lands, and ecosystems, often making life impossible for the more-than-human displaced and affected by its presence. More directly, as this chapter has shown, the prison also structures human-animal relationships: between prisoners and liminal animals, in animal agriculture, and in community service training programs. Liminal animals are not targeted for transformation in the way that those in animal agriculture and PAPs are. While they might, to some degree, enter and exit prison grounds on their own accord, some are targeted for extermination, while others are in relationships of mutual care with human prisoners. Farmed animals in prisons are produced as deeded life, whereas

¹¹² “Training” a free living horse cannot be done in ninety days without “shortcuts.” “Shortcuts” include increasing the severity of training tools/aids and harsh equipment such as leverage bits, spurs, whips, tie-downs, martingales, etc. See, e.g., Andrew N. McLean & Paul D. McGreevy, *Horse-Training Techniques That May Defy the Principles of Learning Theory*, 5 J. OF VETERINARY BEHAVIOR 187–95 (2010).

¹¹³ Raemisch, *supra* note 112.

¹¹⁴ Raemisch, *supra* note 112.

¹¹⁵ Moran, *supra* note 23, at 644.

¹¹⁶ Rosemary-Claire Collard & Kathryn Gillespie, *Introduction*, in CRITICAL ANIMAL GEOGRAPHIES: POLITICS, INTERSECTIONS AND HIERARCHIES IN A MULTISPECIES WORLD 1, 9 (Kathryn Gillespie & Rosemary-Claire Collard eds., 2015).

those present in training programs are valuable as lively commodities. Both are used as props from which the prison sustains itself materially and makes (empirically unfounded) claims about its ability to rehabilitate. Because the prison always entails multi-species relationships, it is not the case that criminalizing animal abuse will protect animals. At best, it will protect some animals while redirecting violence to farmed animals in prisons. At worst, it will bolster the prison's colonial and anti-black function and perpetuate harm to communities.

The prison also serves an ideological function; it animalizes captives who are often constructed as extra-bodily in their dangerousness – as animals who cannot be controlled otherwise and thus require caging.¹¹⁷ Yet, ontology and power are not unidirectional. It is not just that we understand the human and the animal in a way that authorizes various treatments, but that these ontological orderings are justified and remade through our witnessing of caged prisoners and other animals.¹¹⁸ The prison's continued existence, in part, relies on our racialized and speciesized acceptance of cages and the evisceration of life – purposefully and collaterally – that the prison requires and produces. Animal cruelty will only be meaningfully addressed through anti- and de-carceral strategies that take a multi-species approach – strategies which are better positioned to decrease harm while protecting and benefiting humans, animals, and the environment.

¹¹⁷ On extra-bodiliness, see Kim *supra* note 8, at 39.

¹¹⁸ See Montford, *supra* note 57, at 80; Chloë Taylor, *Foucault and the Ethics of Eating*, 9 *FOUCAULT STUDIES* 71, 75 (2010).