

## Juvenile Smokescreens

### *Softening the Harm of Zoos, Aquaria, and Prisons through (Human) Children*

Maneesha Deckha

#### 13.1 INTRODUCTION

This chapter explores how human children soften the abusive edge of carceral spaces. Prisons, immigration detention centres, and zoos and aquaria are institutions that attract sustained public scrutiny from prisoner rights, migrant rights, anti-racist, and animal rights movements. Critics and scholars note the entwined nature of race, gender, and species logics that shape and unite these spaces and object to the short- and long-term incarceration these institutions make possible as well as the conditions residents confined within experience.<sup>1</sup> Prisoner rights, migrant rights, and animal rights critics also contest the messaging that these institutions and their proponents use to assure the public of the need for confinement and the ethical acceptability of the conditions captive animals and humans experience.<sup>2</sup> These

<sup>1</sup> See, e.g., RALPH R. ACAMPORA, *CORPORAL COMPASSION: ANIMAL ETHICS AND PHILOSOPHY OF BODY* 3-6 (2006). See also Michelle Brown & Judah Schept, *New Abolition, Criminology and a Critical Carceral Studies*, 19 *PUNISHMENT & SOC'Y* 440, 441 (2017); Bree Carlton, *Penal Reform, Anti-carceral Feminist Campaigns and the Politics of Change in Women's Prisons, Victoria, Australia*, 20 *PUNISHMENT & SOC'Y* 283, 285-90 (2018); Kathryn Gillespie, *Placing "Angola": Racialization, Settler Colonialism, and Anthropocentrism at the Louisiana State Penitentiary's Angola Rodeo*, 50 *ANTIPODE* 1267, 1268-71 (2018); Rachel Kronick et al., *Refugee Children's Sandplay Narratives in Immigration Detention in Canada*, 27 *EUR. CHILD & ADOLESCENT PSYCHIATRY* 423, 423-24 (2018); Karen M. Morin, *Carceral Space: Prisoners and Animals*, 48 *ANTIPODE* 1317, 1318-20 (2016); AMY NETHERY & STEPHANIE J. SILVERMAN, *IMMIGRATION DETENTION: THE MIGRATION OF A POLICY AND ITS HUMAN IMPACT* 1-9 (2015); AFFRICA TAYLOR & VERONICA PACINI-KETCHABAW, *THE COMMON WORLDS OF CHILDREN AND ANIMALS: RELATIONAL ETHICS FOR ENTANGLED LIVES* 1-5 (2018).

<sup>2</sup> Eva Boodman, *An Immanent Critique of the Prison Nation: The Contradictions of Carceral "Anti-violence"*, 44 *PHIL. & SOC. CRITICISM* 571, 574-76 (2018); Bronwyn Dobchuk-Land, *Resisting "Progressive" Carceral Expansion: Lessons for Abolitionists from Anti-colonial Resistance* 20 *CONTEMP. J. REV.* 404, 405 (2017); Rachel Kronick et al., *International Solidarity to End Immigration Detention*, 389 *LANCET* 501, 501 (2017); Alexandra Palmer et al., *Caregiver/Orangutan Relationships at Auckland Zoo*, 24 *SOC'Y & ANIMALS* 230, 232, 239-45 (2016).

discourses, depending on the specific institution, highlight the larger public “law and order” interests of safety and border control, but also “progressive” interests of rehabilitation, conservation, and education.<sup>3</sup>

In highlighting these latter “progressive” interests, carceral institutions seek to *humanize* themselves and their work to bolster their social credibility. This “humane-washing” occurs through long-standing rationales about rehabilitation for offenders in the prison context, and more recent rationales about the conservation of nature and conservation education in the zoo and aquarium context. It also, I will argue, occurs through a specific type of marshaling of the human child. I seek to add to the literature on “humane-washing”<sup>4</sup> as well as contestations and uses of “childhood” and “family” narratives<sup>5</sup> in general in this analysis. I apply a multispecies lens to consider how the real and imagined human child in the zoo and aquaria context, and narratives about what is in the best interests of human children in the immigration and prison context, figure into characterizing such carceral institutions as legally and socially legitimate spaces.<sup>6</sup> The argument acknowledges that these carceral spaces can yield positive benefits for some, such as rehabilitation or rescue of a specific individual or even conservation of a specific species. However, it accepts the existing critical scholarly literature against such spaces overall to focus on the question of how carceral spaces mask their problematic and oppressive nature by integrating the presence of human children.

### 13.2 THE USE OF “CHILDREN” TO HUMANIZE CARCERAL SPACES

To be sure, prisons, detention centres, and zoos and aquaria are not primarily or simply spaces for children. But this makes the question of when and where children

<sup>3</sup> E.g., Siena Anstis et al., *Separate but Unequal: Immigration Detention in Canada and the Great Writ of Liberty*, 63 MCGILL L.J. 1, 12–14 (2017); Debra Parkes, *Solitary Confinement, Prisoner Litigation, and the Possibility of a Prison Abolitionist Lawyering Ethic*, 32 CANADIAN J. L. & SOC'Y 165, 166–69 (2017).

<sup>4</sup> Saskia Stucki, *(Certified) Humane Violence? Animal Welfare Labels, the Ambivalence of Humanizing the Inhumane, and What International Humanitarian Law Has to Do with It*, 111 AM. J. INT'L L. 277, 279 (2017); Delcianna J. Winders, *Captive Wildlife at a Crossroads – Sanctuaries, Accreditation, and Humane-Washing*, 6 ANIMAL STUD. J. 161, 167 (2017).

<sup>5</sup> Barbara Baird, *Child Politics, Feminist Analyses*, 23 AUSTL. FEMINIST STUD. 291, 291–92 (2008); NANCY SCHEPER-HUGHES & CAROLYN SARGENT, *SMALL WARS: THE CULTURAL POLITICS OF CHILDHOOD* 1 (1998).

<sup>6</sup> Carceral institutions also benefit from public inaccessibility or engage in visibility management to conceal more objectionable practices. The general public has no right to enter prisons, and zoos and aquaria use almost invisible enclosures that shield the public from the barriers incarcerated animals experience and the hidden close bodily management of captive populations across species including the slaughter of healthy animals. See Braverman 2011. This discussion, however, will focus on the public messaging and experience-shaping strategies they employ, namely those involving children.

do acquire importance in these “paradigm institutions of domination”<sup>7</sup> all the more pressing. This part of the analysis takes up this question.

### 13.2.1 *How Children’s Need for Conservation Education Legitimizes Zoos and Aquaria*

If there is one carceral place where children are encouraged to attend for educational and recreational purposes, it is the zoo and aquarium. A zoo is a place of childhood<sup>8</sup> and family.<sup>9</sup> As one travel writer put it: “Spending a night at the zoo is a perennial childhood fantasy: many a popular children’s book features a lock-in with exotic animals as its plot.”<sup>10</sup> As one example of this fantasy turning into reality, consider the Edmonton Valley Zoo, where Lucy, an Asian elephant languishes on her own with chronic health conditions, and has been the subject of two high-profile lawsuits by animal rights advocates to move her to a sanctuary.<sup>11</sup> Annually, the Edmonton Valley Zoo hosts such a “magical evening” for children with disabilities that they call “Dreamnight.”<sup>12</sup> Edmonton Valley Zoo is not alone in this child-centered initiative. Its website indicates that “Dreamnight now spans over 300 zoos internationally, with more zoos joining each year.”<sup>13</sup> In Canada and the United States, industry statistics also confirm the tight correlation between zoos and children, with well over half of visitors comprising children under eleven years of age.<sup>14</sup>

<sup>7</sup> LORI GRUEN, *THE ETHICS OF CAPTIVITY* 243 (2014).

<sup>8</sup> Kathryn Denning, *Regarding the Zoo: On the Deployment of a Metaphor*, 14 INT’L J. HERITAGE STUD. 60, 65 (2008).

<sup>9</sup> JANE DESMOND, *STAGING TOURISM: BODIES ON DISPLAY FROM WAIKIKI TO SEA WORLD* 217–18 (1999).

<sup>10</sup> Sally Peck, *British Safaris: A Night at the Zoo*, THE TEL. (July 4, 2015), <https://www.telegraph.co.uk/travel/destinations/europe/united-kingdom/articles/British-safaris-a-night-at-the-zoo>.

<sup>11</sup> Tyler Dawson, *Advocates for Lucy the Elephant Fail to Convince Courts to Review Her Confinement Conditions at Edmonton Zoo*, NAT’L POST (May 28, 2019), <https://nationalpost.com/news/canada/lucy-the-elfphant>; see also *Zoocheck Can. Inc. v. Alberta (Agriculture and Forestry)*, 2017 ABQB 764; *Reece v Edmonton*, 2011 ABCA 238.

<sup>12</sup> Edmonton Valley Zoo, *Dreamnight at the Zoo*, EDMONTON VALLEY ZOO (2020), [https://www.edmonton.ca/attractions\\_events/edmonton\\_valley\\_zoo/dreamnight-at-the-zoo.aspx](https://www.edmonton.ca/attractions_events/edmonton_valley_zoo/dreamnight-at-the-zoo.aspx).

<sup>13</sup> EDMONTON VALLEY ZOO, [https://www.edmonton.ca/attractions\\_events/edmonton\\_valley\\_zoo/dreamnight-at-the-zoo.aspx](https://www.edmonton.ca/attractions_events/edmonton_valley_zoo/dreamnight-at-the-zoo.aspx).

<sup>14</sup> Visitor demographics recorded by the American Association of Zoos and Aquariums (AZA) indicate that out of the roughly 12 million visitors to member-accredited zoos, 57 percent were children under 11 and that “two out of three adults visit a zoo with a child and 50% of adults visit an aquarium with a child.” Am. Zoo Ass’n, *Visitor Demographics*, AM. ZOO ASS’N (2020), <https://www.aza.org/partnerships-visitor-demographics?locale=en#:~:text=Visitors%20are%3A,54%25%20women%2F46%25men>. Demographics from Canada may even be higher, as a report from the Toronto Zoo on the 2016 statistics showed that 78.1 percent of respondents had at least one child in the group and 51.9 percent had two children in the group. Robin D. Hale, *Staff Report*, TORONTO ZOO 2 (Feb. 22, 2017), <https://www.toronto.ca/legdocs/mmmis/2017/z/bgrd/backgroundfile-101510.pdf>.

With young children's lives generally being immersed in animal narratives through picture books, television shows, films, apps, and toys and stuffed animals,<sup>15</sup> it is not surprising that children want to go to zoos and aquaria or that their families wish to take them to these places to see the animals. Yet, with increased protest against animal captivity in zoos as well as the acculturation of accredited zoos to the science of conservation biology, such places have had to reposition themselves to maintain respectable public stature. They have dissociated themselves from their traditional but now increasingly-discredited reasons for why animals have to be in captivity related to imperial history, exotica, leisure, and recreation<sup>16</sup> to re-branding themselves as conservation and educational centres.<sup>17</sup> Moreover, when zoos and aquaria are critiqued for keeping wild animals captive or for running captive breeding programs, many point to educational and conservation mandates of their institutions and the social value of wild animal captivity for these purposes.<sup>18</sup> As Irus Braverman has documented in her comprehensive study of American zoos, zoos emphasize the boost that captive breeding in zoos plays for conservation efforts of wild populations (whether such populations are characterized as *in situ*, *ex situ*, or *intersitu*) in response to animal rights opponents seeking zoos' abolition.<sup>19</sup> As well, zoos and aquaria point to their rescue and rehabilitation of injured wild animals and claim to serve a leading role in teaching the public about the need for conservation given the ongoing phenomenon of species extinction.<sup>20</sup>

Although it is not a point that Braverman herself unpacks, we can observe that such justificatory mandates for the continued purported need for zoos and aquaria revolve around the human child. The presence of children in zoos and aquaria as visitors on family outings and school trips is routine and critical to the continued viability of zoos and aquaria.<sup>21</sup> Some scholars have noted how children are the target audiences for conservation messaging from zoos and aquaria, making them the principal human cohort that is said to benefit from the conservation work zoos and

<sup>15</sup> Sandra R. Waxman et al., *Humans (Really) Are Animals: Picture-Book Reading Influences 5-Year-Old Urban Children's Construal of the Relation between Humans and Non-human Animals*, 5 *FRONTIERS PSYCH.* Article 172, 1, 1–2 (2014).

<sup>16</sup> JOHN BERGER, *Why Look at Animals?* in *ABOUT LOOKING* 3, 19–21 (1st ed. 1980); DESMOND, *supra* note 9, at 149, 157.

<sup>17</sup> Irus Braverman, *Conservation without Nature: The Trouble with In Situ Versus Ex Situ Conservation*, 51 *GEOFORUM* 47, 49 (2014); Tema Milstein, *Somethin' Tells Me It's All Happening at the Zoo: Discourse, Power, and Conservationism*, 3 *ENV'T COMM'N: J. NATURE & CULTURE* 25, 29–32 (2009).

<sup>18</sup> IRUS BRAVERMAN, *ZOOLAND: THE INSTITUTION OF CAPTIVITY* (2012); Milstein, *supra* note 17, at 17, 25, 27, 40–46.

<sup>19</sup> BRAVERMAN, *supra* note 19, at 18.

<sup>20</sup> *Id.*; IRUS BRAVERMAN, *ZOO VETERINARIANS: GOVERNING CARE ON A DISEASED PLANET* 1 (2020).

<sup>21</sup> Milstein, *supra* note 17, at 42; Gail F. Melson, *Why the Wild Things Are: Animals in the Lives of Children* 75 (2001).

aquaria do.<sup>22</sup> Conservation discourses are aimed at preserving species for *future* human generations. We see that above in the Canadian context of the Edmonton Valley Zoo. But a quick look at zoo and aquarium websites worldwide reveal that such messaging is not anomalous; conservation educational efforts are disproportionately directed at children with school visits, overnight stays, birthday parties, and camps as regular parts of the zoo and aquarium offerings and overall experience.

Consider the mission statement for the global industry-leading San Diego Zoo. In the rotating banner on their website's home page, it says their mission is to end species extinction.<sup>23</sup> When a visitor clicks on the banner to learn more, they are taken to a painting of various animals that looks like it is from a children's picture book, with the caption underneath indicating that the "San Diego Zoo global is a conservation organization committed to saving species around the world."<sup>24</sup> After depictions of children along with their parents happily gazing at the animals swimming in a tank, the page goes on to discuss "The Human-Animal Connection":

For more than a century, people have flocked to the San Diego Zoo to discover animals. The Zoo connects people with wildlife to inspire a passion for nature. *Picture the wide-eyed wonder on a child's face upon meeting a living, breathing giraffe, something she's only seen on a digital screen before. Or the wonder of encountering a penguin that is looking at you with the same curiosity you have about him. These are the moments that tell the story of the San Diego Zoo and San Diego Zoo Safari Park. It is these connections that spark the desire to protect and save species.*<sup>25</sup>

Messaging on the website of other world-famous top-ranked zoos,<sup>26</sup> such as at Taronga Zoo Sydney<sup>27</sup> and Singapore Zoo (as part of Wildlife Reserves Singapore<sup>28</sup>), is similar. For example, under the heading "Our Animals" across from an image of a baby chimpanzee latched onto her mother, Taronga Zoo Sydney states: "Taronga cares for over 4000 animals from over 350 species, many of which are threatened. Find out which fascinating animals you might meet on your visit, and how we're contributing to global efforts to save species from the brink of

<sup>22</sup> Anette Therkelsen & Maria Lottrup, *Being Together at the Zoo: Zoo Experiences among Families with Children*, 34 LEISURE STUD. 354, 356–57 (2015); Aaron J.C. Wijeratne et al., *Rules of Engagement: The Role of Emotional Display Rules in Delivering Conservation Interpretation in a Zoo-Based Tourism Context*, 42 TOURISM MGMT. 149, 149, 150, 153 (2014).

<sup>23</sup> SAN DIEGO ZOO (2020), <https://zoo.sandiegozoo.org>.

<sup>24</sup> San Diego Zoo, *Our Mission*, SAN DIEGO ZOO (2020), <https://zoo.sandiegozoo.org/our-mission>.

<sup>25</sup> *Id.* (emphasis added).

<sup>26</sup> Oishimaya Sen Nag, *The Top Zoos in the World*, WORLDATLAS (Sept. 28, 2018), <https://www.worldatlas.com/articles/best-rated-zoos-in-the-world.html>.

<sup>27</sup> Taronga Zoo, *Our Actions*, TARONGA ZOO (2020), <https://taronga.org.au/conservation-and-science/our-actions>.

<sup>28</sup> Wildlife Reserves Singapore, *About Us*, WILDLIFE RSRV. SING. (2020), <https://www.wrs.com.sg/en/about-us.html>.

extinction.”<sup>29</sup> Virtual visitors are then invited to click on animals by species to learn more and are taken to new webpages with photos and a short description of the animal species along with how the zoo is saving the species through breeding programs, participation in rehabilitation and release programs, or other initiatives.<sup>30</sup> Virtual visitors can also watch the animals on Taronga TV.<sup>31</sup> School excursions are offered, and the website assures parents that there are many “kid-friendly” activities at the zoo.

The offering of “educational” programming for children allows the zoos to present themselves as an essential provider of an important public service: teaching and inspiring the next human generation about the wonders of “nature” and the importance of wildlife conservation. How can a space that children flock to with their families to see cute animal babies and learn about the “natural world” possibly be objectionable? It is challenging to look past the family-friendly veneer of these spaces, especially given the other measures zoos have adopted to erase visible signs of captivity,<sup>32</sup> to expose the conditions of captivity and the harms they produce. The marshalling of children and families as principal implicit stakeholders for zoos contributes to the humane-washing that zoo critics have already pointed to regarding zoos’ efforts to improve animal welfare<sup>33</sup> which “make the intrinsic violence of custody and display more palatable, more subtle, and less visible.”<sup>34</sup>

And even when such violence is on display, as it was on February 9, 2014, when the Copenhagen zoo chose to kill a healthy eighteen-month old giraffe they had named Marius because he was seen as a “surplus” animal that threatened the carefully cultivated genetic pool of giraffes in European zoos should he mature and reproduce, children are deployed to rationalize it.<sup>35</sup> A zoo veterinarian shot Marius in the head outside of the public eye, but the feeding of his carcass to three zoo lions (who were killed a month later to be replaced by a young male lion unrelated to the females in the den) was made public as a children’s “educational” event.<sup>36</sup> The zoo sought to quell the storm of international controversy that erupted through multiple justifications: (1) the breeding program’s genetic parameters, (2) using Marius’ flesh as food for zoo lions, and (3) conducting a three-hour dismemberment and dissection of Marius’ body in front of a public audience as an educa-

<sup>29</sup> Taronga Zoo, *Our Animals*, TARONGA ZOO (2020), <https://taronga.org.au/sydney-zoo/animals>.

<sup>30</sup> Taronga Zoo, <https://taronga.org.au/sydney-zoo/animals>.

<sup>31</sup> Taronga Zoo, *Taronga TV*, TARONGA ZOO (2020), <https://taronga.org.au/taronga-tv>.

<sup>32</sup> Denning, *supra* note 8, at 69; BRAVERMAN, *supra* note 19, at 71-72, 80-86.

<sup>33</sup> Jessica Pierce & Marc Bekoff, *A Postzoo Future: Why Welfare Fails Animals in Zoos*, 21 J. APPLIED ANIMAL WELFARE SCI. 43, 43 (2018).

<sup>34</sup> Denning, *supra* note 8, at 61.

<sup>35</sup> BRAVERMAN, *supra* note 20, at 17.

<sup>36</sup> LORI GRUEN, *DISPOSABLE CAPTIVES*, Oxford University Press: Blog (Apr. 10, 2014), <https://blog.oup.com/2014/04/disposable-captives-zoo-animals-philosophy/>.

tional experience for children in anatomy and the realities of life.<sup>37</sup> All of these justifications can be impugned. Lori Gruen has noted that the disposable treatment of Marius spurred by reigning genetic logic was also then later applied to kill the lions (a mother and her two cubs) to whom Marius was fed a mere month later.<sup>38</sup> Despite the reigning narrative of conservation, Gruen pointedly observes that “[c]-ausing death is what zoos do” not simply due to genetic management concerns but also due to the effects of captivity.<sup>39</sup>

It is instructive that the Copenhagen zoo did not merely rest on the first two justifications about why Marius had to be killed, perhaps aware that its rationalizations about genetic control of animals for conservation purposes and that Marius’ carcass was not “wasted” because three lions benefitted are not sufficient to convince the public about the ethics of killing a very young giraffe. It is likely not fortuitous that the zoo chose to market the killing as an educational opportunity – not generically, but for schoolchildren. Pointing to the absurdity of this particular invocation of the educational value of Marius’ death, Craig Gingrich-Philbrook observes: “It seems never to occur to the zoo officials offering this pedagogical alibi that, if a culture does indeed wish to educate children about the relationships between animals and death, one could easily bus them to a nearby slaughterhouse.”<sup>40</sup> As Gingrich-Philbrook goes on to note, of course, this does not occur, as the slaughterhouse is not perceived to be suitable viewing material for children or a family-friendly place. Children are not present at slaughterhouses, and industrialized societies take enormous discursive and material efforts to hide the way in which animals are produced from our sensibilities<sup>41</sup> and even from slaughterhouse employees themselves.<sup>42</sup> Gingrich-Philbrook exposes the not-so-subtle ways in which the presence of children at the zoo is critical to its organizing genetic conservationist logic justifying the zoos and aquaria’s continued need for existence. When the lethal nature of zoo decisions and activities are put (exceptionally) on public display, children are made visible to attenuate negative perception and restore confidence of zoos as ethical spaces that the public should support.

Doubtless, death of megafauna is never on display at a for-profit aquarium like SeaWorld, whose family brand – iconized through the ageless killer whale

<sup>37</sup> Craig Gingrich-Philbrook, *On the Execution of the Young Giraffe, Marius, by the Copenhagen Zoo: Conquergood’s “Lethal Theatre” and Posthumanism*, 36 *TEXT & PERFORMANCE Q.* 200, 206 (2016); *Disposable Captives*, <https://blog.oup.com/2014/04/disposable-captives-zoo-animals-philosophy/>.

<sup>38</sup> *Disposable Captives*, <https://blog.oup.com/2014/04/disposable-captives-zoo-animals-philosophy/>.

<sup>39</sup> *Id.*

<sup>40</sup> Gingrich-Philbrook, *supra* note 36, at 206.

<sup>41</sup> ELLEN K. SILBERGELD, *CHICKENIZING FARMS AND FOOD: NEW PERILS FOR PUBLIC HEALTH* 2, 62 (2016).

<sup>42</sup> TIMOTHY PACHIRAT, *EVERY TWELVE SECONDS: INDUSTRIALIZED SLAUGHTER AND THE POLITICS OF SIGHT* 8-9, 43-52 (2013).

Shamu – and messaging to children is powered by relentless marketing that suggests to (the largely white or middle class families that visit), that SeaWorld is family-friendly entertainment at its best. In her incisive account of spectacle and performance on display at SeaWorld, Jane Desmond calls attention to the conservation and family-oriented discourses and practices SeaWorld marshals to validate its entertainment and reduce the chance that its adult visitors might question the captivity of orcas for the fun and thrill of watching the ocean’s top predators perform elaborate tricks at the behest of human trainers.<sup>43</sup> Marketing to families and even children directly is central to SeaWorld’s commercial success – gift shops that sell stuffed animals and toys to children are strategically placed throughout the theme park,<sup>44</sup> and SeaWorld has launched three SeaWorld Kids apps to target this key demographic.<sup>45</sup>

But more so than marketing to ensure top profits, it is the *presence and figure* of human children that is critical to the validating messaging of the “good work” that SeaWorld and other animal-display venues (whether for-profit or not) are doing as “family-friendly” places to visit. Without children, the emphasis on “family” is unintelligible given the dominant heteronormative futurist logics through which most of us understand the term “family.”<sup>46</sup> Further, SeaWorld makes it clear that its educational and conservation messaging is directed at children.<sup>47</sup> Children are also invoked in legal battles that question captivity. The documentary *BlackFish* and memoirs by former lead trainers have affected SeaWorld’s bottom line<sup>48</sup> as well as its

<sup>43</sup> DESMOND, *supra* note 9, at 234–36, 243.

<sup>44</sup> *Id.* at 221–23.

<sup>45</sup> See SeaWorld Ent., Inc., *SeaWorld Kids Explores Nature with Five New, Fun Mobile Apps*, CISION PR NEWSWIRE (Dec. 16, 2014), <https://www.prnswire.com/news-releases/seaworld-kids-explores-nature-with-five-new-fun-mobile-apps-300010207.html>; see also <https://seaworld.com/orlando/shopping/> and <https://seaworld.com/san-diego/shopping/>.

<sup>46</sup> Cassie Peterson, *The Lies That Bind: Heteronormative Constructions of “Family” in Social Work Discourse*, 25 J. GAY & LESBIAN SOC. SERV. 486, 494–95 (2013).

<sup>47</sup> SeaWorld provides a variety of educational e-learning resources on their website which they describe as “ideal for students in grades K–8”. SeaWorld Parks & Ent., *@ Home*, SEAWORLD PARKS & ENT. (2020), <https://seaworld.com/at-home/>. They promote day camps and sleepaway camps for children from grade 2 to grade 8 as part of their educational programming in addition to field trips and behind-the-scenes tours. See SeaWorld Parks & Ent. (2020), <https://seaworld.org>. In describing their rescue and rehabilitation efforts, the website includes a quote from their senior veterinarian indicating her intention to inspire children: “I hope to inspire others, particularly bright young minds who want to know more about ocean life and what they can do to help.” SeaWorld also portrays teaching children about the world around them as a component of their conservation efforts: “Today, we cared for an injured animal. Today, we taught a child about the world around them. Today, we celebrated life, in all of its magnificent and powerful forms. Tomorrow we’ll do the same. This is our commitment.” SeaWorld Parks & Ent., *Our Commitment*, SEAWORLD PARKS & ENT. (2020), <https://seaworld.org/conservation/our-commitment/>.

<sup>48</sup> Maya Rhodan, *Seaworld’s Profits Drop 84% after Blackfish Documentary*, TIME (Aug. 6, 2015), <https://time.com/3987998/seaworlds-profits-drop-84-after-blackfish-documentary>.



ability to breed any more cetaceans.<sup>49</sup> *BlackFish* has also had a similar, if less direct, effect on Canada's Vancouver Aquarium,<sup>50</sup> despite the fact it did not then house orcas.<sup>51</sup> Both have resisted the efforts of legislative bans on future breeding or captivity and animal rights campaigns against them through careful reiteration of their conservation mandate and benefit to human children.<sup>52</sup>

### 13.2.2 *The Use of Children to Humanize Immigration Detention and Human Prisons*

In marked contrast to zoos and aquaria, immigration detention facilities and human prisons are not promoted as educational sites for children to visit. Those confined in these facilities attest to their extensive adverse effects.<sup>53</sup> The scholarly literature documenting the negative effects in general on humans who are kept captive is well established and will not be repeated here. What is lesser known is how children also inhabit these spaces, not only during visiting hours or as teenagers in juvenile detention facilities, but as young children who reside inside alongside their parents, overwhelmingly mothers. In this section, I discuss this phenomenon in the Canadian context and its underlying rationale as something “progressive” meant to improve the conditions of and reduce the family separation and, specifically mother-child attachment, harms that prisons and immigration detention occasion in the first place. I show how human children are marshalled to humanize these captive spaces with known disruptive and often devastating family harms.

<sup>49</sup> E.C.M. Parsons & Naomi A. Rose, *The Blackfish Effect: Corporate and Policy Change in the Face of Shifting Public Opinion on Captive Cetaceans*, 13 TOURISM MARINE ENV'T 73, 78 (2018).

<sup>50</sup> Blackfish was a catalyst for a cetacean anti-captivity bill that eventually became law in Canada, namely, the *Ending the Captivity of Whales and Dolphins Act*, SC 2019, c 11. Katie Sykes, *The Whale, Inside: Ending Cetacean Captivity in Canada*, 5 CANADIAN J. COMPAR. & CONTEMP. L. 349, 354 (2019).

<sup>51</sup> The COVID-19 global pandemic and the severe downturn in public attendance caused the Vancouver Aquarium to close in summer of 2020. Although it has since re-opened, its chances of regaining financial viability despite continued provincial and federal government support may still be bleak. Hina Alam, *Vancouver Aquarium Will Reopen, Operator's CEO Vows, as It Searches for Solution to Financial Struggles*, CBC NEWS (Sept. 17, 2020), <https://www.cbc.ca/news/canada/british-columbia/vancouver-aquarium-covid-19-financial-solution-pandemic-1.5727870>.

<sup>52</sup> Associated Press, *SeaWorld Sues over Orca Breeding Ban*, WALL ST. J. (Dec. 30, 2015), <https://www.wsj.com/articles/seaworld-sues-over-orca-breeding-ban-1451493595>; Canadian Broad. Corp. News, *Vancouver Aquarium Files Legal Challenge to Whale, Dolphin Breeding Ban*, CBC NEWS (Aug. 27, 2014), <https://www.cbc.ca/news/canada/british-columbia/vancouver-aquarium-files-legal-challenge-to-whale-dolphin-breeding-ban-1.2748326>.

<sup>53</sup> GRUEN, *supra* note 7, at 240-44.

## 13.2.2.1 Immigration Detention

In immigration detention centres, while some countries enforce the devastating measure of separating children from their caregivers, other countries house parents in immigration detention with their children; and others still take the further step of housing children legally entitled to be in a country (usually because they are born there after their mother entered illegally) with their “illegal” parent in detention centres. As I discuss below with respect to the Canadian context, this practice arises out of a concern for the welfare of the children as well as of the parents who wish to avoid separation from their children while detained. As recent practices at the US-Mexican border have showcased, the forced separation of children from their parents upon detention has attracted overwhelming public outcry.<sup>54</sup> Family maintenance during immigration processing and detention can thus be a positive measure that softens the harsh edges of immigration detention.<sup>55</sup>

In Canada, however, separating children from their parents is supposed to be a last resort under the Immigration and Refugee Protection Act.<sup>56</sup> Minor children are not supposed to be detained except according to their best interests.<sup>57</sup> In 2017–18, advocacy organizations reported that 155 children were detained, an increase by their count of 4 children from 2016–17, but also a decrease from 232 in 2014–15.<sup>58</sup> Compared to the militarized and neoliberal border confinement practices in the United States since the 1980s,<sup>59</sup> Canada’s “last resort” policy appears responsive to

<sup>54</sup> Camilo Montayo-Galvez, *U.S. Planned to Separate 26,000 Migrant Families before Outcry over “Zero Tolerance” Policy*, CBS NEWS (Nov. 27, 2019), [www.cbsnews.com/news/family-separations-zero-tolerance-policy-us-planned-to-separate-more-than-26000-migrant-families-2019-11-27/](http://www.cbsnews.com/news/family-separations-zero-tolerance-policy-us-planned-to-separate-more-than-26000-migrant-families-2019-11-27/).

<sup>55</sup> Rachel Kronick et al., *Asylum-Seeking Children’s Experiences of Detention in Canada: A Qualitative Study*, 85 AM. J. ORTHOPSYCHIATRY 287, 290–91, 293 (2015); Rachel Kronick et al., *Refugee Children’s Sandplay Narratives in Immigration Detention in Canada*, 27 EUR. CHILD & ADOLESCENT PSYCHIATRY 423, 434–435 (2018); Lauren Vogel, *Health Professionals Decry Detention of Migrant Children in Canada*, 190 CANADIAN MED. ASS’N J. E867, E867 (2018).

<sup>56</sup> Immigration and Refugee Protection Act, S.C. 2001, cl. 27, § 6 (2001) (Can.).

<sup>57</sup> *Id.*

<sup>58</sup> HUM. RTS. WATCH & U. TORONTO INT’L HUM. RTS. PROGRAM, JOINT SUBMISSION BY HUMAN RIGHTS WATCH AND THE UNIVERSITY OF TORONTO’S INTERNATIONAL HUMAN RIGHTS PROGRAM TO THE COMMITTEE ON THE RIGHTS OF THE CHILD’S CONSIDERATION OF CANADA’S FIFTH AND SIXTH PERIODIC REPORTS 2 (2020), [https://www.hrw.org/sites/default/files/supporting\\_resources/hrw\\_crc\\_submission\\_canada\\_final\\_1.pdf](https://www.hrw.org/sites/default/files/supporting_resources/hrw_crc_submission_canada_final_1.pdf). There is some discrepancy between the numbers reported by Human Rights Watch and the University of Toronto’s International Human Rights Program and those reported by Canada Border Services Agency. According to Canada Border Services Agency: in 2017–18, 151 children were detained, representing a decrease of 11 children from 2016–17, and a decrease from 232 in 2014–05. See Can. Border Serv. Agency, *Annual Detention Statistics – 2012–18* (2018), <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2018-eng.html>.

<sup>59</sup> Linda Alvarez, *No Safe Space: Neoliberalism and the Production of Violence in the Lives of Central American Migrants*, 5 J. RACE, ETHNICITY, & POL. 4, 9 (2020).

the needs of parents and children. Yet, as a recent report prepared by the University of Toronto's Faculty of Law entitled *No Life for a Child* explains, the situation is anything but.<sup>60</sup> Parents and children face conditions and resulting harm and trauma even when together. For one, where the children themselves are Canadian citizens, parents must confront the decision of permitting their child to enter the foster care system or having them detained with them to avoid losing their children.<sup>61</sup> Tracking children defined as seventeen and under, the *No Life for a Child* report notes that "between 2010 and 2014, an average of 242 children were detained each year" with numbers declining in the last two years.<sup>62</sup> The authors are careful to clarify that these numbers represent children under formal detention orders, arguing that the figures are higher given that many children also live with their mothers on a de facto basis in Immigration Holding Centres.<sup>63</sup>

Although the children are called "guests" and not "detainees,"<sup>64</sup> this change in language does not materially erase the violation of their rights or those of children who are also considered illegal under the United Nations Convention on the Rights of the Child (CRC), a convention to which Canada is a signatory and has ratified.<sup>65</sup> The CRC stipulates in Article 3 that "the best interests of the child" should be paramount in any state decision (CRC). The authors of *No Life for a Child* and the UN Special Rapporteur on the Special Rights of Migrants, who wrote the Foreword to the report, both emphasized that the detention of children, even when rationalized as a last resort option, does not comply with the best interests principle.<sup>66</sup> Children stand to suffer psychologically and have traumatized caregivers even post-release.<sup>67</sup> The *No Life for a Child* report, the United Nations Commissioner for Children, and other child rights organizations have called for children to be able to stay with their families *outside* of detention even while undergoing refugee, asylum, and immigration processing.<sup>68</sup> Such critiques of "living in" help us recognize the brutalities for children in detention while also recognizing "progressive" policies for

<sup>60</sup> HANNA GROS & YOLANDA SONG, "NO LIFE FOR A CHILD": A ROADMAP TO END IMMIGRATION DETENTION OF CHILDREN AND FAMILY SEPARATION 1 (Samer Muscati ed., 2016), <https://ihp.law.utoronto.ca/news/no-life-child-roadmap-end-immigration-detention-children-and-family-separation>.

<sup>61</sup> *Id.* at 41.

<sup>62</sup> *Id.* at 9.

<sup>63</sup> *Id.* at 9–10. The authors note that some family separation occurs because "children must live separately from their fathers because the family rooms are restricted to mothers and children." *Id.* at 9.

<sup>64</sup> *Id.* at 55–56.

<sup>65</sup> G.A. Res. 44/25, United Nations Convention on the Rights of the Child (Nov. 20, 1989), <https://treaties.un.org/doc/Publication/MTDSCG/Volume%20I/Chapter%20IV/IV-11.en.pdf>.

<sup>66</sup> GROS & SONG, *supra* note 59, at 2.

<sup>67</sup> *Id.* at 10.

<sup>68</sup> *Id.* at 2, 56; HUM. RTS. WATCH & U. TORONTO INT'L HUM. RTS. PROGRAM, *supra* note 57, at 8–9.

families as a welfarist measure that permits the underlying and problematic detention to continue.

### 13.2.2.2 Prisons

In order to contend with the growing number of female prisoners who give birth while in prison – a phenomenon related to the fast-rising rate at which women are being incarcerated – and to respect the mutual benefits of maternal care and bonding for both the mother and child, prisons worldwide have housed young children with their mothers.<sup>69</sup> The realization by some governments that separating children from their incarcerated parents, particularly their mothers, even for short custodial sentences, entails long-lasting adverse effects on the child<sup>70</sup> is to be welcomed. It is a significant achievement when contrasted with jurisdictions such as the United States, which incarcerates roughly one-third of the world's female prisoner population estimated at 625,000 in 2018,<sup>71</sup> and where the opportunities for children to stay with their mothers are scant.<sup>72</sup> In such situations of forced parental-child separation, a parental prison sentence is still effectively shared by the child, particularly when incarceration removes a *mother* from the child(ren) she was caring for,<sup>73</sup> and not only during the period of incarceration.<sup>74</sup> Having an incarcerated parent is a prominent “adverse childhood experience” (ACE) that predisposes children to additional ACEs for the child's future adult years across many measures

<sup>69</sup> E.g., Jane R. Walker et al., *Residential Programmes for Mothers and Children in Prison: Key Themes and Concepts*, 21 CRIMINOLOGY & CRIM. JUST. 21, 22 (2021). See also Carlton, *supra* note 1, at 290; ARON SHLONSKY ET AL., LITERATURE REVIEW OF PRISON-BASED MOTHERS AND CHILDREN PROGRAMS: FINAL REPORT, 1 (Soc. Work Melbourne Sch. Health Sci. et al. 2016); Helen Namondo Linonge-Fontebo & Marlice Rabe, *Mothers in Cameroonian Prisons: Pregnancy, Childbearing and Caring for Young Children*, 74 AFR. STUD. 290, 290-91 (2015); Sylvia I. Mignon & Paige Ransford, *Mothers in Prison: Maintaining Connections with Children*, 27 SOC. WORK PUB. HEALTH 69, 70-73 (2012); PAT CARLEN, WOMEN AND PUNISHMENT: THE STRUGGLE FOR JUSTICE XX (Routledge Ltd. ed. 2013); Patricia J. Thompson & Nancy J. Hamm, *Parenting from Prison: Helping Children and Mothers*, 23 ISSUES COMPREHENSIVE PEDIATRIC NURSING 61, 61-62 (2000).

<sup>70</sup> Natalie Booth, *Disconnected: Exploring Provisions for Mother-Child Telephone Contact in Female Prisons Serving England and Wales*, 20 CRIMINOLOGY & CRIM. JUST. 150, 151-52, 162 (2020).

<sup>71</sup> Helen Myers et al., *Impact of Family-Friendly Prison Policies on Health, Justice and Child Protection Outcomes for Incarcerated Mothers and Their Dependent Children: A Cohort Study Protocol*, 7 BMJ OPEN e016302 1, 1 (2017).

<sup>72</sup> Lynne Haney, *Motherhood as Punishment: The Case of Parenting in Prison*, 39 SIGNS: J. WOMEN CULTURE & SOC'Y 105, 108-9 (2013).

<sup>73</sup> John Hagan & Holly Foster, *Children of the American Prison Generation: Student and School Spillover Effects of Incarcerating Mothers*, 46 LAW & SOC'Y REV. 37, 38-44 (2012); Myers et al., *supra* note 70, at 2.

<sup>74</sup> Dan Levin, *As More Mothers Fill Prisons, Children Suffer “a Primal Wound,”* N.Y. TIMES (Dec. 29, 2019), <https://www.nytimes.com/2019/12/28/us/prison-mothers-children.html>; Anais Ogrizek et al., *Mother-Child Attachment Challenged by Prison*, EUR. CHILD & ADOLESCENT PSYCHIATRY (2020), <https://doi.org/10.1007/s00787-020-01585-6>.

of success and well-being.<sup>75</sup> Such effects are heightened further when the incarcerated parent is the mother and contribute to the intergenerational compounding of gender, race, and class inequities given the disproportionate rate at which racialized and poor mothers are incarcerated in the United States and elsewhere<sup>76</sup> and that the bulk of caring for children left behind falls on related female kin rather than non-incarcerated fathers.<sup>77</sup>

Still, it would be erroneous to assume that programs that allow children to accompany their mothers to prison or stay once they are born for their early formative years are a categorical improvement for children or their mothers. Taking a closer look at the Canadian program helps understand why. In Canada, a woman who is federally sentenced has had the right to apply to live with her child since 2001 when Correctional Services Canada implemented the federal Mother-Child Program (MCP),<sup>78</sup> following recommendations by the Task Force on Federally Sentenced Women in its report entitled *Creating Choices*.<sup>79</sup> The Task Force was established after intense media coverage of deaths in the then-existing Kingston Penitentiary for Women in Kingston, Ontario, and widespread reporting of the inhumane conditions therein.<sup>80</sup> The Task Force was established to change prison conditions for women.

The Task Force's Report emphasized a "constant touchstone" for its plan to reform Canadian prisons for women, comprising the following factors: the need to "create choices" and for prison programming and operation to "mirror caring responses for women" that they would find "in the community, including Aboriginal and other ethnic communities";<sup>81</sup> as in other jurisdictions where colonialism, poverty, and other forms of structural violence form the bedrock for vulner-

<sup>75</sup> Kristin Turney, *Adverse Childhood Experiences among Children of Incarcerated Parents*, 89 CHILD. & YOUTH SERV. REV. 218, 218 (2018).

<sup>76</sup> Hagan & Foster, *supra* note 72, at 41; Myers et al., *supra* note 70, at 1-2.

<sup>77</sup> Haney, *supra* note 71, at 109.

<sup>78</sup> Sarah Brennan, *Canada's Mother-Child Program: Examining Its Emergence, Usage and Current State*, 3 CANADIAN GRADUATE J. SOCIO. & CRIMINOLOGY 11, 11 (2014).

<sup>79</sup> *Id.*; TASK FORCE ON FEDERALLY SENTENCED WOMEN, *CREATING CHOICES: THE REPORT ON THE TASK FORCE ON FEDERALLY SENTENCED WOMEN 1* (1990), <https://www.publicsafety.gc.ca/lbrr/archives/hv%209507%20t3%201990-eng.pdf>. The MCP is overseen by the Office of the Correctional Investigator. The program underwent considerable shifts in 2008 and in 2016. Brennan, *supra* note 77, at 28.

<sup>80</sup> Sherti Barron, *Life and Death in the Cage*, OTTAWA CITIZEN Mar. 9, 1991 at XX; Canadian Press, *First "Dangerous Offender," Woman, 30, Dies in Prison*, GLOBE & MAIL, Dec. 5, 1988, at A15; Mary Lasovich, *Vigil Tomorrow for Dead Prison for Women Inmate*, WHIG, Dec. 17, 1988, at X; Whig, *Critical Judge Agrees to Visit Kingston Prison for Women*, WHIG Mar. 25, 1987 at XX.

<sup>81</sup> TASK FORCE ON FEDERALLY SENTENCED WOMEN, *supra* note 78, at 138-39. <https://www.publicsafety.gc.ca/lbrr/archives/hv%209507%20t3%201990-eng.pdf>.

abilities that place some more than others on a “pipeline” to prison, the incarcerated population in Canada is disproportionately poor and Indigenous.<sup>82</sup> In stressing the need to “empower women to take responsibility of their lives,”<sup>83</sup> the report asked that prison initiatives “ensure that women are treated with respect and dignity” and be driven from the ground up by listening to the voices of women who are incarcerated as to their needs.<sup>84</sup> In sum, the report “envisioned an idealized prison environment that emphasized serenity and tranquility, plenty of space and privacy, was rehabilitative rather than security-focused and recognized women’s particular needs.”<sup>85</sup> As part of the changes that were then recommended, the report stressed the important need for inmates’ living choices to include “the opportunity for mothers and children to live together based on the rights and needs of the children, mothers and significant others in each individual case” by directing that each prison facility construct “an appropriate environment to enable a child or children to live with the mother” in a cottage-like setting.<sup>86</sup>

As of 2014, MCPs were operational in five of the six federal facilities for women inmates across Canada.<sup>87</sup> Full-time residency for children under five, part-time residency for children under six (originally available to children five to twelve), and regular visiting for other children are all components of the program.<sup>88</sup> Despite these options, overall participation is extremely low;<sup>89</sup> across the country a mere fourteen children lived with their mothers between 2008 and 2014 in federal prisons and only eight lived full-time.<sup>90</sup> Numerous academic critiques have pointed to systemic gendered, colonial, ability, and class barriers to explain the non-optimal functioning of the program leading to very low rates of participation.<sup>91</sup> Significantly,

<sup>82</sup> Lynsey Race & Lorna Stefanick, *Mother-Child Programs in Prison: Disciplining the Unworthy Mother*, in *MOTHERING AND WELFARE: DEPRIVING, SURVIVING, THRIVING* 43, 44, 49 (Karine Levasseur et al. eds., 2020).

<sup>83</sup> TASK FORCE ON FEDERALLY SENTENCED WOMEN, *supra* note 78, at 111.

<sup>84</sup> *Id.* at 137.

<sup>85</sup> Brennan, *supra* note 77, at 28.

<sup>86</sup> TASK FORCE ON FEDERALLY SENTENCED WOMEN, *supra* note 78, at 144, <https://www.publicsafety.gc.ca/lbr/archives/hv%209507%2013%201990-eng.pdf>.

<sup>87</sup> Brennan, *supra* note 77, at 15. Nova Institution for Women (Truro, Nova Scotia), Edmonton Institute for Women (Edmonton, Alberta), Grand Valley Institute for Women (Kitchener, Ontario), Joliette Institute (Joliette, Quebec), Fraser Valley Institution (Abbotsford, British Columbia), Okimaw Ohci Healing Lodge (Maple Creek, Saskatchewan). *Id.* at 15. Sections 76 and 77 of the Corrections and Conditional Release Act provide the principal legal authority for the creation of the MCP program, providing that the Service should design programs that “contribute to [inmates’] successful reintegration into the community” and requiring the Service shall provide programs tailored to women, respectively. Corrections and Conditional Release Act, S.C. 1992, c. 20, §§ 76-77. (Can.). *Commissioner’s Directive 768*, developed by the Women Offender Sector and Strategic Policy, sets out the details of the program.

<sup>88</sup> Kayliah Miller, *Canada’s Mother-Child program and Incarcerated Aboriginal Mothers*, 37 *CANADIAN FAM. L.Q.* 1, 6 (2017).

<sup>89</sup> *Id.* at 8; Brennan, *supra* note 77, at 16.

<sup>90</sup> Race & Stefanick, *supra* note 81, at 56.

<sup>91</sup> Brennan, *supra* note 77, at 11, 21, 28; Miller, *supra* note 87, at 11, 16–17; Jane M. Paynter & Erna Snelgrove-Clarke, “Breastfeeding in Public” for Incarcerated Women: *The Baby-Friendly Steps*,

however, as Sarah Brennan highlights, despite the program's minimal uptake, "[i]t is noteworthy that not a single respondent identified a lack of interest on the part of incarcerated women as a possible reason for the low participation rate in the program."<sup>92</sup> We can understand that the MCP is of utmost value to women who are mothers who wish to be with their children,<sup>93</sup> a valuation that is common to imprisoned mothers across the globe.<sup>94</sup> We can also understand that the presence of such a program in a prison context is one important way prison policies can become compliant with the "constant touchstone" of the *Creating Choices* Report,<sup>95</sup> namely, to treat women with respect, dignity, and care and empower them and help generate a more compassionate prison environment. Allowing mothers to stay with their children prevents trauma and other psychological and social ills to both.<sup>96</sup> Correctional Service Canada (CSC) itself has stated that the program "aims to provide a supportive environment that fosters and promotes stability and continuity for the mother-child relationship."<sup>97</sup> In other words, the MCP can be understood as making the prison better and thus a more humane and socially defensible place to live.

But if the CSC's goal is "to provide a supportive environment that fosters and promotes stability and continuity for the mother-child relationship," it is necessary to ask whether the impetus for the program should not focus on how children can best *enter* the prison to be with their mothers but, instead, how mothers can *exit* the prison environment altogether to be with their children outside of captivity and in the community context. Thus far, acknowledging the harms of mother-child separation and benefits of keeping mothers with their children has not persuaded legislatures to stop the practice of incarcerating women who are mothers with children or otherwise have had caregiving responsibility for children disrupted by their imprisonment. Neither has awareness of Canada's international law obligations as a signatory to the CRC, where all decisions regarding children must conform to the best interests of children. If the "best interests of children" is the ultimate benchmark for state decisions where children are involved, including whether a child can stay with her mother, and it is in the case of the MCP,<sup>98</sup> surely doing what is in the best interests means incarcerating neither the child nor her mother.

14 INT'L BREASTFEEDING J. 1, 4 (2019); Martha J. Paynter, *Policy and Legal Protection for Breastfeeding and Incarcerated Women in Canada*, 34 J. HUM. LACTATION 276, 276 (2018).

<sup>92</sup> Brennan, *supra* note 77, at 19.

<sup>93</sup> *Id.* at 12; Miller, *supra* note 77, at 4.

<sup>94</sup> Booth, *supra* note 69, at 151-53.

<sup>95</sup> TASK FORCE ON FEDERALLY SENTENCED WOMEN, *supra* note 78, at 138, <https://www.publicsafety.gc.ca/lbrf/archives/hv%209507%20t3%201990-eng.pdf>.

<sup>96</sup> Miller, *supra* note 77, at 2-4, 21-22; Brennan, *supra* note 77, at 11-13.

<sup>97</sup> CORR. SERV. CAN., COMMISSIONER'S DIRECTIVE 768 INSTITUTIONAL MOTHER-CHILD PROGRAM ¶ 1 (Gov't Can. 2020), <https://www.csc-cc.gc.ca/politiques-et-lois/768-cd-en.shtml>.

<sup>98</sup> Miller, *supra* note 77, at 2-4, 21-22; see *Inglis v. B.C. (Minister of Public Safety)*, 2013 B.C.S.C. 2309 (2013).

This option has not yet emerged as a priority, let alone a solution, in public government discourse in the year since *Inglis* was argued and decided. Canada is also a signatory to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“the Bangkok Rules”), which emphasize maximizing leave opportunities for mothers where safe to do so and in children’s best interests.<sup>99</sup> The Canadian government has cited these rules as part of the legal framework underlying a “gender responsive” and “trauma-centred” approach to corrections outlined in a report entitled *Gender Responsive Corrections for Women in Canada: The Road to Successful Reintegration*.<sup>100</sup> Despite referencing the Bangkok Rules, and identifying the high proportion of women who are mothers/active caregivers as a key gendered reality of the female prison population, and prioritizing for future work “(o)pportunities that promote stability and continuity for the mother-child relationship,” this “trauma-informed” report makes no mention of non-custodial sentences.<sup>101</sup>

Judicial review of the MCP’s operation has also not led to a questioning of the carceral model for mothers despite the child-centered constitutional and international law obligations constraining government action in Canada. In *Inglis v. British Columbia*, the only constitutional challenge brought by mothers and their babies in relation to the program, here in relation to the closing of the MCP at the Alouette Correctional Centre for Women, the defendants Minister of Public Safety and Solicitor for British Columbia, the Attorney General of British Columbia, and the warden of the prison denied that the decision to cancel the program had to take into account the best interests of the children. The court rejected this argument, citing the CRC as well as the provincial child protection statute’s emphasis on the best interests of children as relevant context for the federal closure decision.<sup>102</sup> In addition, the court noted other child- and family-related international law principles that were applicable given Conventions that Canada had ratified. These regarded state protection for families in general, state protection for pregnant women and to mothers and newborns, and a mandate against separating children from their families unless necessary according to the best interests principle.<sup>103</sup> Madam Justice Ross found that the MCP was a program guided by the individualized best interests of each child, as decided by the ministry’s child protective administrative arm pursuant to the *Child and Family Community Services Act*.<sup>104</sup> She further observed that given the vulnerability and disadvantage experienced by incarcerated

<sup>99</sup> G. A. Res. 65/229. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 43 (Mar. 16, 2011).

<sup>100</sup> CORR. SERV. CAN., GENDER-RESPONSIVE CORRECTIONS FOR WOMEN IN CANADA: THE ROAD TO SUCCESSFUL REINTEGRATION (2021), <https://www.csc-scc.gc.ca/women/002002-0005-en.shtml#t3>.

<sup>101</sup> *Id.*

<sup>102</sup> *Inglis*, 2013 B.C.S.C. at ¶ 9.

<sup>103</sup> *Id.* at ¶ 7.

<sup>104</sup> *Id.* at ¶ 14.



mothers and their babies, and noting in particular the “overrepresentation of Aboriginal women in the incarcerated population and the history of dislocation of Aboriginal families caused by state action,” that the MCP “represented a significant step forward in the amelioration of the circumstances of the mothers and their babies.”<sup>105</sup>

The court went on to find that the closure violated section 7 of Canada’s Charter of Rights and Freedoms, the country’s constitutional rights-protecting document vis-à-vis state action. It did so by denying both mothers and their infants their security of the person and liberty interests in remaining attached to each other and enjoying numerous benefits that attachment to mothers and breastfeeding bring for both parties now and later in life.<sup>106</sup> The court also held that the closure violated the equality rights of the mothers.<sup>107</sup> These violations could not be justified per the rationale and effects of the decision. The judicial remedy, in the end, however, was only to set aside the Corrections decision to close the program and the policy underlying it and to order the prison decision-makers to retake their decision. The mothers remained incarcerated.<sup>108</sup>

The *Inglis* outcome is a “victory” for its plaintiffs in terms of the parameters of the constitutional challenge launched. Against the larger socio-legal landscape of the adverse effects of prisons on adults, but particularly children,<sup>109</sup> and the possibility that the MCP itself, similar to programs elsewhere,<sup>110</sup> is operationalized to judge women for their mothering in prison and thereby serves as “another mode of social control,”<sup>111</sup> the “victory” quickly loses its sheen. The option to remove mothers into the community to be with their babies or other children is not considered despite the strong rights vindication the court provides. As in the zoo context, the interests of human children, even the “best” interests of human children informed by national and international legal recognition of children’s rights, are not sufficient to question the need for incarceration of their mothers in the first place. With zoos and aquaria, animals’ incarceration is seen to be necessary to the conservation and education mandate. And in human prisons, the ongoing incarceration of mothers is presumed to be necessary presumably for reasons of public safety and deterrence. The presence of children in these carceral spaces helps to soften or gloss over the wide-ranging violence and vulnerability these spaces promote to make the captivity they embody less contentious.

<sup>105</sup> *Id.* at ¶ 15.

<sup>106</sup> *Id.* at ¶ 11.

<sup>107</sup> *Id.* at ¶ 13.

<sup>108</sup> *Id.* at ¶ 656.

<sup>109</sup> BARRY HOLMAN & JASON ZIEDENBERG, *THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 1* (2006).

<sup>110</sup> Haney, *supra* note 71, at 112-18.

<sup>111</sup> Race & Stefanick, *supra* note 81, at 57.

### 13.3 HUMAN CHILD–ANIMAL NEXUS: UNDERSTANDING CHILD-INVOKING CARCERAL DISCOURSES AS PERVERSE DEPLOYMENTS AND BETRAYALS OF CHILDHOOD

It is well established that certain human bodies are associated with nature and animals more than others. As Western societies were industrializing, human children were posited as closer to nature and surrounded with animal figures (through the rise of stuffed animals, companion animal keeping, and jungle gyms) even as societies and families transitioned from rural to urban landscapes.<sup>112</sup> In contemporary times, the association of children as closer to nature and animals is still intact through the continuation of stuffed animals and companion animals as normative in middle-class households,<sup>113</sup> coveted outdoor early childhood educational curriculums,<sup>114</sup> children's picture books, readers, and other literature that is highly mediated by animal figures,<sup>115</sup> and, as we saw above, zoos and aquaria that pitch themselves as the ideal place for family-friendly outings where children can see "wild" animals. With this nexus in mind, this Part illuminates how this human child-animal nexus is marshaled to harm both animals and human children.

#### 13.3.1 *Children, Nature, and Innocence: Policy Drivers*

The naturalization of children with an idea of pristine nature also marks their ostensible innocence and need for protection from those who would prey upon them.<sup>116</sup> For many non-white children in the United States, Canada, and elsewhere, the narrative of childhood innocence does not reliably apply as they (and their families) are animalized to the extent of being dehumanized.<sup>117</sup>

What can we make of the fact that human children are naturalized and animalized more so than adults, which helps to mark them out as innocent and in need of protection, and yet certain human children are animalized to such an extent that they lose the "innocence" marking and may be rendered (like animals) dispensable if not disposable? First, the partiality and instability of the childhood innocence

<sup>112</sup> Jane Desmond, *Staging Privilege, Proximity, and "Extreme Animal Tourism,"* in OXFORD HANDBOOK ANIMAL STUD. XX (Linda Kalof ed., 2017); MEGAN H. GLICK, *INFRAHUMANISMS SCIENCE, CULTURE, AND THE MAKING OF MODERN NON/PERSONHOOD* 1, 34-42 (2018).

<sup>113</sup> MATTHEW COLE & KATE STEWART, *OUR CHILDREN AND OTHER ANIMALS: THE CULTURAL CONSTRUCTION OF HUMAN-ANIMAL RELATIONS IN CHILDHOOD* 3, 53-54, 65-67 (2014).

<sup>114</sup> CONOR WILLIAMS, *The Perks of a Play-in-the-Mud Educational Philosophy,* THE ATL. (Apr. 26, 2018), [www.theatlantic.com/education/archive/2018/04/early-childhood-outdoor-education/558959](http://www.theatlantic.com/education/archive/2018/04/early-childhood-outdoor-education/558959).

<sup>115</sup> COLE & STEWART, *supra* note 112, at 55, 70; Waxman et al, *supra* note 16 at 1-2.

<sup>116</sup> *Id.*

<sup>117</sup> Toby Rollo, *The Color of Childhood: The Role of the Child/Human Binary in the Production of Anti-Black Racism,* 49 J. BLACK STUD. 307, 309-10 (2018); Phillip A. Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children,* 106 J. PERSONALITY & SOC. PSYCH. 526, 526-27 (2014).

frame confirms that although all human children are vulnerable to exploitation because of their developmental stage, this vulnerability is differentiated according to the social location of a child. But the juxtaposition also highlights how “childhood” is a socially constructed category, a reality brought into sharp relief not only through the prism of race- and class-based concepts of innocence, but also through the implicit human qualifier that delineates the concept of “children” and denies that status to animals, often leading human exceptionalists to protest any attempt to draw analogies between human children and animals.<sup>118</sup>

This type of “boundary maintenance”<sup>119</sup> to shore up the fiction of humans as not-animal alerts us to how the figure of the child can be deployed in contested social arenas to validate certain policies or laws, and dismiss or otherwise marginalize alternative possibilities, a correlation others have established.<sup>120</sup> I have been arguing that with respect to the ongoing socially contested nature of zoos, prisons, and detention centres, the human child helps to validate the social acceptability of zoos, prisons, and detention centres by ostensibly humanizing these carceral spaces. This dynamic ensues even as vulnerable, disproportionately poor, and racialized human children within prisons and detention centres suffer inside them and even as ideologies about improving human children’s education and futures through exposure to zoos and aquaria violate the bodies and terminate the lives of animals and their children.

### 13.3.2 *Inculcating Human Exceptionalism through Childhood Familiars*

It is important to point out the particularly perverse dimensions of this deployment of the human child in these spaces. With respect to sites of animal captivity, it seems perverse that human children, whose social worlds are immersed and entwined with those of animals,<sup>121</sup> who closely identify with animals,<sup>122</sup> and who come to them for acceptance, resilience building, and to learn social-emotional skills,<sup>123</sup> learn through zoos to objectify, commodify, and dominate them instead.<sup>124</sup> The magnitude of this perversion is amplified particularly in zones of zoo and aquarium captivity. In these sites, both for growing insurance populations to buffer possible extinction in situ and for attracting visitors and revenue, captive breeding is practiced and thus the deliberate practice of bringing *animal* children into this world to grow up in

<sup>118</sup> Taimie Bryant, *Denying Animals Childhood and Its Implications for Animal-Protective Law Reform*, 6 LAW, CULTURE & HUMAN. 56, 57 (2010).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*; Baird, *supra* note 5, at 291, 294.

<sup>121</sup> TAYLOR & PACINI-KETCHABAW, *supra* note 1, 2-5.

<sup>122</sup> COLE & STEWART, *supra* note 112, at 84-85.

<sup>123</sup> LOUISE CHAWLA, *Children’s Engagement with the Natural World as a Ground for Healing*, in GREENING IN THE RED ZONE 111 (Keith G. Tidball & Marianne E. Krasny eds., 2013).

<sup>124</sup> *Disposable Captives*, <https://blog.oup.com/2014/04/disposable-captives-zoo-animals-philosophy/>.

conditions of captivity if they are permitted – unlike Marius and the two lion cubs to whom his body parts were fed – to grow up at all.

What is also deeply troubling is that we misrepresent to children what they are seeing or otherwise apprehending when we take them to the zoo to see newborn animal babies or otherwise. These visits idealized as family-friendly educational outings are excursions to enjoy a particular type of spectacle and performance, one that expresses human domination and entails torture and misery for the captive animals that is hidden or explained away.<sup>125</sup> Early work on learned helplessness in animals has shown that animals suffer from “behavioural despair” when repeated attempts to escape aversive conditions are unsuccessful.<sup>126</sup> They also experience neuroplasticity loss and long-term activation of parts of the brain that are adverse. The problem is not just solitary confinement, but massive overcrowding and understimulation or over-stimulation that leads to repetitive pacing, swaying, and other signs of captivity-induced madness.<sup>127</sup> The observation of animals in captivity, in the end, does not inculcate a conservationist mindset; the claim has no substantiation though it is oft repeated.<sup>128</sup> To the contrary, studies have demonstrated that people leave zoos with a human “superiority” mindset intact<sup>129</sup> even if they learn something about biodiversity.<sup>130</sup> The zoo is clearly a site where animal childhoods are always already compromised and the almost boundless level of control that humans legally exert over animals to instrumentalize them for human purposes is on display. What the typical zoo and aquaria-going human child and animals experience in this setting (and generally) is incommensurable.<sup>131</sup> But we also betray human children when we present the zoo as an innocuous space rather than expose it as one that teaches them that the ideal human subject denies their kinship with animals and learns to dominate them.

### 13.3.3 *Incarcerating Children for Their Own Good*

It also seems perverse to rationalize the incarceration of human children so that they can stay with their mothers (or other primary caregivers). How can being incarcerated be in their *best* interests when it is demonstrable that it is better for children and

<sup>125</sup> *Id.*; DESMOND, *supra* note 9, at 226–30, 234–36.

<sup>126</sup> ROGER D. PORSOLT, *Behavioral Despair: Past and Future*, in *NEW DIRECTIONS IN AFFECTIVE DISORDERS* 17, 17 (Bernard Lerer & Samuel Gershon eds., 1989); Martin E.P. Seligman, *Learned Helplessness*, 23 *ANN. REV. MED.* 407, 407–08 (1972). It bears highlighting that these results came from deadly and highly injurious forms of animal experimentation as described in these studies themselves.

<sup>127</sup> NEVILLE G. GREGORY, *PHYSIOLOGY AND BEHAVIOUR OF ANIMAL SUFFERING* 1, 39 (2004); Andrew Flack, “*In Sight, Insane*”: *Animal Agency, Captivity and the Frozen Wilderness in the Late-Twentieth Century*, 22 *ENV'T & HIST.* 629, 637–38, 644, 646 (2016).

<sup>128</sup> Lori Marino, *Cetacean Captivity*, in *THE ETHICS OF CAPTIVITY* 22 (Lori Gruen ed., 2014).

<sup>129</sup> GRUEN, *supra* note 7, at 232–34.

<sup>130</sup> *Disposable Captives*, <https://blog.oup.com/2014/04/disposable-captives-zoo-animals-philosophy/>.

<sup>131</sup> Bryant, *supra* note 118, at 56–58.

their mothers to be out of a carceral environment, however socioeconomically compromised their home living situation might be?<sup>132</sup> Attachment theory tells us that human children suffer on multiple levels when separated from their primary caregivers.<sup>133</sup> But to imagine that attachment theorists would accept prison as an acceptable way to maintain family bonds, rather than return human children with their families to their communities where the family poses no risk to the child and can be supported with proper services, is a disingenuous and deeply flawed deployment of attachment theory.

#### 13.4 CONCLUSION

The COVID-19 pandemic and the bans on public gatherings it has entailed gave many humans worldwide their first experience of lockdown, shelter in place, and of generally not being able to leave their homes for many weeks if not months. Even if they could leave, the closure of familiar places of learning, recreation, and business did not allow them much choice as to where to go and what to do. Although the privileged among us had our many digital devices as per usual, many media stories appeared, presumably meant for those securely resourced and at home but now without their regular range of mobility, as how not to get bored,<sup>134</sup> how to keep children entertained and stimulated,<sup>135</sup> and how generally to keep a positive mood and get through the experience.<sup>136</sup> Although doubtless a stressful experience for even those privileged by class, geographic location, and species, the reality is that we place captive animals and humans in something markedly worse and vulnerability-inducing than a COVID-19 lockdown every single day of their captive existence. What this chapter has shown is how the presence of the human child helps to obscure the chronic harms of the permanent lockdown sites our societies normalize as well as justifies their continued existence.

The social and legal remedy for zoos seems straightforward (which is not to say it will be easy to implement or that other social supports will not be needed for transitions to sanctuaries or other models of living for the former captive animals).

<sup>132</sup> Race & Stefanick, *supra* note 81, at 58.

<sup>133</sup> Richard A. Bryant et al., *Separation from Parents during Childhood Trauma Predicts Adult Attachment Security and Post-traumatic Stress Disorder*, 47 *PSYCH. MED.* 2028, 2028-29 (2017); VIVIEN PRIOR & DANYA GLASER, *UNDERSTANDING ATTACHMENT AND ATTACHMENT DISORDERS: THEORY, EVIDENCE AND PRACTICE* 15-18, 81 (2006).

<sup>134</sup> Heather R. Morgan, *15 Ways to Fight Boredom and Anxiety amidst the Coronavirus Pandemic*, *FORBES* (Mar. 17, 2020), <https://www.forbes.com/sites/heathermorgan/2020/03/17/15-ways-to-fight-boredom-and-anxiety-amidst-the-coronavirus-pandemic/#47749d69615ef>.

<sup>135</sup> Meg Roberts, *Here Are 8 Ways to Keep Your Kids Learning . . . and Entertained*, *CBC NEWS* (Apr. 24, 2020), <https://www.cbc.ca/news/canada/newfoundland-labrador/8-ways-kids-learning-1.5537254>.

<sup>136</sup> Sara Spary, *Feeling Overwhelmed? Top Tips for Staying Positive Online during the Coronavirus Crisis*, *CNN* (Mar. 19, 2020), <https://www.cnn.com/2020/03/19/world/coronavirus-stay-positive-online-scli-intl-wellness/index.html>.

As Pierce and Bekoff argue, the vast majority of the world's zoos should be shut down and technological exhibits should replace live animal ones in the remaining zoos that remain open and are well managed. They write: "If zoos are mainly for children (and, as the paying addendum, the parents), these interactive exhibits have the potential to be more fun and more educational than traditional zoo animal exhibits without the collateral damage of real animal lives . . . Zoos with live animals would become a thing of the past."<sup>137</sup> As for the captive breeding argument, zoo administrators themselves admit the limits of this argument given the increasing difficulty of introducing animals back into the wild and the loss of their natural habitat in any case.<sup>138</sup>

The answer to the harms that prison and detention centers occasion for children also behooves us to seek out alternative justice models and community-based alternatives to prison and detention while processing immigration claims.<sup>139</sup> If countries, like Canada, have signed and ratified the CRC, then they have committed themselves to upholding the CRC's championing of the best-interests-of-the-child test as the primary consideration involving all state decisions regarding children and their parents.<sup>140</sup> Given the literature showing both the harms to children in prison or detention as well as the harms if they are separated from their parents, particularly mothers, the answer here also seems straightforward: children and their mothers or other caregivers should not be incarcerated or detained.<sup>141</sup> Instead of bringing children into captivity to avoid separation, the mother or caregiver and child should remain together outside of captivity (where there is no safety risk to the child and older children able to decide for themselves wish to do so). The rights and present and future interests of the child in remaining with a loving mother or other caregiver must take priority over incarceration rationales. The funds used to support

<sup>137</sup> Pierce & Bekoff, *supra* note 33, at 46.

<sup>138</sup> The loss of natural habitat for wild animals, and the increasing human-animal contact that has occasioned through wildlife trade, consumption, and general living proximity, is itself a reason for the age of pandemics in which the whole world is now ensconced. Grant Lingel, *How to Prevent Future Pandemics: Fix the Broken Food System*, SENTIENT MEDIA (Apr. 27, 2020), <https://sentientmedia.org/how-to-prevent-future-pandemics-fix-the-broken-food-system>; Phoebe Weston, "We Did It to Ourselves": Scientist Says Intrusion into Nature Led to Pandemic, GUARDIAN (Apr. 25, 2020), <https://www.theguardian.com/world/2020/apr/25/ourselves-scientist-says-human-intrusion-nature-pandemic-aoc>.

<sup>139</sup> On the harms of incarceration for Race & Stefanick, *supra* note 81, at 58; JUSTIN MARCEAU, *BEYOND CAGES: ANIMAL LAW AND CRIMINAL PUNISHMENT* 35-37 (2019).

<sup>140</sup> GROS & SONG, *supra* note 59, at 37-38.

<sup>141</sup> Although not the focus of this present chapter, I would also argue that it is important to centre children's rights in remaining with their mothers and other parents in deportation proceedings that threaten to separate them. For a groundbreaking Supreme Court of Canada decision recognizing as much in 1999, see *Baker v. Canada*, 2 SCR 817 (1992). For a valuable critical contextualization of the judgment see CONSTANCE BACKHOUSE, *Fairness in Immigration: Baker, 1999*, in CLAIRE L'HEUREUX-DUBÉ: A LIFE 470 (2017).

incarceration and detention can now be redirected to the social services that will be required to implement alternative justice models and housing arrangements. These funds can also support the mother and her child(ren) in the community and mitigate vulnerabilities in communities in general which shape most adults',<sup>142</sup> particularly women's, pathways to prison.<sup>143</sup>

<sup>142</sup> MARCEAU, *supra* note 137, at 39-41.

<sup>143</sup> Race & Stefanick, *supra* note 81, at 45-50; Haney, *supra* note 71, at 121.