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POLICE BRUTALITY AND THE NONHUMAN

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Between 1998 and 2014, police shot 6,083 dogs. More than half of all intentional police shootings in the nation involve animals, dogs in particular. While officers who work with K9 dogs receive special training before entering the field, only a small handful of departments across the country provide animal behavior training for officers not specifically tasked with patrolling with a canine partner, and only Colorado requires such training.[1] That lack of training, combined with a broad default position among police, chronicled by many in this collection, that unknown quantities who don't display similar physical characteristics to the officers themselves are potentially expendable threats, has proven inordinately deadly for nonhuman animals in the United States. With an average of almost one dog shooting every day since 1998, the consequences for the animals themselves are obvious, but there is a human toll, as well, as the families of companion animals are devastated by the loss of a family member taken from them, usually without cause.[2] There is also, as demonstrated by the collection's companion essays, a decidedly human-racial element in police shootings of dogs, the majority taking place in black and brown neighborhoods. For all of these reasons, any holistic understanding of police brutality needs to include an analysis of officer-involved shootings of nonhumans.

There are more than 77 million pet dogs in the United States and millions of others not part of a human household. Among the homes that include dogs, two-thirds describe pets as constituent parts of the family. Still, they are considered property, not persons, in the eyes of the law, which makes them even more vulnerable in encounters with police. That property status, then, leads to calls to police brutality against animals to build from the Fourth Amendment's prohibition against unreasonable searches and seizures.[3] Then there is the same qualified immunity that shields many police officers from prosecution in shooting cases with human victims, a defense strategy occasionally effective when police shoot nonhuman victims. Law enforcement gains immunity in such cases if the shooting "[(1)] does not violate clearly established statutory or constitutional rights [(2)] of which a reasonable person would have known," a legal precedent that has protected countless officers in shootings of both humans and nonhumans. Even when qualified immunity doesn't apply, however, police are often shielded from financial liability by a variety of other defenses and entirely shielded from criminal liability by animals' lack of standing.[4]

Unsurprisingly, the decidedly racialized effect of qualified immunity in police shootings of black and brown nonhumans has also translated into violence toward their pets. In a geographical analysis of police and sheriff's deputy killings of dogs in Los Angeles, Stefano Bloch and Daniel E. Martínez demonstrate that the bulk of shootings take place in the same black and brown neighborhoods in

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which the police commit the majority of their human shootings. The wanton disregard for black and brown human life by police, then, affects the lives of the animals who share those black and brown homes. "Violence committed against canines in these communities is an expression of larger trends in state violence that routinely takes place during the serving of search warrants," argue Blocha and Martínez, "as part of stops and frisks of pedestrians, and as result of investigatory traffic stops that disproportionately target communities of color."[5]

Speciesism and racism are their own independent entities, but in the United States from Reconstruction to the present they have acted on each other in ways that have been generative of new manifestations of both, within police departments and without. They feed off of one another, helping to shape the contours of both in the twenty-first century. They do not act in the same way, but they both act in concert, making engagement in one form of coded alterity a de facto engagement in the other.

The history of the intersection of race and animality more broadly has also been the subject of more recent studies. Work by Joshua Bennett and Zakiyyah Iman Jackson argue that African Americans deploy animal metaphors in direct response to historical white claims of black animality and the long colonial project of treating the black experience as a meaningless non-entity.[6] Lindgren Johnson goes further, describing a "fugitive humanism" among African Americans that maintains significant animal relationships in pushing back against the animal associations created by white supremacy.[7] Iman Jackson and Johnson, in particular, track such associations through literary production, while Bénédicte Boisseron's *Afro-Dog* combines with literary theory a more historical approach to understanding such associations, arguing that the white discourse of race and species served both to tie blackness to animality and to bolster the white supremacist project.[8]

"The history of animals is not merely a 'fad' in the ever widening reach of historical scholarship," argues Erica Fudge. It is instead the necessary outgrowth of debates in the discipline and broader public narratives outside of it. For Fudge, "the history of animals is a necessary part of our reconceptualization of ourselves as human." Animals "are the site of social change," which itself is the driver of historical progression. If meaning-making is a function of difference, and the human animal-nonhuman animal divide is the largest remaining assumed cavern of difference in the human mind, then it is vital that we seek to "learn more about humans by understanding what they claimed that they were not: animals."[9]

At the same time, meaning-making is also a function of similarity, of comparisons that create the shifting dynamics of identity between, for example, humans and other animals, or between humans of differing levels of racial and class privilege. Cary Wolfe has argued in regard to critical theory that with the developments in biology, cognitive science, and other disciplines, "there is no longer any good reason to take it for granted that the theoretical, ethical, and political question of the subject is automatically coterminous with the species distinction between Homo sapiens and everything else." The same can be said--must be said--for the discipline of history. When those in the field produce "a rather traditional version" of what Wolfe calls "the discourse of species," that discourse, "in turn, reproduces the institution of speciesism."[10]

Richard Ryder coined the term "speciesism" in an anti-vivisection pamphlet in 1970, and it was popularized by Peter Singer in the years that followed.[11] Speciesism, Ryder argued, was "the widely held belief that the human species is inherently superior to other species and so has rights or privileges that are denied to other sentient animals."[12] It could certainly encompass oppression and physical cruelty, but oppression and cruelty were not necessary. Speciesism was any set of "beliefs and behaviours if they are based upon the species-difference alone, as if such a difference is, in itself, a justification" for those beliefs and behaviors.[13] Singer concurred, seeing speciesism as "a prejudice or attitude of bias toward the interest of members of one's own species and against those of members of other species," and argued that it could only be properly understood in relation to other dispossessions like sexism and racism.[14]

Taking that speciesism seriously through the intersectional lens of race requires respecting the life of the nonhuman as much as that of the human, while still acknowledging their fundamental differences. It is the common position for any deontological conception of animal ethics, spanning from Kant's categorical imperative to never treat anyone only as a means to an end to Ronald Dworkin's non-relative interests that have total weight in moral calculations.[15] The position was taken most influentially by Tom Regan. "Inherent value," he argued, "belongs equally to those who are the experiencing subjects of a life."[16] Assuming nonhuman animals to be experiencing subjects of a life who have inherent value, and thus should not only be treated as a means to an end, shapes the signposting of animals in new ways and demonstrates how different bigotries intersect in the treatment of groups coded by race and species.

"It could be argued," writes Samantha Hurn, "that 'Western' 'speciesism' began with Aristotle and his continuum of living things, which saw humans at one end of a spectrum, the 'perfection' which for all other animals was unattainable."[17] Its presence in the historical discourse appears most regularly when historians ignore the interests of and consequences for nonhuman animals in the progression of human social history. After all, "the figure of the 'animal' in the West," writes Wolfe, "is part of a cultural and literary history stretching back at least to Plato and the Old Testament, reminding us that the animal has always been especially, frightfully nearby."[18]

That hiding in plain sight of other beings in temporal and physical space stands as another signpost of the influence of speciesism in "the formation of Western subjectivity and sociality as such, an institution that relies on the tacit agreement that the full transcendence of the 'human' requires the sacrifice of the 'animal' and the animalistic."[19] That tacit agreement is built on semiotic referents designed to reinforce the notion of human supremacy, ultimately leading to what Jacques Derrida calls a "noncriminal putting to death" of those nonhuman animals that humans cannot see as beings with interests because of the influence of such signs.[20]

When Derrida describes his "noncriminal putting to death," however, he does not just refer to nonhuman animals. The others put to death in such a manner are those humans animalized by similar semiotics that code them as being either unworthy of life or less worthy than those in power. And in the United States, that worth has been determined more than anything else by race.

In encounters with the police, however, worth is also determined (and diminished) by indiscriminate violence, a violence that codes all markers of difference as potentially problematic to a group whose training teaches them to assume consistent threat. Nonhuman animals, and dogs in particular, are already devalued as beings without morally relevant lives, making their interactions with law enforcement even more tenuous. The case law attempting to reconcile animals' status as property, the important role they play in the lives of human families, and the constant violence enacted on them by police, began substantially in the 1980s.

In August 1984, for example, sheriff's deputies in Manitowoc County, Wisconsin executed a search warrant on a family home, seeking traces of marijuana and some stolen pressure cookers. They entered the house in camouflage and moved quickly to "secure" the premises. They found neither marijuana nor pressure cookers, but in the process of securing the house, one of the officers shot and killed the family's German shepherd. When the family sued, the original jury in the case awarded them monetary compensation for the loss of the dog as well as punitive damages; it also required funding for officer training related to canine interactions. Appellate courts, however, found the punitive damages as problematic and the Seventh Circuit Court of Appeals remanded the case back to Manitowoc County for a new trial in 1989. The court was clear that the shooting was a Fourth Amendment violation, a functional seizure of the family's property, but worried about punitive damages for what was interpreted as a loss of property rather than the loss of a member of the family.[21]

It would prove a common appellate interpretation, courts validating Fourth Amendment claims based on police brutality to nonhuman animals, but refusing to describe that validation as a form of brutality. Seizure claims ensured victims a measure of monetary compensation, but that

compensation was typically limited to the fair market value of the dog, not based on a serious interest in the life taken or the psychological damage to the family. It was a form of speciesism that ensured the financial culpability for offending officers and their departments would be minimal, leading to a shoot-first attitude that presumed dogs to be potential violent threats rather than innocent bystanders. The standard was all the more galling when considering common law culpability for pet owners after events like dog bites built from the assumption that dogs were not inherently violent at all, a standard commonly known as "first bite free." Civilian victims of dog bites had to demonstrate in court that pet owners had a reasonable understanding of a dog's potential for violent action to prove culpability and get financial restitution. Police, however, could assume the opposite and thus feel relatively unfettered in killing pets indiscriminately.[22]

There were, however, exceptions to that rule, wherein larger restitution could be made. *Fuller v. Vines* (1994) involved the shooting of Champ, a 12-year-old Great Dane/Labrador mix, while lying in the grass at his home. A father and son were with him when two police officers walked by. Startled at the presence of pedestrians, Champ stood up, prompting the officers to draw their guns. Both father and son begged them not to shoot the dog, but they did anyway. When the son protested, they turned the gun on him. As in most of the cases resulting from police brutality against dogs, the Ninth Circuit Court of Appeals treated the resulting suit as a Fourth Amendment property seizure, and after remanding the original suit back to the trial court, a jury awarded the Fuller family $143,000 for violation of the family's constitutional rights, another $10,000 in punitive damages, and more than $100,000 in additional money for pointing the gun at the son.[23] *Fuller* demonstrated that juries were more sympathetic to the bonds between human families and nonhuman companion animals than judges, but even with a heavy payout, the case was still the result of a civil action. The officers never faced charges and knew that Fourth Amendment seizure claims for killing dogs would never end in the kind of prosecution that would force them to face non-monetary consequences for their actions.

The violent speciesism inherent in such paradigms inevitably played out within police departments, as well. The same year as the Ninth Circuit's Fuller decision, the Eighth Circuit ruled on another Fourth Amendment dog-killing suit. *Lesher v. Reed* (1994), however, involved a dog slated to work for the Little Rock, Arkansas K9 unit. When officer James Lesher was transferred to the department, he donated a dog to the program and raised her himself. His written agreement with the LRPD acknowledged that Lesher could retain custody of the dog if she was deemed unsuitable for police work. After the dog bit a child, the force decided that she was not police material and informed Lesher that it was claiming and killing her as a result of the bite. Lesher protested vehemently and cited the clause in his agreement allowing him to retain custody. When threatened with termination if he didn't relinquish the dog, he finally relented, but because of the incident, he was then transferred out of the K9 unit to another department. Lesher sued the force, claiming a Fourth Amendment violation for the taking and killing of his dog and a First Amendment violation of his free speech for the transfer. The Ninth Circuit discarded the First Amendment claim but validated that of the Fourth, despite police protestations that the agreement made the dog LRPD property and that there was no "search" so there was not a technical "seizure." The Ninth Circuit laid bare the fallacy of such claims. "The seizure of property is subject to Fourth Amendment scrutiny even though no search has occurred," the opinion stated. "Public employees, like private citizens, are entitled to the benefits of the Constitution, and the State may not coerce them into relinquishing a constitutional guarantee under threat of losing their employment."[24]

While the decision provided the Lesher family with the potential for financial restitution, it couldn't bring back their dog killed by the police department which showed a wanton indifference to the lives of nonhuman animals. The case law is important and will continue to be discussed in the paragraphs that follow because it demonstrates the evolution of legal thinking on police brutality toward animals. But the one static entity in a legal system kinetically negotiating its relationship with

police violence toward the nonhumans in their midst is that wanton indifference. The evolution of legal thinking, then, is about classification rather than prevention, restitution rather than punishment, drawing from the common law understanding of animals as chattel, as property.

At least when the definition is in the way of describing police violence against them. Courts have historically wrestled with differences between domestic animals and wild animals, between livestock and pets. They have worried over whether goldfish, birds, or rats count in legislative definitions of "animal" and over the various exemptions applied to killing animals in a society that builds much of its food and entertainment sectors on their deaths.[25] "Courts and legislatures seem to be searching for a balance to protect living creatures other than humans, without extending that protection to a point that may seem unreasonable and possibly unenforceable."[26] In all such searchings, however, the baseline understanding grounding legal decisions has been an assumption that nonhumans are not persons and have no legal standing.

And so they enter the policing space in an inordinately vulnerable position, as expendable nonpersons, as property. One of the foundational cases governing such assumptions in the twenty-first century is *Rabideau v. City of Racine* (2001). After Wisconsin police shot and killed Dakota, a dog living with Julie Rabideau, the judge in her case awarded the human plaintiff recovery for emotional damages based on the fact that she witnessed the killing. Rabideau argued that "anyone who has owned and loved a pet would agree that in terms of emotional trauma, watching the death of a pet is akin to losing a close relative." The Supreme Court of Wisconsin, though acknowledging that bond, disagreed. "The law categorizes the dog as personal property despite the long relationship between dogs and humans," the opinion read, and that being the case, petitioners "cannot maintain a claim for recovery for the emotional distress caused by negligent damage to her property."[27] That unwillingness by the court to countenance the human relationship with animals above and beyond their common law property definition served as a form of further permission for police officers to treat animals with relative impunity.

That same year the Third Circuit Court of Appeals evaluated a Pennsylvania case wherein Immi, a Rottweiler, wandered into a parking lot adjacent to her house while her humans were in the process of moving. When approached by a police officer, Immi barked. Despite her bright pink collar and tags, and despite her owner screaming from the window of the home, the officer pulled his gun and shot Immi five times, even continuing to shoot as she attempted to crawl away. The court in *Brown v. Muhlenberg Township* (2001) was concerned in particular with the qualified immunity claimed by the officer and denied it based on his breach of Fourth Amendment seizure laws. But even in that legal victory against police violence, the victims were the human members of the Brown family rather than Immi, who was simply the property seized in an illegal Fourth Amendment action.[28]

Police have proven willing if not eager in many cases to take the lives of human victims, even when they are being filmed, because of a confidence that qualified immunity will protect them. In instances of police brutality against nonhumans, there is a reverse assumption at work. Claims of qualified immunity have been consistently struck down by courts precisely because animals are considered property. Fourth Amendment search and seizure violations rise in their place but never generate the possibility of jail time or other legal jeopardy for officers involved because the issue only arises in civil actions. Thus while qualified immunity has historically served as at least a partial motivating factor in the police shooting of humans, the lack of criminal prosecution in Fourth Amendment civil cases has become its own version of qualified immunity that creates a similar willingness to kill when officers encounter dogs in public spaces.[29]

And as in police brutality cases against humans, the assumption of at least an approximation of immunity lends a de facto credibility to officer narratives of events. In *Altman v. City of High Point, NC* (2003), for example, animal control officers rather than the police killed several dogs, but made a similar claim for qualified immunity. The Fourth Circuit Court of Appeals again rejected the claim

but absolved the officers of responsibility because the dogs were Rottweilers, pit bulls, and large dogs of mixed breed that defendants were able to depict as aggressive and dangerous, a successful form of profiling so common in defenses of human shootings. The next year, a Connecticut court ruled that a police officer was justified in shooting a pit bull running toward him, despite the dog's owner telling that he was friendly. It was a deadly profiling made possible by the diminished standard of animals at the bar and officers' correct assumption that in most cases, particularly in interactions with breeds with a reputation for aggression, they could kill without consequence.[30]

That reliance on profiling offered another intersection with the racialized history of policing. Just as racial profiling and stop-and-frisk policies provided permission for police officers to abuse civilians based on their own inherent fears of the other, breed assumptions gave them similar cover for similar violent interactions. It was a metaphorical intersection, to be sure, but one that could also find physical representation. In a 1998 police raid of the clubhouse of the San Jose chapter of the Hells Angels motorcycle gang, police shot three dogs that belonged to members of the group, guard dogs that were not only large and assumed to be aggressive, but were also by default associated with the Hells Angels, despite the fact that dogs do not carry the same cultural constructs to allow them to know or care about motorcycle gangs. Not only did the police kill three dogs on the property, but one of the members of the Hells Angels was "handcuffed just yards from where her dog Sam lay dead and bleeding." It was the ultimate trauma for Sam and a substantial one for his arrested human companion. "The emotional attachment to a family's dog is not comparable to a possessory interest in furniture," the Ninth Circuit Court of Appeals ruled in 2005. The officers predictably claimed qualified immunity, but the court disagreed, arguing that plans for the raid had been made a week in advance, giving police ample time "to develop strategies for immobilizing the dogs" without killing them. It was both an unreasonable search and an unreasonable seizure in violation of the Fourth Amendment, based on a lived intersection of human and animal stereotypes.[31]

Demonstrating the legal schizophrenia presented by courts, another federal district court in the same year granted, for the first time, a qualified immunity claim for a police officer after shooting and killing a dog, despite the fact that that court accepted the plaintiff's claim that the dog did not bite and that he could easily have just been put on a leash. The officer "could have reasonably assumed that the dog posed an imminent threat to his safety," the court claimed, and thus he was "objectively reasonable in his belief that his conduct would not violate clearly established law."[32] It was a narrative familiar to African American plaintiffs since the recorded beating of Rodney King, the court giving the benefit of the doubt to a police officer's reasonable assumption of danger based on no demonstrable data. And as the families of victims from Amadou Diallo to Freddie Gray knew all too well, that those baseless assumptions ended in death were of little legal concern in such decisions.

And just as in those human decisions, the court's acceptance of a qualified immunity claim carried with it consequences for future lawsuits, creating a stare decisis domino effect that made it more difficult for claims against police officers who killed pets in violation of the Fourth Amendment. In 2008, the Seventh Circuit Court of Appeals upheld qualified immunity in the Milwaukee police killing of Bubba, a seven-year-old Labrador Retriever/Springer Spaniel mix. Despite the fact that Bubba was sitting in his yard, staring at his human companion, the officer who shot him claimed he felt threatened, and the court was inclined to take him at his word, arguing that the use "of deadly force against a household pet is reasonable only if the pet poses an immediate danger and the use of force is unavoidable."[33] Though shooting Bubba was clearly avoidable, the ambiguity of such terms gave the legal apparatus the ability to provide cover for law enforcement. That same year, the court for the Eastern District of California expanded such ambiguous definitions. "To determine whether the shooting of plaintiff's dog was reasonable, the court must balance the nature and quality of the intrusion on plaintiff's Fourth Amendment interests against the countervailing governmental interests at stake."[34] When "immediate danger" transmogrified to "countervailing governmental interests," the potential for deadly police misconduct only increased.

In 2007, for example, the municipality of Barceloneta, Puerto Rico, took control of three public housing complexes in the area. Though under their previous administrators the complexes allowed pets, the mayor of Barceloneta ordered the removal of residents' pets. In two successive raids, officials seized at least twenty pets, explaining that if the animals weren't surrendered, the families would be evicted. Many of the human companions were killed on site, slammed into the sides of vans, or thrown off of a nearby bridge. It was the kind of cruelty that redounded as a consequence of the lack of legal accountability. When the residents sued, the mayor claimed qualified immunity, a claim denied by the courts in 2009 in part because of the blatant, extortive seizure and in part because of the particularly cruel deaths suffered by the animals. The municipality was ultimately required to pay $300,000 to the residents for violating their Fourth Amendment search and seizure rights and Fourteenth Amendment due process rights.[35]

In 2010, the Northern District of California also denied a qualified immunity claim, not because of grotesque cruelty or because qualified immunity couldn't apply in the police shooting of a nonhuman animal, but instead because officers who killed an animal while executing a warrant knew that the plaintiff's dog was in the house before they entered. That left Fourth Amendment claims, which the courts on two different occasions in 2010 and 2011 argued could apply to police shootings of nonhumans even when the victims were only wounded. Still, demonstrating the perfidious shadow of assumptions about qualified immunity and reasonable fear, both of those cases ended in summary judgments for the police defendants because the courts deemed the shootings reasonable.[36]

Perfidious shadows, however, hung in every corner of the connectivity between police brutality and definitions of the other. In a case that would find human echoes seven years later in the police killing of Breonna Taylor, *Carroll v. County of Monroe* (2013) upheld a lower court ruling that justified the law enforcement shooting of a family dog while executing a no-knock warrant in Monroe County, New York. Sheriff's deputies used a battering ram to break down the plaintiff's door, understandably distressing the dog who lived in the home and leading him to growl and bark at the entering officers. One of the deputies responded by shooting the dog in the head with a shotgun upon entry, but the court ruled that the aggression of the dog was justified enough for the shooting, despite the aggression being caused by the use of a no-knock warrant.[37]

The problematic nature of that kind of successful circular argument would become all too familiar in 2020 in Louisville, Kentucky, after the execution of a no-knock warrant and the understandable aggression of one of the home's residents led to the indiscriminate shooting and the killing of Breonna Taylor. The public outrage over the lack of police consequences for the attack was international in its scope, a macro version of what pet owners had experienced for years in cases like *Carroll*, the police unreasonably interpreting a threat, or experiencing a threat in response to their own actions, then using that interpretation and the case law that backed it to argue that what they did was reasonable, despite the unnecessary loss of life.

The clear comparison between the different kinds of official othering and the lack of consequences for it would be obvious to police brutality's human victims, particularly those among the African American population, leading to a glut of nonhuman animal symbolism in commentary on racialized policing. Racial uprisings, for example, have almost always included animalized commentary. One of the most prominent came in Harlem in 1964, following the police shooting of an African American boy.[38] During the uprising that accompanied the killing, protesters described police culture as hunting culture, one policeman telling them, "I'm going to get me a nigger tonight." The original officer, the protesters explained, didn't have to wait for nightfall. "He got his nigger in the morning." That hunting ethos, then, turned its subjects into animals. Harlem, according to psychologist Kenneth Clark, "is a product of violence and its existence is a symbol of inhumanity and injustice." Even among the advocates of the victims of racial policing, humanity became the standard by which decency was judged. "How could the city expect the Negro to behave sensibly?" asked civil rights leader Bayard Rustin. "He behaved desperately because of the

desperate situation." That kind of framing, from both the hunters and hunted, even led the *Washington Post*'s news reporting on the violence to engage in such metaphors. Harlemites, one article explained, cared less about civil rights legislation and more about poverty and the need for food. "And if some Harlem youth are acting like animals today, it could be because some of them sell themselves to homosexuals" for sustenance.[39]

It was a demonstration of the declension inevitable in animal metaphors. Comparisons of police brutality to hunting were not unjustified, but they led to claims of inhumanity which led to comparisons of inhumanity to desperation, which then ended in comparisons of black behavior to that of animals and the absurd notion that their animalistic behavior was represented by the poor "selling themselves to homosexuals," an act decidedly unrelated to nonhuman animal species. The reason that association existed was because of that particular problematic declension, but also because human society had been conditioned to see any behavior that skirted societal norms as nonhuman, as animalistic, despite the lack of any real resemblance to actual nonhuman animal action. It was not, then, a metaphor based on realistic comparisons. It was a metaphor based solely on bigotry, against the human or human group in the comparison, and against all nonhuman animals. And the only group in that particular paradigm without the ability to push back against such framing were the animals.

As Mary Midgley has explained, "When human beings behave really badly, they are said to behave 'like animals' however unlike their acts may be to those that any other species could perform. This is a way of disowning the motives concerned and distancing them from the rest of us," the effort at moral superiority and political superiority trumping the need for one-to-one correlation.[40]

"Animal" is an epithet reserved for the most "horrible human beings" and "heinous criminals," Jim Mason argues, particularly when "we want to describe their egoism, insatiable greed, insatiable sexuality, cruelty, senseless slaughter of other beings, and the mass slaughter of human beings," behavior that is actually rarely the product of nonhuman beings. Animalizing such behavior, then, has nothing to do with the actual relationship to animals. Mason calls the general corpus of negative portrayals and ideas about nonhuman animals "misothery." Misothery "reduces the power/status/dignity of animals and nature and so aids and abets the supremacy of human beings in our dominionist culture." It was that attitude that helped formalize the move to sedentary agriculture and create modern human societies. Debasing animals to elevate humans helped define culture and encourage domestication, which in turn created terminology that demeaned human beings with animal tropes even though the actions presented in the tropes had no specific relation to animals. "Before domestication," Mason argues, "the powerful souls or supernaturals (or gods) were animal, and primal people looked up to them; after domestication, the gods were humanoid, and people looked down on animals."[41]

This lack of direct correlation, in the words of Samantha Hurn, "goes some way towards explaining why human characteristics and actions such as rape and murder at one end of the spectrum, and sexual promiscuity or bad table manners at the other, are often labelled as animalistic." By framing select humans as nonhuman animals, the framers "chastise and censure those others" considered outside of socially constructive norms.[42] Animality, then, becomes a signpost of difference rather than the correlative comparison assumed by most metaphorical work.

An excerpt from James Baldwin published in the *New York Times* in 1964 synthesizes much of the frustration felt in Harlem over signposts of difference and their disastrous consequences. "Here in this ghetto I was born," he wrote. "And here it was intended by my countrymen that I should live and perish. And in that ghetto, I was tormented. I felt caged, like an animal. I wanted to escape. I felt if I did not get out I would slowly strangle."[43] While Baldwin's lament could have applied directly to Harlem's uprising, it worked in a different way in relation to animals. In this quote, urban poverty is a stand-in for a form of bondage, as with animals in zoos. Baldwin follows with an explanation of his hope that education would be his way out of such bondage, a solution significant because it is one wholly unavailable to the other caged beings he describes. There was in such comparisons no awareness that the pain and psychological strangulation felt by those like Baldwin were, it would stand to reason, faced

by the animals they saw as convenient referents for caging. Though the author displayed plenty of transgressive behaviors that skirted societal norms, as in the *Washington Post*'s semantic declension about the Harlem uprising, his use of the animal metaphor didn't result from those transgressions. Instead, his was an acknowledgment that being caged metaphorically was torture without an acknowledgment of those being caged actually. An article in the paper the following year made the comparison even more explicit, a critic of Lyndon Johnson's Office of Economic Opportunity accused "the antipoverty program of treating Negroes 'like animals in a zoo.'"[44]

Martin Luther King made a similar comparison in describing black attempts to register to vote in Selma, Alabama in 1965. Potential registrants were "herded into an alley like animals" by the police to wait their turn for what became a frustrating and failed attempt to register.[45] The metaphor was apt, as many animals were subject to herding and corralling that limited their range of motion, but its use elevated the frustrated black Alabamians at the expense of nonhuman animals, who were not part of King's stated concern. It was a subtle belittling, but it was a belittling.

Similar belittling can be seen in the protests of 2020 prompted by the police murder of George Floyd in Minneapolis. "To watch my baby nephew suffer like an animal until they put him out of his misery," said Floyd's uncle, Selwyn Jones, "he didn't deserve to die in the middle of the street like trash." Jones here equates nonhuman animals with trash to make his point about police brutality.[46] A protestor at one of the myriad marches in the aftermath of the killing told a reporter, "George Floyd was killed like an animal. And we're tired. This is the norm. This is not something that's new."[47] The refrains of 2020 echoed those of the protests of the 1960s, and the pain that came from police abuse echoed those of humans whose companion animals were killed under the guise of official duty.

After the metaphors ran their course, however, there were still tens of thousands of dogs shot and killed by police. "In too much of policing today," explains journalist Radley Balko, "officer safety has become the highest priority. It trumps the rights and safety of suspects. It trumps the rights and safety of bystanders. It's so important, in fact, that an officer's subjective fear of a minor wound from a dog bite is enough to justify using potentially lethal force."[48] In 2016, the problem was made most public by the documentary *Of Dogs and Men*, which examined in depth the disturbing trend of police shootings of companion animals.[49] The ASPCA, the Animal Legal Defense Fund, and other advocacy groups have sought to create training programs for officers and funding pools for Fourth Amendment court challenges for victims of police abuse. Advocates created the Puppycide Database Project to track police shootings of dogs and other nonhuman animal companions.[50] "Whether you're talking about police shooting dogs or citizens," explains attorney John Whitehead, "the mindset is the same: a rush to violence, abuse of power, fear for officer safety, poor training in how to de-escalate a situation, and general carelessness."[51] And whether you're talking about dogs or citizens, the results have historically been catastrophic and deadly.

Notes

1 Genette Gaffney, "6,083 Dogs Shot and Killed: The Unknown Puppycide Epidemic in America," *Animal Law* 24 (2018): 199, 200; and Kaylan E. Kaatz, "Those Doggone Police: Insufficient Training, Canine Companion Seizures, and Colorado's Solution," *San Diego Law Review* 51 (August-September 2014): 825.
2 Other statistics claim that dogs are killed by the police every ninety-eight minutes. Kaatz, "Those Doggone Police," 826.
3 Cynthia Bathurst, Donald Cleary, Karen Delise, Ledy VanKavage, Patricia Rushing, *The Problem of Dog-Related Incidents and Encounters* (Washington: Office of Community Oriented Policing Services, 2015), 2.
4 *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).
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6 Joshua Bennett, *Being Property Once Myself: Blackness and the End of Man* (Cambridge: Harvard University Press, 2020); and Zakiyyah Iman Jackson, *Becoming Human: Matter and Meaning In an Antiblack World* (New York: NYU Press, 2020). See also Aph Ko, *Racism as Zoological Witchcraft: A Guide for Getting Out* (Brooklyn: Lantern Books, 2019).

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29 There have also been attempts by plaintiffs to frame police violence against dogs in other ways. In *Copenhaver v. Borough of Bernville* (2003), the plaintiff made a trespass to chattels claim, an intentional tort that put the focus on the officer's "specific intent to commit a wrong," rather than "on the alleged wrongdoer's intent to exercise control over the chattel." While the court allowed the tort, it limited the defendants to the shooter, rather than to the other officers and the force itself, because the intent claim only applied to the one who had actively demonstrated it. *Copenhaver v. Borough of Bernville* 2003 U.S. Dist. LEXIS 1315 (E.D. Pa. Jan. 9, 2003).
30 *Altman v. City of High Point, NC*, 330 F.3d 194 (4th Cir. 2003); and *Warboys v. Proulx*, 300 F. Supp 2d 111 (D. Conn. 2004). For more on historical legal interpretations of dogs deemed aggressive or dangerous and the criminal liability related to those interpretations, see "Dogs," *Western Jurist* 13 (April 1879): 150–152; Charles A. Ray, *Negligence of Imposed Duties, Personal* (Rochester: Lawyers' Co-operative Pub. Co., 1891), 614–628; Montague R. Emanuel, *Law Relating to Dogs* (London: Stevens & Sons., 1908).
31 *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*, 402 F3d 962 (9th Cir. 2005). See also Gaffney, "6,083 Dogs Shot and Killed," 207–208.
32 *Dziekan v. Gaynor*, 376 F. Supp. 2d 267 (D. Conn. 2005). In a Florida case four years prior, an officer was absolved of responsibility after shooting a human bystander while firing at what he described as vicious dogs. The suit was brought by the bystander, so the death of the dogs was ancillary to the case itself, but it

demonstrated both the lack of legal concern for animal victims of police brutality and the willingness of the court to countenance an officer's fear as justification for violence. *Ryan v. Roy*, 801 So. 2d 203 (Fla. Dist. App. 4th 2001).

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