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## “Animals May Take Pity on Us”: Using Traditional Tribal Beliefs to Address Animal Abuse and Family Violence Within Tribal Nations

Sarah Deer

Liz Murphy

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**“ANIMALS MAY TAKE PITY ON US”: USING  
TRADITIONAL TRIBAL BELIEFS TO ADDRESS ANIMAL  
ABUSE AND FAMILY VIOLENCE WITHIN TRIBAL  
NATIONS**

Sarah Deer<sup>†</sup> and Liz Murphy<sup>††</sup>

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I. INTRODUCTION

The relationship between Native<sup>1</sup> people and animals has a rich, complex history. For tens of thousands of years, Native people have

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<sup>†</sup> Professor, University of Kansas; Citizen, Muscogee (Creek) Nation of Oklahoma.

<sup>††</sup> Tribal Court Attorney, Mille Lacs Band of Ojibwe; Tribal Animal Law and Policy Specialist, Native America Humane Society; Oklahoma Choctaw.

1. This article focuses on American Indians/Alaska Natives and tribal nations.

cultivated their symbiotic relationship with the animal world, and these relationships demonstrate a unique centralized status that animals have for many tribal cultures. Beginning with early contact with Europeans, however, the relationship between Native people and animals began to deteriorate.<sup>2</sup> Europeans and Native people had fundamentally different perspectives on the relationship between humans and animals.<sup>3</sup> In some cases, the cosmologies of Europeans and Natives toward animals were mutually exclusive; either animals were seen as equal to humans or were subject to the complete dominion of man.<sup>4</sup> This clash of worldviews parallels many other areas of colonial power, including the treatment of women and children.<sup>5</sup> Whereas many tribal cultures do not view animals and humans as occupying a hierarchy, European belief systems have historically put men in complete dominion over their property—namely women, children, and animals.<sup>6</sup>

Over the course of several centuries, the relationship between Native people and animals has been put to the test with the introduction of European practices, including weaponized dogs, sport hunting, over-hunting, and animal cruelty. This article thus considers these complex histories of the relationship between Native people and animals as they inform contemporary problems. Today, many reservations struggle with animal protection and control problems, such as over-population, feral dog packs, and widespread neglect.<sup>7</sup> These problems, which have reached a crisis level in many communities, can be understood as an outgrowth of colonization.<sup>8</sup> In order to develop concrete contemporary legal solutions, we must

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We will use several terms interchangeably throughout this article given the various perspectives on appropriate terminology, including Indians, Natives, and tribal citizens or members.

2. See generally Holly H. Mullin, *Mirrors and Windows: Sociocultural Studies of Human-Animal Relationships*, 28 ANN. REV. ANTHROPOLOGY 201, 205 (1999).

3. See, e.g., *id.* (explaining the role of animals in colonial enterprises).

4. See Philip Armstrong, *The Postcolonial Animal*, 10 SOC'Y ANIMALS 413, 414 (2002) (“[I]deas of an absolute difference between the human and the animal (and the superiority of the former over the latter) owe a great deal to the colonial legacies of European modernity.”).

5. See generally Thomas L. Altherr, “*Flesh Is the Paradise of a Man of Flesh*”: *Cultural Conflict over Indian Hunting Beliefs and Rituals in New France as Recorded in The Jesuit Relations*, 64 CANADIAN HIST. REV. 267 (1983) (discussing the European view of women during the colonial time).

6. See generally *id.*

7. See *infra* Part IV.

8. See *infra* Part IV.

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understand how this history has shaped and reshaped the relationship between Native people and animals. Given the particularly egregious history and myriad contemporary problems, this article proposes several approaches to help normalize and celebrate the relationship between Native people and their companion animals by considering how tribal self-determination can offer solutions.<sup>9</sup>

This article proceeds in four parts. In Part II, the article considers how traditional norms and laws of many Native people have prohibited the physical and spiritual mistreatment of animals since time immemorial. Part II will also explore how the relationship between humans and animals occupies a central role in the history of many tribal nations. Part III focuses on the introduction of European practices that served to distort the relationship between animals and humans throughout North America. The contemporary reservation and village animal problems come to a head in Part IV, which considers how animal abuse and neglect have become prevalent in many tribal communities. Part V considers how tribal law reform may be the foundation for solutions to some of today's tribal animal issues. The authors also highlight the work of the Native America Humane Society (“NAHS”) to address animal concerns in Indian country.<sup>10</sup> NAHS developed a national survey about the animal challenges faced by Native people; those findings are shared and analyzed below. This article concludes by offering a series of steps that can be considered in responding to the sometimes strained relationship between people and animals in tribal communities that also acknowledges the harm that has been done to the animal-human relationship in general.

This paper intentionally and deliberately frames tribal cultural practices and customs as unwritten *laws*. Native peoples do not traditionally have a sharp dividing line between sacred and secular rules, and as a result, the history of western Anglo-American legal thought often characterizes tribal legal traditions as rituals, myths, and legends, but not *law*.<sup>11</sup> This mischaracterization has sometimes led non-Native people to conclude that tribes were lawless or

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9. See *infra* Part IV.

10. See *infra* Part IV.

11. See generally Altherr, *supra* note 5; Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 126, 133 (1996) (discussing the “ethnocentric view of the Western colonizers who devalued Native peoples’ legal structures and wanted to replace them with an imported Western system”).

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somehow less deserving of being recognized as independent sovereign governments. As part of reclaiming and reframing tribal expectations and practices as laws, the authors hope that tribal efforts to address contemporary animal challenges will be given the respect they deserve.

## II. TRADITIONAL TRIBAL BELIEF SYSTEMS CONCERNING ANIMALS

The intersection of foundational beliefs about animals and tribal law can be best understood by first exploring some of the fundamental tenets that have defined the relationship between Native people and animals. Traditionally, animals have held several integral roles in the culture of every tribal cultural group in North America.<sup>12</sup> However, each culture is unique, and no two cultures shared the exact same belief systems about animals.<sup>13</sup> To the extent that generalizations can be made, this Part explores some common fundamental edicts among Native peoples that provide instruction and guidance for the appropriate treatment of animals. These principles are then contrasted with Judeo-Christian beliefs about animals. These principles provide the policy justification for the common law of individual tribal nations (unwritten laws). In short, these edicts encompass many critical relationships between humans and animals, including identity, spirituality, and the reciprocal philosophy of hunting. Many of the laws that follow from these edicts are still widely in use and practiced today, providing ample opportunity to codify these ancient principles into today's tribal animal laws.

### A. *Creation Stories*

A common way that animal-human roles are explained is through stories that speak to the essence of the animal-human relationship, establishing the foundation for both the spiritual and the corporal perspective on animal life, as well as legal principles wherein persons who mistreat animals must be held accountable. Animals play a central role in many creation stories.<sup>14</sup> Indeed, tribal

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12. See generally AMERICAN INDIAN MYTHS AND LEGENDS (Richard Eroles & Alfonso Ortiz eds., 1984) (discussing the role of animals in various tribes such as the Tsimshians, Slaish, Maidu, Cherokees, Blackfoot, Cheyennes, Hopi, Anishinabes, and Micmacs).

13. See *id.*

14. See Dave Aftandilian, *Toward a Native American Theology of Animals: Creek and*

creation stories often feature animals as playing the pivotal role in the creation of the universe, the planet earth, and the emergence of human beings.<sup>15</sup> For example, in an Ojibwe creation story, a muskrat was responsible for providing the dirt that became the foundation for life on the planet in the form of Turtle Island.<sup>16</sup> In another example, in the Crow creation story, a coyote directed a flock of ducks to dive down into the water and bring up the earth, and he later made other animals and humans out of the mud that the ducks brought.<sup>17</sup> Wolves and dogs have played a prevalent role in many creation stories as well, demonstrating how tribes may have revered dogs as not just “man’s best friend,” but as also vital to creation of mankind.<sup>18</sup>

In contrast to typical Native creation stories, Judeo-Christian creation stories typically do not credit animals with any role in creation; instead, the creator in the Judeo-Christian world exercises complete dominion over all beings but allows humans complete dominion over animals.<sup>19</sup> This dichotomy will be discussed later as part of the clash of cultures and the role that assimilation plays in eroding the place of animals in tribal cultures.

In many tribal belief systems, animals are treated and revered as sentient beings, and humans are only one among many creatures deserving of reverence and respect.<sup>20</sup> Contrast this worldview with Judeo-Christian beliefs, which typically bifurcate the animal world into animals that are strictly good or strictly evil.<sup>21</sup> These Judeo-Christian belief systems have used animal symbolism to invoke their

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*Cherokee Perspectives*, 61 CROSSCURRENTS 191, 195 (2011).

15. See, e.g., *id.*

16. There are a variety of versions of this story. One example is posted on the official website of the Turtle Mountain Band of Chippewa Indians. See generally *Historical Overview*, TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, <http://tmbci.org/history/> (last visited Aug. 14, 2017).

17. AMERICAN INDIAN MYTHS AND LEGENDS, *supra* note 12, at 88–90.

18. See MARK DERR, A DOG’S HISTORY OF AMERICA: HOW OUR BEST FRIEND EXPLORED, CONQUERED, AND SETTLED A CONTINENT 14–15 (2004).

19. See Juliann DuBerry, *Moving Beyond Property Crime—Violence Against Animals as Dangerous Crimes*, 9 ARIZ. SUMMIT L. REV. 197, 206 (2016) (“God bestows upon Adam dominion over the animals of the air, sea, and land.”). See generally E. Szues et al., *Animal Welfare in Different Human Cultures, Traditions and Religious Faiths*, 25 ASIAN-AUSTRALASIAN J. ANIMAL SCI. 1499 (2012).

20. See generally Dave Aftandilian, *Animals Are People, Too: Ethical Lessons About Animals from Native American Sacred Stories*, 27 INTERDISC. HUMAN. 79 (2010).

21. See Szues et al., *supra* note 19, at 1503 (discussing the Judeo-Christian concept of human dominion over animals).

god, including animals such as the lion, the eagle, the sheep, the dove or the lamb.<sup>22</sup> These “good” animals are then revered symbols of the Judeo-Christian creator.<sup>23</sup> However, the same set of spiritual beliefs also identify other animals to be the representatives of evil, such as reptiles, insects, and vultures.<sup>24</sup> This strict dichotomy is not seen in a majority of tribal animal stories, and the animal-human relationship is one of equality and reciprocity rather than “good” and “evil.” For example, Hopi people have a story in which snakes taught the Hopi a dance to make the rain, a vital resource in the Southwest homelands of the tribe.<sup>25</sup> The Hopi honor the snake by having live snakes present during their traditional rain dance.<sup>26</sup> Other examples of tribal respectful relationships with reptiles are seen in certain North American burial mounds built to resemble the snake.<sup>27</sup> Given that the snake represents an evil figure in the Old Testament, many missionaries and other non-Native people perceived Native religious practice not as only pagan, but even satanic.<sup>28</sup>

One also sees a contrast of animal stories between Native oral history and Euro-American parables. In many tribal cultures, animal stories are meant to teach both adults and children a variety of lessons.<sup>29</sup> However, in Euro-American cultures, animal stories are primarily meant for pre-pubescent children and are told through such mediums as nursery rhymes or age-focused animated films.<sup>30</sup>

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22. See generally ARTHUR H. COLLINS, *SYMBOLISM OF ANIMALS AND BIRDS REPRESENTED IN ENGLISH ARCHITECTURE* (1913), <http://bestiary.ca/etexts/collins1913/symbolism%20of%20animals%20and%20birds%20-%20collins.pdf>.

23. See, e.g., DERR, *supra* note 18, at 15–19 (discussing how the lamb is a symbol of the Judeo-Christian creator).

24. *Id.*

25. VINE DELORIA JR., *GOD IS RED: A NATIVE VIEW OF RELIGION* 88 (30th Anniversary ed. 2003).

26. *Id.*

27. Michel-Gérald Boutet, *The Great Long Tailed Serpent: An Iconographical Study of the Serpent in Middle Woodland Algonquian Culture*, MIDWEST EPIGRAPHIC SOC'Y, <http://www.midwesternepigraphic.org/The%20Great%20Long%20Tailed%20Serpent.pdf> (last visited Aug. 14, 2017).

28. Stephen C. McCluskey, *Evangelist, Educator, Ethnographers, and the Establishment of the Hopi Reservation*, 21 J. ARIZ. HIST. 363, 374 (1980).

29. Aftandilian, *supra* note 20, at 80 (noting that “for traditional Native American peoples, orally told stories have always been the primary means to pass along knowledge from the elders to younger generations”).

30. See Carolyn L. Burke & Joby G. Copenhaver, *Animals as People in Children's Literature*, 81 LANGUAGE ARTS 205, 212 (2004),

This is not to say that certain Native cultures do not have animal stories designated solely for children; however, it is a significant difference that Euro-American cultures do not disseminate animal stories as a cultural teaching tool to adults.<sup>31</sup> With the lack of animal stories in the lives of adults, Euro-Americans have subliminally implied that the influences of animal teachings are limited to the intellect and development of children. It is a logical conclusion that a lack of animal stories in the lives of Euro-American adults contributes to the Western ideology of speciesism—an ideology that was foreign to many tribal cultures.

Some tribes even have distinct classifications for certain animal stories: some were sacred,<sup>32</sup> some had important legal and cultural

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<https://secure.ncte.org/library/NCTEFiles/Store/SampleFiles/Journals/la/LA0813Animals.pdf>; *Children's Animal Tales*, THE BRITISH LIBRARY (Nov. 10, 2015), [www.bl.uk/animal-tales/articles/childrens-animal-tales](http://www.bl.uk/animal-tales/articles/childrens-animal-tales). The British Library's webpage about Children's Animal Tales states, "Stories about animals have always been a staple of children's literature," and,

While these books were all aimed at children, and we can assume that children's reading was tightly controlled in the nineteenth century, works initially aimed at adults also became seen as children's stories. The most commercially successful of these, Anna Sewell's *Black Beauty* (1877), which has sold millions of copies, was not composed necessarily as a children's story, but as a lesson about the proper treatment of horses . . . . The success of *Black Beauty* points to the potential attractions of animal tales, particularly to children.

*Id.*

31. See Aftandilian, *supra* note 20, at 91 (stating that Native Americans have used experimental-type techniques to teach both children and adults "about animals and the rest of the natural world for countless generations").

32. E.g. Vincent Schilling, *Our Brothers and Sisters: 5 Sacred Animals and What They Mean in Native Cultures*, INDIAN COUNTRY TODAY MEDIA NETWORK (Oct. 28, 2014), <http://indiancountrymedianetwork.com/news/environment/our-brothers-and-sisters-5-sacred-animals-and-what-they-mean-in-native-cultures>. Schilling wrote about the turtle's place of importance in Native cultures:

Known as the carrier of Turtle Island by the Great Spirit, the turtle plays a fundamental role in the creation stories of many East Coast tribes. The name Turtle Island is literal: Having placed a large amount of dirt on a great turtle's back in order to create North America, the Creator designated the turtle as its eponymous caretaker.

*Id.*



lessons,<sup>33</sup> and some were for humor or amusement.<sup>34</sup> For example, in addition to stories teaching spirituality, history, and customs, the Choctaws also have a type of story called “Shukha anumpa,” which are humorous stories about animals.<sup>35</sup> “Shukha anumpa” translates as “hogwash.”<sup>36</sup> The Choctaws view these stories as fictional; however, the stories’ primary role is to teach important cultural parables through humor.<sup>37</sup> Another example of using humor in parables is seen through many tribes’ coyote stories.<sup>38</sup> In these stories, the coyote is known as a “trickster”—always getting into mayhem but sometimes providing a bit of humor to the lesson of the story. Many tribes have their own form of “hogwash” and coyote stories that are used to teach their people through humor. Through creation stories and parables, Native cultures have displayed their reverence for animals and acknowledge the influence animals have had over their communities.

#### B. *Clans and Affinity Animals*

One of the clearest linkages between humans and animals in many indigenous cultures is found in the various clan systems. In many indigenous cultures, clan identity is centrally important in the way the community and familial relations are structured.<sup>39</sup> Clans are large, extended kinship networks of people who are thought to share a common ancestor. Many tribal clans are named for animal species, such as deer, rabbit, buffalo, eagle, and the like. Clan members may identify as being related to, or even descendants of, that particular animal.<sup>40</sup> These kinship relationships are often tied to stories that allocate a balance of powers to various animals, always indicating deep reverence and respect for these animals that are the basis for

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33. *E.g.* AMERICAN INDIAN MYTHS AND LEGENDS, *supra* note 12, at 398–99 (describing an Iroquois story about why the owl has big eyes, which provides that the owl was punished by being permanently changed because he was watching things he should not watch).

34. *See e.g.*, TOM MOULD, CHOCTAW TALES 40–49 (2004) (discussing the use of humorous stories involving animals).

35. *Id.* at 40.

36. *Id.*

37. *Id.* at 46.

38. *See* AMERICAN INDIAN MYTHS AND LEGENDS, *supra* note 12, at 88–93, 385–86.

39. *See* JOSEPH BRUHAC, OUR STORIES REMEMBER: AMERICAN INDIAN CULTURE, HISTORY, AND VALUES THROUGH STORYTELLING 160–61 (2003).

40. Robert D. Cooter & Wolfgang Fikentscher, *American Indian Law Codes: Pragmatic Law and Tribal Identity*, 56 AM. J. COMP. L. 29, 42 (2008).

one's identity.<sup>41</sup> Identifying with specific species of animals is one way to demonstrate the strong, intertwined relationship between humans and animals.<sup>42</sup>

Clan identities create a special alliance between humans and their roles in the larger kinship network.<sup>43</sup> For example, in the Mvskoke (Creek) culture, most clans are named for specific animals, such as Bird, Fish, Deer, Beaver, and Panther.<sup>44</sup> There are detailed protocols embedded in the Mvskoke culture as to how members of different clans should relate to one another.<sup>45</sup> In some cases, one clan might have certain obligations to another clan.<sup>46</sup> Additionally,

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41. DELORIA, *supra* note 25, at 87–88; *see also* BRUHAC, *supra* note 39.

42. In fact, the “ideas of an absolute difference between the human and the animal (and the superiority of the former over the latter) owe a great deal to the colonial legacies of European modernity.” Armstrong, *supra* note 4, at 414.

43. *See, e.g.*, Melton, *supra* note 11, at 128 (“[T]ribal divisions . . . represent legal systems prescribing the individual and kin relationships of members and the responsibilities individual and group members have to one another and to the community.”).

44. John R. Swanton, *A Foreword on the Social Organization of the Creek Indians*, 14 AM. ANTHROPOLOGIST 593, 594 (1912) (naming the bird, fish, deer, beaver, and panther, as well as other clan animals); *see* Elisabeth Tooker, *Clans and Moieties in North America*, 12 CURRENT ANTHROPOLOGY 357, 358 (1971) (discussing the practice of using animal designations for clans).

45. *See* Joyotpaul (Joy) Chaudhuri, *Some Notes on Political Theory and American Indian Values: The Case of the Muscogee Creeks*, 25 AM. INDIAN CULTURE RES. J. 129, 133 (2001).

46. *See, e.g.*, SC 06-07, *Ellis v. Muscogee (Creek) Nation National Council (Ellis II)*, at 19 (Muscogee (Creek) Nation Sup. Ct. Aug. 30, 2007). In *Ellis II*, the court likened the relationship between the Tribe's branches of government to the Tribe's common law of respect and honor:

Traditionally, in our Creek society, a tribal officer has an important role to fill in our Nation's Government and should be given authority to carry out his or her role without interference. This concept predates European, and the United States', concepts of Separation of Powers, now so strongly entrenched and imbedded in our Constitution and our Muscogee (Creek) Nation case law. The concept in our society is that all the roles within our society are important, and to be honored. Kinship and clan responsibilities are the bedrock of our society, in earlier times as warrior and peace keeping communities, and continuing today. This is true for ceremonial grounds, churches and families within our Nation, and especially our governmental entities. For our tribal society to function properly, we must honor and respect the respective roles of others. Our Constitution is based on our societal values, as a people, and that interconnectedness lays out the separate powers and duties of the various branches of government.

in many tribal cultures, an individual cannot hunt or eat one's own clan animal.<sup>47</sup> In fact, in many tribes, individuals may use familial terms like "brother" and "sister" when referring to animals.<sup>48</sup> Tribal clan systems also provide for social structures and rules, and many tribes strictly adhere to their clan system in regard to dating, marriage, and even certain forms of social interaction.<sup>49</sup> For example, for many indigenous people, it is considered incestuous to be in a romantic or marital relationship with a member of the same clan.<sup>50</sup> For Diné, or Navajo people, even dancing with a member of the same clan would be objectionable.<sup>51</sup>

There is another clear distinction in the way tribal belief systems about animals directly clashed with Euro-American beliefs. In a vast number of tribal cultures, animals were not viewed or treated as inferior to the human species; rather, animals were seen as "people," too.<sup>52</sup> For example, bison were often conceived of as people by different Plains tribes, and salmon were considered people to Northwest Coast Indians.<sup>53</sup> Dakota theologian Vine Deloria Jr. once wrote, in regard to equality for both animals and people in tribal communities, "Equality is thus not simply a human attribute but a recognition of the creaturehood of all creation."<sup>54</sup> This equality between living creatures is seen in different examples, such as

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*Id.* Additionally, clans named for animals carry special responsibilities. Chaudhuri, *supra* note 45, at 133 ("[H]uman clans are born with unique animal functions, expressing the fraternity of living things. The clans provide and supervise the responsibilities for specific functions relating to nature (wind), healing and medicine (bear), and conservation of the animal and plant worlds (deer).").

47. Nicholas James Reo & Kyle Powys Whyte, *Hunting and Morality as Elements of Traditional Ecological Knowledge*, 40 HUM. ECOLOGY 15, 21 (2011).

48. See, e.g., DONALD L. FIXICO, *THE INVASION OF INDIAN COUNTRY IN THE TWENTIETH CENTURY: AMERICAN CAPITALISM AND TRIBAL NATURAL RESOURCES* 106 (2d ed. 2012) (discussing the Great Lakes tribes that referred to animals and plants as "brothers" and "sisters"); JOHN WITTHOFT, *THE AMERICAN INDIAN AS HUNTER* 19 (1953) (discussing the Pennsylvania tribes that referred to bears as "uncles").

49. BRUHAC, *supra* note 39, at 161.

50. See, e.g., ANTHONY F.C. WALLACE, *TUSCORA: A HISTORY* 38 (2012) (referencing the prohibition of intra-clan marriage and the old adage "marry out or die out").

51. BRUHAC, *supra* note 39, at 161; see also FIXICO, *supra* note 48, at 104.

52. DELORIA, *supra* note 25, at 88–89.

53. *Id.*

54. *Id.*; see also JACK D. FORBES, *COLUMBUS AND OTHER CANNIBALS* 13 (1979) ("Native American philosophy recognizes the right of every living creature to life and to live its own life without interference.").

various tribes regarding certain species of animals as “people,” and in fact, many tribal communities place great religious importance on animals and humans being able to transform into one another in the spiritual realm.<sup>55</sup> This view of species transformation strengthens the relationship between the human and the animal and displays the people’s respect amongst the natural environment.<sup>56</sup>

Other identity connections to animals can be seen in Northwestern totem poles and weavings. Although the term “totem poles” was a name given by Europeans, it originated from the Anishinaabe word *ototeman*, meaning “one’s relative.”<sup>57</sup> Totem poles were a symbol of the relationship between animals and humans in a kin group, and the animals that the kin group identified with were carved on the pole to represent that membership.<sup>58</sup> In addition to totem poles in the Northwest, certain weavings were also done in the symbol of clan or membership animals, such as the raven, the bear, the whale, and others.<sup>59</sup> Even certain animal hair, such as dog hair, was woven into blankets and clothing to signify status and connectedness with the animal.<sup>60</sup>

Native identity connections to animals are a stark contrast to the Western context wherein “dehumanization,” which generally refers to the demotion of people to the status of animals, sometimes

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55. See, e.g., AMERICAN INDIAN MYTHS AND LEGENDS, *supra* note 12, at 399–402, 404–07 (telling the Passamaquoddy story of “The Owl Husband” and the Brule Sioux story of “The Snake Brothers”); DELORIA, *supra* note 25, at 89 (discussing how humans and animals can transform into one another “to learn from each other”); MOULD, *supra* note 34, at 40–49, 107–12 (telling the stories of “The Man Who Became a Snake” and “The Man Who Became a Deer”).

56. See generally Aftandilian, *supra* note 20 (discussing the relationship between humans and animals and the lessons this reveals about proper interaction with the environment).

57. BRUHAC, *supra* note 39, at 160.

58. Vanessa Magnanini, *Constructing Tribal Sovereignty for the 21st Century: The Story of Lawmaking in Chilkat Indian Village*, IRA v. Johnson, 18 B.C. THIRD WORLD L.J. 45, 49–50 (1998) (“Marilee Engee . . . writes that each post is an ‘intricate mosaic of animal, human and otherworldly creatures that flow from one into the other.’” (citation omitted)).

59. See Evelyn Vanderhoop, *The Naaziin: Robe of Sacred Honor*, in IN THE SPIRIT OF THE ANCESTORS: CONTEMPORARY NORTHWEST COAST ART AT THE BURKE MUSEUM (Robin K. Wright & Kathryn Bunn-Marcuse eds., 2015).

60. MARION SCHWARTZ, A HISTORY OF DOGS IN THE EARLY AMERICAS 56 (1998) (discussing Coastal Salish women’s practice of weaving their dogs’ hair into blankets with goat wool).

occurs.<sup>61</sup> Dehumanization is intended to take the humanity out of the person, presumably to make it easier to oppress, abuse, or kill the individual.<sup>62</sup> Again, this construct directly clashes with many tribal cultures, wherein humans and animals retained equal status in the world. Dehumanization of Native individuals to the status of animals would not have had the intended disparaging meaning to tribal people. What dehumanization did from the Western perspective, though, was to thoroughly deny Native people their humanity—and to describe them as savages and animals.<sup>63</sup>

C. *Traditional Hunting Laws*

Since most tribal groups are traditionally omnivorous, hunting has traditionally been a necessity for survival.<sup>64</sup> As part of the obligation to the animal world, many traditional tribal hunting laws provided specific protocols for hunters before, during, and after the killing of an animal.<sup>65</sup> The justification for these protocols stems from the belief system that animals have spirits, just like humans, and so the taking of an animal's life is intertwined with spiritual beliefs and obligations.<sup>66</sup> In fact, in some tribal belief systems, an animal

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61. See Aftandilian, *supra* note 20, at 81 (stating that one of the main Native American teachings about animals is that they are people, too); see also Nick Haslam, *Dehumanization: An Integrative Review*, 10 PERSONALITY & SOC. PSYCH. REV. 252, 252 (2006) (noting that dehumanization is often related to ethnicity, race, and genocide) (“A consistent theme in [studies of dehumanization] is the likening of people to animals. In racist descriptions Africans are compared to apes and sometimes explicitly denied membership of the human species. Other groups are compared to dogs, pigs, rats, parasites, or insects.”). *But see* Armstrong, *supra* note 4, at 414 (“[A]lthough Native American cultures may consider *some* identifications with animals honorable, it cannot be presumed that all species of animal are accorded this value, nor that all other colonized cultures do the same.”).

62. See ANDREA SMITH, CONQUEST: SEXUAL VIOLENCE AND AMERICAN INDIAN GENOCIDE 116–17 (2005).

63. See Armstrong, *supra* note 4, at 414 (“[I]deas of an absolute difference between the human and the animal (and the superiority of the former over the latter) owe a great deal to the colonial legacies of European modernity . . .”).

64. See BRUHAC, *supra* note 39, at 162.

65. See JOSEPH EPES BROWN, THE SPIRITUAL LEGACY OF THE AMERICAN INDIAN: COMMEMORATIVE EDITION WITH LETTERS WHILE LIVING WITH BLACK ELK 56 (“A hunter, for example, is not just participating in a purely mechanical, but is engaged in a complex of meditative acts, all of which—whether preparatory prayer and purification, pursuit of the quarry, or the sacramental manner by which the animal is slain and subsequently treated—are infused with the sacred.”).

66. WITTHOFT, *supra* note 48, at 22; Shelley D. Turner, *The Native American's*

“chooses” to be taken.<sup>67</sup> The animal offers itself up to sustain the people; this idea thus presents an interesting distinction from Judeo-Christian principles, which would see humans as deliberately choosing their prey.<sup>68</sup> As a result of these beliefs, hunting is often laden with ceremonial requirements, which reflect deep respect and consideration for the animal’s spirit. For example, the Lac du Flambeau Band of Lake Superior Chippewa Indians believes respect for a deer must be at the core of hunting. This respect is found in various hunting moral codes, including, but not limited to: (1) only shoot to kill; (2) only take meat that is needed; (3) give thanks (known as *miigwetchitaagoziwin*) to the deer for its life, and place tobacco (known as *semaa*) near the deer before and after the hunt as semblance of that gratitude; (4) only hunt when sober; and (5) conduct efficient and careful butchering, so as not to disrespect or waste the life the deer gave.<sup>69</sup>

Another example of a tribe’s hunting laws is those related to the Makah Indians’ whaling traditions. Prior to the hunt, whalers will fast, ritually cleanse, pray, remain celibate, and abstain from drugs and alcohol.<sup>70</sup> Additionally, when a whale is harpooned, it is sprinkled with eagle feathers to release its soul back to the sea.<sup>71</sup> Again, the core of hunting for the Makah is respect for the whale and acknowledgement that the whale provides not only sustenance but also social identity.<sup>72</sup>

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*Right to Hunt and Fish: An Overview of the Aboriginal Spiritual and Mystical Belief System, the Effect of European Contact and the Continuing Fight to Observe a Way of Life*, 19 N.M. L. REV. 377, 382 (1989) (“The Indian sought to control his environment and he accomplished this through strict adherence to hunting and fishing taboos and rituals.”).

67. Reo & Whyte, *supra* note 47, at 21; *see also* Phyllis Morrow, *Yup’ik Eskimo Agents and American Legal Agencies: Perspectives on Compliance and Resistance*, 2 J. ROYAL ANTHROPOLOGICAL INST. 405, 418 (1996).

68. *See generally* Szues et al., *supra* note 19 (discussing various viewpoints of the relationship between humans and animals).

69. Reo & Whyte, *supra* note 47, at 20–21.

70. Richard Kirk Eichstaedt, “*Save the Whales*” v. “*Save the Makah*”: *The Makah and the Struggle for Native Whaling*, 4 ANIMAL L. 145 (1998); Rob van Ginkel, *The Makah Whale Hunt and Leviathan’s Death: Reinventing Tradition and Disputing Authenticity in the Age of Modernity*, 18 ETNOFOOR 58, 65–66 (2004); *see also* Jovana J. Brown, *It’s in Our Treaty: Right to Whale*, ENDURING LEGACIES NATIVE CASES INITIATIVE (2008), <http://nativecases.evergreen.edu/collection/cases/its-our-treaty-whaling>.

71. Van Ginkel, *supra* note 70, at 68.

72. *See id.*

Even after an animal is killed and eaten, many Native people have traditionally continued to treat the carcass with a great deal of reverence and respect. In some traditional laws, for example, they will not mistreat game animal bones for fear that the spirit of the animal would bring bad luck to the hunter in the future.<sup>73</sup> The Euro-American perspective on hunting has not typically been grounded in this type of respect or ceremonial protocol.<sup>74</sup> While individual recreational hunters may describe their hunting experience as “spiritual,” killing an animal in the Euro-American culture is ultimately justified as an obvious outgrowth of human dominion over animals.<sup>75</sup> Such a desire for dominion is found within “sport” hunting, where Euro-American hunters are encouraged to hunt and harvest the largest of a species, primarily to demonstrate

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73. See Altherr, *supra* note 5, at 270; see also Valerie Ruth Napoleon, Ayook: Gitskan Legal Order, Law, and Legal Theory 65–66 (2001) (unpublished Ph.D. dissertation, University of Victoria) (on file with authors).

74. See Paul Nadasdy, *The Gift in the Animal: The Ontology of Hunting and Human-Animal Sociality*, 34 AM. ETHNOLOGIST 25, 26 (2007) (“Even as we argue for the importance and legitimacy of indigenous knowledge and practices, our own theories remain rooted in Euro-American ontological assumptions that are fundamentally incompatible with them.”).

75. See Eugenia Shanklin, *Sustenance and Symbol: Anthropological Studies of Domesticated Animals*, 14 ANN. REV. ANTHROPOLOGY 375, 376 (1985) (citing *Genesis* 1:26) (“[R]eligions and storytellers alike customarily try to account for the beginnings of human-animal interaction. Genesis does so assertively: ‘And God said: . . . “Let [humans] have dominion over the fish of the sea, and over the fowl of the air, and over the cattle and over all the earth.”’”).

“athleticism,” not to provide needed nourishment.<sup>76</sup> Again, this is a stark contrast to Native hunting practices.<sup>77</sup>

Jesuit priests struggled to control Native hunting practices in the nineteenth century and encouraged Native people to abandon animism and other philosophical approaches to hunting as part of the overall effort to convert all Native people to Christianity.<sup>78</sup> The Native legal principles of providing offerings and prayers to the spirit of the animal stood in direct contradiction to the Judeo-Christian perception that “animals had no souls or hope of salvation.”<sup>79</sup> In the end, the Jesuits believed that Christian hunters who abandoned traditional hunting would actually see more success in the hunt, but even many Christian Indians continued to follow their traditional hunting traditions.<sup>80</sup>

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76. Heonik Kwon, *The Saddle and the Sledge: Hunting as Comparative Narrative in Siberia and Beyond*, 4 J. ROYAL ANTHROPOLOGICAL INST. 115, 115 (Mar. 1998) (noting that “breaking the stag”—butchering a deer after a hunt—in medieval Europe represented an aristocratic and romanticized conquest over nature); Norbert Ross et al., *Epistemological Models and Culture Conflict: Menominee and Euro-American Hunters in Wisconsin*, 35 ETHOS 478, 479 (2007). Ross et al. stated,

Whereas many Menominee interact with nature with a basic “do not waste” ethic and a focus on hunting for food, Euro-American hunters are more likely to stress other goals, including the goal of getting trophy game. Here the ethic is more on the sportsmanship and competition between hunters (who gets the biggest buck) and between hunters and the game (outsmarting the biggest/smartest buck). These differences in goals and epistemological frameworks, we argue, lead to different interpretations of behavior and ultimately result in stereotyping and conflict.

*Id.* Moreover, some critiques of contemporary mainstream American hunting culture note that hunting is often associated with sex, and women are often associated with animals. *See, e.g.*, Amy Fitzgerald et al., *Animals, Women, and Weapons: Blurred Sexual Boundaries in the Discourse of Sport Hunting*, 12 SOC’Y ANIMALS 237, 237 (2004) (“Particularly prominent in the magazines’ hunting discourse is the sexualization of animals, women, and weapons, as if the three are interchangeable sexual bodies in narratives of traditional masculinity.”).

77. *See* Reo & Whyte, *supra* note 47, at 22. Among the Inuit, a hunter should never brag about his success, because it may “tempt animals to avoid that hunter and anyone who hunts with him thus potentially depriv[ing] the family and community of food.” PAUKTUUTIT INUIT WOMEN OF CANADA, *THE INUIT WAY: A GUIDE TO INUIT CULTURE* 33 (2006).

78. *See* Altherr, *supra* note 5, at 268–69.

79. *Id.* at 268.

80. *See id.* at 274.



Profiting financially from hunting and fishing was not exclusive to Anglo-American hunters. Certainly, tribes bought and sold animal parts (such as meat, fur, and pelts) and profited from these sales, most notably with the advent of nineteenth-century trading posts.<sup>81</sup> Indeed, it is fair to say that Native people did over-hunt at times, particularly in the nineteenth-century southeast deerskin trade.<sup>82</sup> However, physical cruelty and abusive treatment of animals are not considered acceptable within tribal belief systems, as animals are spiritually connected to humans and such maltreatment is spiritually damaging for the community.<sup>83</sup>

In the contemporary setting, tribes that engage in subsistence or ceremonial hunting, fishing, and trapping may find themselves unwelcome in some of the more strident animal rights movements, who may object to hunting altogether.<sup>84</sup> This is only one area of conflict that might occur between tribal nations and some portions of the environmental movements in the United States.<sup>85</sup> For example, in 1995 and 1996, when the Makah Nation in Washington State began to reintroduce the practice of whale hunting, many non-Native environmental rights activists and animal rights activists protested the treaty rights of the Makah to engage in whaling.<sup>86</sup> What became clear during the public awareness battle on this matter is that non-Native organizations are often ignorant of the long history of respect for animals and the necessity to hunt for sustenance and religious purposes.<sup>87</sup>

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81. Ken Zontek, *Hunt, Capture, Raise, Increase the People Who Saved the Buffalo*, 15 GREAT PLAINS Q. 133, 134 (1995) (citing the buffalo trade as a means for Natives to profit).

82. Barnet Pavao-Zuckerman, *Deerskins and Domesticates: Creek Subsistence and Economic Strategies in the Historic Period*, 72 AM. ANTIQUITY 5, 28 (2007).

83. See generally Nathan Sherrer, *Probing the Relationship Between Native Americans and Ecology*, 4 JOSHUA ONLINE 16 (2006), [http://my-ecoach.com/online/resources/5714/Native\\_Americnas\\_and\\_Ecology.pdf](http://my-ecoach.com/online/resources/5714/Native_Americnas_and_Ecology.pdf) (citing a large number of rituals and strictures concerning the ethical treatment of animals in indigenous cultures).

84. Armstrong Wiggins, *Indian Rights and the Environment*, 18 YALE J. INT'L L. 345, 349–50 (1993).

85. See *id.*

86. Eichstaedt, *supra* note 70, at 155.

87. *Id.* at 146.

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### III. ANIMAL-HUMAN RELATIONS AND COLONIZATION

Colonization has affected the way in which humans and animals relate to one another in Native cultures.<sup>88</sup> In short, animal cruelty and neglect (as we understand it in the contemporary context) was largely unheard of in traditional tribal societies. As noted earlier, most tribal belief systems centralize human-animal relations as having a spiritual, reciprocal connection, while most European belief systems are anthropocentric and claim dominion over animals as a right of human superiority.<sup>89</sup> This clash of cultures led to an erosion of the traditional relationship between animals and humans, which may explain how animal cruelty may have become more common in tribal communities.<sup>90</sup> As Cree scholar Billy-Ray Belcourt explains, “[W]e cannot address animal oppression or talk about animal liberation without naming settler colonialism and white supremacy as political mechanisms that require the simultaneous exploitation or destruction of animal and Indigenous bodies.”<sup>91</sup> In the same way that gendered violence was introduced as a part of the attempted destruction of tribal cultures, animal abuse shares similar linkages.<sup>92</sup> Patriarchy and dominion over animals became two primary European imports.

Since Western (Euro-American) culture arguably did not contain the same value structures for animals as did most Native cultures, early contact between Europeans and Native people was mired in extreme confusion about why the other culture acted the way it did toward animals.<sup>93</sup> Native people were often confused by the way in which Europeans treated their animals, and non-Native explorers and settlers viewed the reverential Native treatment of

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88. See, e.g., DERR, *supra* note 18, at xiii (“[A]ttitudes toward dogs and the uses to which their talents are put have changed dramatically with the destruction of indigenous societies.”).

89. The Western dominion of humans over animals can be traced back to ancient philosophers, such as Aristotle, who “believed that animals were incapable of moral and rational judgement.” DuBerry, *supra* note 19, at 206.

90. See, e.g., Nadasdy, *supra* note 74.

91. Billy-Ray Belcourt, *Animal Bodies, Colonial Subjects: (Re)Locating Animality in Decolonial Thought*, 5 SOCIETIES 1, 3 (2015).

92. Sarah Hand Meacham, *Pets, Status, and Slavery in the Late-Eighteenth-Century Chesapeake*, 77 J. S. HIST. 521, 524 (2011) (linking the paternal and patriarchal ownership of pets to an unconscious justification for slavery).

93. See, e.g., Altherr, *supra* note 5, at 268 (“The Indians’ hunting beliefs and rituals provided a strong challenge to the efforts and patience of the Jesuits.”).

animals as, at best, evidence that Native people were a primitive people with heathen belief systems or, worse, as an indication that Native people were indeed no more valuable than animals.<sup>94</sup> Missionaries and federal agents who sought to “civilize” Native people have encouraged (and even mandated) tribal communities to adopt Judeo-Christian values about animals.<sup>95</sup>

Many of the efforts to change the nature of the animal-human relationship took hold and were internalized by many tribal members—much like the introduction of child abuse and domestic violence that often followed closely after the conversion of many of the people to a patriarchal religion. Both domestic violence and animal abuse have sadly become commonplace in some tribal communities, likely having taken hold because of the history of assimilation policies implemented by the federal government.<sup>96</sup>

By using animals as weapons, upsetting the natural balance of animal-human relations through poaching, and demonstrating how to be violent and abusive to animals, the colonial project has had a dramatic effect on Native people. Understanding this history is essential to understanding how solutions may be crafted today.

#### A. *Weaponized Animals*

On Columbus’s second voyage to North America, he came armed with dogs that were used in military attacks on Caribbean

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94. Indians and wolves were discussed in much the same language, as wild, brutal, savage, uncivilized creatures blocking the advance of Christian civilization.” DERR, *supra* note 18, at 61.

95. For example, many Native children were commanded to explicitly reject their spiritual beliefs about animals in government- and church-run boarding schools. Boarding schools were largely tools of assimilation that the government used in an effort to sever children from their tribal identities. One boarding school survivor from Alaska reflected on this experience: “The church people mistook our emblems as worshipping animals, being heathenistic so they—it was against the rules and it was forbidden to speak your Tlingit language. You were punished if you did. You couldn’t practice the dancing or any of the cultural things because it was heathenistic.” DIANE HIRSHBERG & SUZANNE SHARP, THIRTY YEARS LATER: THE LONG-TERM EFFECT OF BOARDING SCHOOLS ON ALASKA NATIVES AND THEIR COMMUNITIES 22 (2005), <http://www.iser.uaa.alaska.edu/Publications/boardingschoolfinal.pdf>.

96. Rob Roy Smith, *Domestic Animal Protection and Cultural Use of Wild Animals in Indian Country*, MORISSET, SCHLOSSER, JOZWIAK & SOMERVILLE (Apr. 2006), <http://www.msaj.com/papers/Animal%20Law%20CLE%20Paper.htm> (noting the increase and correlation in domestic and animal abuse).

Indians.<sup>97</sup> As one commentator notes, “These dogs, and the others that followed, were to lay a bloody trail across the islands and mainland of the newfound world.”<sup>98</sup> Observations from the 1495 Columbus campaign describe graphic, bloody violence.<sup>99</sup> The perverse use of animals to attack, maim, and kill Indian people was perhaps the most significant disruption in animal-human relationships for Native people from the time of early contact.<sup>100</sup> Soon after Columbus’s campaign, Spanish colonizers even began selling human body parts at public markets for “training Spanish dogs to develop a taste for people, and these dogs were pitted against Native Americans for sport.”<sup>101</sup>

In times of conflict, Europeans and Euro-Americans used dogs to hunt and kill Native people, often using mastiff and greyhound dogs that were trained to brutally attack, maim, and kill.<sup>102</sup> This gruesome tactic has been particularly well-documented in the areas conquered by Spain in the 16th and 17th centuries.<sup>103</sup> But the Spanish were not alone: colonists from other nations also used this brutal technique to torture and kill. Seventeenth-century English explorer Martin Pring recorded that he used mastiffs as attack dogs to kill “savages.”<sup>104</sup> In 1757, Benjamin Franklin reportedly encouraged Pennsylvania to acquire mastiffs and handlers from England in order to hunt down Shawnee and Delaware Indians, who had formed alliances with France.<sup>105</sup> Such deliberate acts can understandably alter the structure of the animal-human relationship, as Native people likely became deeply afraid of dogs as

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97. JOHN GRIER VARNER & JEANNETTE JOHNSON VARNER, *DOGS OF THE CONQUEST* 4 (1983).

98. *Id.* at 4–5.

99. BARTOLOME DE LAS CASAS, *BREVÍSIMA RELACIÓN DE LA DESTRUCCIÓN DE LAS INDIAS* (1552). Taino people were “run down, disemboweled, torn to pieces, and consumed by dogs. In all, he reported that Columbus’s 20 dogs killed 100 Taino in an hour.” DERR, *supra* note 18, at 28.

100. Dogs were also used to “track” and hunt Native people during times of conflict. During King Philip’s War (1675–1676), it was reported that colonists used bloodhounds to track Native people.

101. SCHWARTZ, *supra* note 60, at 163 (citing VARNER & VARNER, *DOGS OF THE CONQUEST*, *supra* note 97).

102. See SCHWARTZ, *supra* note 60, at 162. See generally Mark A. Mastromarino, *Teaching Old Dogs New Tricks: The English Mastiff and the Anglo-American Experience*, 49 *HIST.* 10 (1986).

103. See SCHWARTZ, *supra* note 60, at 162.

104. Mastromarino, *supra* note 102, at 10–25.

105. DERR, *supra* note 18, at 69.

a result of that trauma. Prior to European contact, dogs held revered roles in the lives of many Native peoples.<sup>106</sup> Several tribal cultures included dogs in their cosmology and creation stories,<sup>107</sup> some viewed dogs as a symbol of wealth and higher societal status,<sup>108</sup> and some buried their dogs with them to accompany them to the afterlife.<sup>109</sup> Domesticated dogs were invaluable to Native people and played a wide variety of roles depending on the tribe, including “guards, hunters, fishers, food, pets, and, commonly, beasts of burden.”<sup>110</sup> Thus, using dogs as torture devices most certainly caused fundamental changes to the relationship between Native people and animals, ultimately uprooting the standard reciprocal relationship between dogs and Native people.<sup>111</sup> Instead of trust and companionship, Native people learned to fear dogs—at least those dogs owned by non-Native people.

Unfortunately, the era of using weaponized dogs against Native people has recently been revitalized. They have been used as a method of terrorizing Native people seeking to protect the Missouri River in North Dakota.<sup>112</sup> On September 3, 2016, at the Sacred Stone Camp in North Dakota, a large group of Native people and activists, who were engaged in a prayerful and peaceful protest against the Dakota Access Pipeline, were confronted with a private security firm outfitted with attack dogs trained to intimidate and terrorize.<sup>113</sup>

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106. Jordan E. Kerber, *Native American Treatment of Dogs in Northeastern North America: Archaeological and Ethnohistorical Perspectives*, 25 *ARCHAEOLOGY OF E. NORTH AM.* 81, 91–92 (1997).

107. See SCHWARTZ, *supra* note 60, at 94–98.

108. See *id.* at 56 (“[A Costal Salish woman’s] wealth was counted in the number of dogs she owned.”).

109. NERISSA RUSSELL, *SOCIAL ZOOARCHAEOLOGY: HUMANS AND ANIMALS IN PREHISTORY* 86–87 (2012); see also SCHWARTZ, *supra* note 60, at 103–09.

110. DERR, *supra* note 18, at x; see also Joshua Abram Kerksmar, *Wolves at Heart: How Dog Evolution Shaped Whites’ Perceptions of Indians in North America*, 21 *ENVTL. HIST.* 1, 5 (2016) (“North America in the seventeenth century . . . was home to at least nine distinct types of dog. Many of these breeds served specific human ends.”).

111. Kerksmar, *supra* note 110, at 7.

112. E.g., *Dogs, Pepper Spray and Guards: Water Protectors Report Violent Encounter*, INDIAN COUNTRY TODAY MEDIA NETWORK (Sept. 4, 2016), <http://indiancountrytodaymedianetwork.com/2016/09/03/dogs-pepper-spray-and-guards-water-protectors-report-violent-encounter-165673>.

113. E.g., *id.*; Sarah Sunshine Manning, *Manning: ‘And Then the Dogs Came’: Dakota Access Gets Violent, Destroys Graves, Sacred Sites*, INDIAN COUNTRY TODAY MEDIA NETWORK (Sept. 4, 2016), <http://indiancountrytodaymedianetwork.com/2016/09/04/manning-and-then-dogs-came-dakota-access-gets-violent-destroys-graves-sacred>

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*Indian Country Today Media Network* reported that “[a]pproximately eight dog handlers, hired by Dakota Access, led the barking and snarling dogs right up to the front line.”<sup>114</sup> When the confrontation ended, six protesters (including a young child) had been bitten, and four security guards and two guard dogs had been injured.<sup>115</sup> But the attempt to intimidate the protesters failed considerably. The number of protesters only increased over time.<sup>116</sup> The camps later closed on February 19, 2017.<sup>117</sup> Spiritual warrior Quese IMC, a Pawnee activist, explained, “We have [a] connection to spirituality and so do dogs. And we know what was happening wasn’t their fault.”<sup>118</sup> The private security companies who were hired to use these attack dogs to intimidate water protectors have not returned to the site, most likely due to the horrific images that were circulated shortly after the incident. Still, the use of dogs at the site of the water protector movement signals that Native people must be prepared for a renewed depraved effort by others to use animals to threaten their lives.

### B. *Poaching*

Traditional Native hunters understood that the relationship between animals and humans required hunters to be thoughtful and reverent when determining how much game is enough so as not to over-hunt and disrupt the delicate food cycle.<sup>119</sup> In most cultures, hunting was only authorized to the extent that food was needed, and animals who were killed were honored and celebrated for their gift

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114. *Id.*

115. James MacPherson, *Oil Pipeline Protest Turns Violent in Southern North Dakota*, ASSOCIATED PRESS (Sept. 3, 2016), <http://bigstory.ap.org/article/dca1962d120b4b069c0436280ad62bd1/oil-pipeline-protest-turns-violent-southern-north-dakota>.

116. *Id.*

117. Jenni Monet, *Standing Rock Tribal Council Approves Evacuation for All Camps*, INDIAN COUNTRY TODAY MEDIA NETWORK (Jan. 22, 2017), <http://indiancountrymedianetwork.com/news/environment/standing-rock-tribal-council-approves-evacuation-order-camps/>.

118. Karen E. Quinones Miller, *Standing Firm at Standing Rock—Native Americans Face Dogs and Pepper Spray to Protect Ancestral Lands*, HUFFINGTON POST (Sept. 7, 2016), [http://www.huffingtonpost.com/entry/standing-firm-at-standing-rock-thousands-of-native\\_us\\_57d04161e4b0f831f706679d](http://www.huffingtonpost.com/entry/standing-firm-at-standing-rock-thousands-of-native_us_57d04161e4b0f831f706679d).

119. WITTHOFT, *supra* note 48, at 6.

to the people.<sup>120</sup> Moreover, tribal hunting laws prohibited the killing of pregnant or nursing female animals, as well as their offspring.<sup>121</sup> However, Euro-American settlers had no such legal restrictions or philosophical limitations and sometimes engaged in widespread poaching of critical animals (such as bison or salmon), leaving Native communities with no access to traditional staple foods, which dramatically affected a tribe's ability to be self-sufficient.<sup>122</sup> In 1801, Indiana Governor William Henry Harrison wrote, "One white hunter will destroy more game than five of the common Indians—the latter generally contenting himself with sufficiency for present subsistence—while the other eager after game hunt for the skin of the animal alone."<sup>123</sup> Indeed, late nineteenth century poaching of bison for hides, coupled with outright annihilation attempts, nearly destroyed the Great Sioux Nation.<sup>124</sup> In nineteenth century northern California, gold rush miners destroyed and diverted many streams, leaving tribal people without access to salmon—a key staple of sustenance for many tribes in the Pacific Northwest and California.<sup>125</sup> Suddenly, tribal people were no longer able to rely on traditional hunting and fishing methods that had been perfected

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120. See generally WITTHOFT, *supra* note 48, at 1–6 (comparing and contrasting how European settlers and Native Americans hunted and sustained themselves).

121. See, e.g., Milton M. R. Freeman, "Just One More Time Before I Die": Securing the Relationship Between Inuit and Whales in the Arctic Regions, 67 *SENRI ETHNOLOGICAL STUD.* 59, 63 (2005) (noting that in the Canadian Inuit culture, "female beluga are not to be killed if accompanied by calves or juvenile whales"). This traditional hunting norm was codified in the twentieth century as part of the hunting bylaws of the Western Canadian Arctic Inuit communities. *Id.*

122. See, e.g., Jody Emel, *Are You Man Enough, Big and Bad Enough? Ecofeminism and Wolf Eradication in the USA*, 13 *ENV'T & PLAN. D: SOC'Y & SPACE* 707, 713–15 (1995).

123. DAVID R. WRONE & RUSSELL S. NELSON JR., WHO'S THE SAVAGE? 74 (Univ. Wis. Stevens Point ed., 1982) (citing 1 WILLIAM HENRY HARRISON ET AL., MESSAGES AND LETTERS OF WILLIAM HENRY HARRISON 25–31 (Logan Esarey ed. 1922)).

124. WRONE & NELSON, *supra* note 123, at 130 (providing a grisly description of the massive slaughter of bison, stating that "[t]housands upon thousands of buffaloes were killed for their tongues alone, and never skinned" and that "[t]housands more were wounded by unskilled marksmen and wandered off to die and become a total loss").

125. 1 RANDALL L. BROWN, STATE OF CAL., DEP'T OF FISH & GAME, FISH BULL. 179 CONTRIBUTIONS TO THE BIOLOGY OF CENTRAL VALLEY SALMONIDS 73, <https://escholarship.org/content/qt6sd4z5b2/qt6sd4z5b2.pdf> (noting that "following the California Gold Rush of 1849, the massive influx of fortune seekers and settlers altered the salmon spawning rivers with such rapidity and so drastically").

over the course of several thousand years.<sup>126</sup> For those cultures that believed animals offered themselves to hunters, this abrupt disruption certainly challenged those belief systems, likely leaving many tribal people feeling betrayed and confused about their long-standing relationship with these animals.

Some tribal nations started criminalizing poaching and over-hunting in the nineteenth century, as tribes were encouraged to codify written laws in English to claim the right to be civilized. The Chickasaw Nation, for example, passed a “game law” in 1896, making it criminal to

[e]nsnare, net or trap any quail, prairie chicken, wild turkey, deer, antelope, fawn, fish or other game used for food within this Nation, or have in possession any game named in the foregoing section for any purpose or any pretense whatever, except for food, and then when actually necessary for immediate use.<sup>127</sup>

The penalty for violating the law included a fine and at least ten days in jail.<sup>128</sup>

### C. *Introducing Animal Abuse to Native Cultures*

Laws prohibiting mistreatment of animals did not appear in America or Europe until well into the nineteenth century.<sup>129</sup> Essentially, until that time, there were no per se legal prohibitions on cruelty towards animals in Western legal thought.<sup>130</sup> Nor were there any per se legal restrictions on abuse of women.<sup>131</sup> As Maneesha Dechka writes, “[T]he law permitted men to treat their animals, along with their wives and children, as they wished.”<sup>132</sup> And early laws passed by American states such as New York only focused

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126. See David D. Smits, *The Frontier Army and the Destruction of the Buffalo: 1865–1883*, 25 WESTERN HIST. Q. 312, 312 (1994); see also Brown, *supra* note 125, at 92 (discussing tribal effects of decline of the salmon resource in the upper San Joaquin River).

127. DAVIS A. HOMER, CONSTITUTION AND LAWS OF THE CHICKASAW NATION TOGETHER WITH THE TREATIES OF 1832, 1833, 1834, 1837, 1852, 1855, AND 1866, at 361–62 (Foley Ry. Printing Co. ed., 1899).

128. *Id.* at 362.

129. Maneesha Deckha, *Welfarist and Imperial: The Contributions of Anticruelty Laws to Civilizational Discourse*, 65 AM. Q. 515, 516 (2013).

130. *Id.* at 518.

131. *Id.*

132. *Id.*



on mistreatment of cattle and other livestock.<sup>133</sup> Companion animals were not protected by law until much later in the nineteenth century.<sup>134</sup> And throughout this time, men had complete dominion over animals and women as property.<sup>135</sup> As these values and ethics became foisted into tribal communities, animal abuse and domestic violence became more common.<sup>136</sup>

One animal deserves special attention in this context: the wolf and its dog relatives. Wolves and dogs hold sacred places in many tribal belief systems.<sup>137</sup> Many Native people believe that humans learned to hunt from watching wolves.<sup>138</sup> Wolves and dogs are not to be harmed nor hunted as they are considered relatives.<sup>139</sup> But the early Euro-American perspective was that “wolves were a species to be exterminated and no method was too cruel or inhumane.”<sup>140</sup> Thus, not only were Native people confronted with the slaughter of their closest animal kin, but the methods used were causing pain and suffering to the animals. Killing a wolf or dog could be seen as an affront to the entire community. The Creek Nation uniquely valued the role of dogs in their communities, and in 1883, it passed a law that sanctioned the willful killing of a dog “without provocation.”<sup>141</sup>

One also sees the exemplification of a Western value system in the large-scale animal agriculture business. Many critics and activists against this system note the treatment of animals and deem it to be degrading, torturous, and solely profit-driven for the companies.<sup>142</sup>

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133. Cats and dogs, for example, were considered economically worthless and therefore unworthy of legal protection. BRUCE A. WAGMAN & MATTHEW LIEBMAN, *A WORLDVIEW OF ANIMAL LAW* 5 (2011) (citing David Farve & Vivien Tsang, *The Development of Anti-Cruelty Laws During the 1800's*, 1993 DET. C.L. REV. 1, 7–8 (1993)).

134. Deckha, *supra* note 129, at 519.

135. *Id.* at 518.

136. *Id.* at 523–24.

137. See generally Brandy R. Fogg, *The First Domestication: Examination of the Relationship between Indigenous Homo Sapiens of North America and Australia and Canis Lupus* (May 2012) (unpublished M.A. thesis, University of Kansas).

138. *Id.*

139. *Id.*

140. *Id.* at 7.

141. Carolyn Thomas Foreman, *The Light-Horse in the Indian Territory*, 34 CHRON. OKLA. 17, 38 (1956). Offenders could be fined up to \$100, with a portion of the fine given directly to the owner of the dog. *Id.*

142. See, e.g., David J. Wolfson, *Beyond the Law: Agribusiness and Systematic Abuse of Animals*, 2 ANIMAL L. 123 (1996); see also, e.g., David Cassuto & Cayleigh Eckhardt, *Don't Be Cruel (Anymore): A Look at the Animal Cruelty Regimes of the United States and Brazil with a Call for a New Animal Welfare Agency*, 43 B.C. ENVTL. AFF. L. REV. 1 (2016).

Environmental activists additionally express concern for the environmental and ecological toll that such an industry has on the environment.<sup>143</sup> The clash between contemporary animal agriculture and traditional tribal values came to a head on the Rosebud Reservation in 2003.<sup>144</sup> A pig production company called Sun Prairie opened a massive hog farm (over 96,000 hogs) on tribal trust land in 1998, with the promise of jobs for tribal members.<sup>145</sup> By 2003, the relationship between the Rosebud Tribe and Sun Prairie had significantly deteriorated after reports of job discrimination, employee health problems, and animal cruelty.<sup>146</sup> The non-Indian hog company, as it turned out, had selected reservation land as the home base for its operation, given the state of South Dakota’s anti-corporate farming law and that their operation would likely be in the state.<sup>147</sup>

Furthermore, one sees the Western value system in certain clinical animal research, which imposes painful experiments upon animals in the pursuit of financial revenue for cosmetic, chemical, and pharmaceutical companies.<sup>148</sup> Activists and critics also note this treatment to be degrading, torturous, and profit-driven.<sup>149</sup>

#### IV. CONTEMPORARY CHALLENGES AND SOLUTIONS

Over the past century, reservation and village life has been marked by challenges presented by animals, particularly dogs.<sup>150</sup> These problems include feral dog packs, dog attacks and maulings, overpopulation, and animal abuse, which often intersects with domestic violence. Despite the widespread nature of these problems,

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143. See, e.g., Kyle H. Landis-Marinello, *The Environmental Effects of Cruelty to Agricultural Animals*, 106 MICH. L. REV. FIRST IMPRESSIONS 147 (2008).

144. Melody Petersen, *Indians Now Disdain a Farm Once Hailed for Giving Tribe Jobs*, N.Y. TIMES (Nov. 15, 2003), <http://www.nytimes.com/2003/11/15/us/indians-now-disdain-a-farm-once-hailed-for-giving-tribe-jobs.html>.

145. *Id.*

146. *Id.*

147. Lora Berg, *Bell Farms, Sioux Tribe Proceed with Joint Venture Hog Farmer*, NAT’L HOG FARMER (June 1, 1999), [http://nationalhogfarmer.com/mag/farming\\_bell\\_farms\\_sioux](http://nationalhogfarmer.com/mag/farming_bell_farms_sioux).

148. See Katie C. Galanes, *Detailed Discussion of Animal Testing in Commercial Products*, MICH. ST. U ANIMAL LEGAL & HIST. CTR. (2010), <http://www.animallaw.info/articles/ddusanimaltesting.htm>.

149. *See id.*

150. See generally, e.g., Thomas J. Daniels, *A Study of Dog Bites on the Navajo Reservation*, 101 PUB. HEALTH REP. 50 (1986).

however, contemporary tribal animal law has largely been absent from legal scholarship, save one important article, *At a Complex Crossroads: Animal Law in Indian Country*, published by Rob Roy Smith in 2007.<sup>151</sup> Smith's article provides a solid foundation for understanding how various tribal governments can structure their laws pertaining to animals and provides a number of key examples of how tribal nations use the law to achieve humane treatment for animals.<sup>152</sup> This article builds off the conclusions of Smith and explores how tribal nations can incorporate customary and traditional principles into contemporary laws, so that tribal animal laws can begin to untangle from years of colonial entrapment.

This Part begins by exploring the role of NAHS.<sup>153</sup> NAHS conducted a national survey on animal problems in tribal communities, resulting in some helpful data that can inform animal law reform for tribal communities. This Part then turns to some specific proposals for dealing with complex animal problems on tribal lands today.

#### A. *Native America Humane Society*

Diana Webster, attorney and member of the White Earth Band of Ojibwe, founded NAHS, a nonprofit, in 2014, and she is the organization's current president.<sup>154</sup> The mission of NAHS is "[t]o empower Native communities to become healthier, happier and safer by providing information, support and resources for animal care programs in Indian country."<sup>155</sup> NAHS takes a multi-prong approach to animal issues, including awareness and education, spay/neuter and wellness clinics, dog rescue programs, and youth

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151. Rob Roy Smith, *At a Complex Crossroads: Animal Law in Indian Country*, 14 ANIMAL L. 109 (2007).

152. *Id.*

153. NATIVE AM. HUMANE SOC'Y, <http://www.nativeamericahumane.org/> (last visited Aug. 14, 2017).

154. *About Us*, NATIVE AM. HUMANE SOC'Y, <http://www.nativeamericahumane.org/about-us.html> (last visited Aug. 14, 2017); Keiko Ohnuma, *New Initiative Sets Up MASH Unit to Spay/Neuter Dogs on Laguna Pueblo*, ALBUQUERQUE J. (Apr. 29, 2016), <https://www.abqjournal.com/765326/re-zdog-management.html>.

155. *About Us*, *supra* note 154.

programming.<sup>156</sup> It is the only national organization currently addressing animal wellness from a tribal-centric perspective.<sup>157</sup>

Webster provided a detailed history on the origin and purpose of NAHS:

We started NAHS to address the challenge of unmanaged animal populations on tribal lands when after talking to our network of family, friends and colleagues in Indian country, we discovered that many of our communities still struggled with roaming packs of rez [reservation] dogs and herds of wild horses. We also heard stories about well-meaning non-Native groups who came to help but often were just concerned about the animals and who didn't respect or acknowledge our cultures, traditions, and sovereign status. Being tribal members who care about our communities—people and their animals—along with respecting and understanding each tribe's right to self-determination as well as understanding how to humanely manage animal populations, it became our mission at NAHS to bring information, support, and resources for animal care programs in Indian country.<sup>158</sup>

NAHS currently partners with tribes in Minnesota and New Mexico to offer regular veterinary care clinics that partner with tribal animal control and other non-profit organizations.<sup>159</sup> NAHS also developed a tribal youth externship program through a collaboration with the University of Minnesota College of Veterinary Medicine to allow students to explore careers in veterinary medicine and other sciences and encourage future leaders.<sup>160</sup>

In addition to the partnerships and the work NAHS does, the organization is also compiling an extensive database of tribal animal legal codes for reference by tribes searching for guidance in developing or amending their own tribal animal codes.<sup>161</sup> The code

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156. *See generally id.*

157. *See* E-mail from Diana Webster, President, Native Am. Humane Soc'y, to Liz Murphy (Oct. 6, 2016, 4:42 PM CST); *Why NAHS?*, NATIVE AM. HUMANE SOC'Y, <http://www.nativeamericahumane.org/why-nahs.html> (last visited Aug. 14, 2017).

158. E-mail from Diana Webster, *supra* note 157.

159. *Id.*; Ohnuma, *supra* note 154, at 36; *Our Partners*, NATIVE AM. HUMANE SOC'Y, <http://www.nativeamericahumane.org/our-partners.html> (last visited Aug. 14, 2017).

160. *Tribal Youth Animal Care Externships*, NATIVE AM. HUMANE SOC'Y, <http://www.nativeamericahumane.org/animal-care-externships.html> (last visited Aug. 14, 2017).

161. *Appendix A: Sample Ordinances*, NATIVE AM. HUMANE SOC'Y,

is expected to be available through a website portal at Michigan State University College of Law, a well-known university for animal history and animal rights legal research.<sup>162</sup> NAHS is also creating education resources for tribes on pet care, the link between human violence and animal abuse, therapy animals, and preventing dog bites. These resources address the unique challenges and considerations tribal communities have shared with the organization.<sup>163</sup> As Webster expressed, “We want to get our communities excited about their animals and see them as many of our ancestors did, as companions, protectors, and healers, rather than as problems.”<sup>164</sup>

One of the obstacles standing in the way of improving tribal animal laws is that it has been difficult to develop discrete priorities due to a lack of information. Each reservation or village has its own unique needs, so a concrete, one-size-fits-all approach to tribal animal law will be unlikely to result in improvements.<sup>165</sup> Because there is so little information, NAHS decided to set up a basic Internet survey and ask people across the country to participate by sharing their perspectives anonymously.

In the fall of 2015, NAHS conducted a national survey about animals in tribal communities that was directed towards tribal community members, off-reservation Natives, and non-Natives who work within tribal communities. The survey was conducted to gather information as to the current state of animals in tribal communities and determine the prevalence of domestic violence involving animal abuse in Indian country in order to demonstrate that there is indeed

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[http://www.nativeamericahumane.org/uploads/6/4/2/5/64257269/animal\\_control\\_appendix\\_-\\_11-13-14.pdf](http://www.nativeamericahumane.org/uploads/6/4/2/5/64257269/animal_control_appendix_-_11-13-14.pdf) (last visited Aug. 14, 2017); see also E-mail from Diana Webster, *supra* note 157.

162. E-mail from Diana Webster, *supra* note 157; Sarah M. Donnelly, *Native America Humane Society’s Summer Legal Research Intern*, TURTLE TALK (Apr. 29, 2016), <https://turtletalk.wordpress.com/2016/04/29/native-america-humane-societys-summer-legal-research-intern/>.

163. See E-mail from Diana Webster, *supra* note 157; see also *Resources*, NATIVE AM. HUMANE SOC’Y, <http://www.nativeamericahumane.org/resources.html> (last visited Aug. 14, 2017).

164. E-mail from Diana Webster, *supra* note 157.

165. Smith, *supra* note 151, at 112. “Animal law in Indian Country presents some unique legal challenges involving multiple, and sometimes conflicting, statutory schemes.” *Id.* “Because of the sheer number of different tribes and cultures, it is very important to steer clear of clichéd views of Indians and to avoid any description that falsely claims to encapsulate them as a people.” Ezra Rosser, *This Land Is My Land, This Land Is Your Land: Markets and Institutions for Economic Development on Native American Land*, 47 ARIZ. L. REV. 245, 256 (2005).

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a link between domestic violence and animal abuse within tribal communities. NAHS's purpose for the survey results was to use the gathered information to help create programs and solutions for tribes who are eager to combat animal abuse within domestic violence.

The survey was created on the website SurveyMonkey and had a total of twenty-nine questions.<sup>166</sup> The survey was first distributed to tribal domestic and sexual assault coalitions, advocacy groups, and Native women's organizations. About a month after being shared with these groups, the survey was shared nationally on social media, e-mail, and other forms of electronic communication. Participants had access to the survey for roughly three months before NAHS closed the public link to it. There was a total of 262 participants.<sup>167</sup> The average participant age range was forty to fifty-nine years old, and 88.17% of the participants identified as pet owners. Dogs, cats, and horses were the most common pets among the participants. Questions about tribal communities' animal laws, animal treatment, animal shelters, animal abuse, and domestic abuse were posed to determine the current state of animals in Native communities. Four major themes about animals in tribal communities emerged from the survey results: (1) overpopulation, (2) lack of community resources, (3) lack of knowledge and code enforcement, and (4) lack of awareness. Most of the survey and the recommendations that followed were focused on dogs.

Overpopulation was the most articulated concern. Participants expressed that overpopulation had resulted in roaming packs of dogs and increased maulings. In terms of responses to such problems, participants noted that packs or mauling dogs were either taken to an animal shelter, or collected by animal control, or shot by the police.

A second common theme in the survey was a lack of resources in tribal communities. Participants articulated that veterinary

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166. *Native America Humane Society Community Animal and Family Violence Survey*, SURVEYMONKEY, <https://www.surveymonkey.com/r/NAHS-DV-ANIMALS> (last visited Aug. 14, 2017). Survey results, which have not previously been published, were provided to the authors.

167. Seventy-one participants listed their tribal affiliation, and this survey was completely open to both Native and non-Native participants. Notably, numerous participants only listed their geographic regions, of which many were within or near tribal communities. Therefore, the exact number of Native participants in this survey is unknown.

services, animal shelter access, and pet-friendly domestic violence shelters were the least available in their communities. Participants also attributed the lack of veterinary services in tribal communities for the increases of disease, pestilence, overpopulation, and animal abuse in their communities.

The third most mentioned issue was the lack of knowledge and enforcement of tribal animal laws within tribal communities, although most participants did not elaborate on the matter. When posed with the survey question as to whether the participant knew of the various animal codes or laws in his or her community, the greatest number of participants answered “Unsure” or “No” as their answer. The participants expressed that the lack of knowledge of animal tribal codes or ordinances contributed to varying degrees of violence against animals in their communities. Within the comment sections, several participants noted that enforcement of their communities’ codes was dependent upon the police and animal control, and a lack of enforcement—be that willful or due to a lack of control resources, primarily financial—contributed to the lack of knowledge and code enforcement.

The fourth most prevalent issue that participants said animal abuse in their communities could be attributed to was a lack of awareness about varying topics of animal safety and healthcare.

In recent years, there has been a growing understanding of how animal abuse is linked to domestic violence and child abuse.<sup>168</sup> Some studies have shown that people who abuse animals are also at high risk for abusing family members.<sup>169</sup> As this phenomenon has become more well-known, collaborations have developed between animal humane societies and domestic violence shelters to increase the likelihood that victims of domestic violence have access to shelters that allow pets.<sup>170</sup> However, it is not clear that the same dynamic necessarily exists in tribal communities, and no studies to date have explored this issue. However, numerous federal reports have

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168. See *Animal Cruelty and Human Violence*, HUMANE SOC’Y OF THE U.S., [http://www.humanesociety.org/issues/abuse\\_neglect/qa/cruelty\\_violence\\_connection\\_faq.html](http://www.humanesociety.org/issues/abuse_neglect/qa/cruelty_violence_connection_faq.html) (last visited Aug. 14, 2017).

169. See Clifton P. Flynn, *Why Family Professionals Can No Longer Ignore Violence Toward Animals*, 49 FAM. REL. 87 (2000).

170. See *Directory of Safe Havens for Animal Programs*, HUMANE SOC’Y OF U.S., [http://www.humanesociety.org/issues/abuse\\_neglect/tips/safe\\_havens\\_directory.html](http://www.humanesociety.org/issues/abuse_neglect/tips/safe_havens_directory.html) (last visited Aug. 14, 2017); *Domestic Violence and Pets*, RED ROVER, <https://redrover.org/domestic-violence-and-pets> (last visited Aug. 14, 2017).

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concluded that Native people suffer the highest rates of interpersonal violence in the nation.<sup>171</sup>

For that reason, the survey asked respondents to consider the intersection of domestic violence and animal abuse in their communities, including whether victims of domestic violence who own companion animals have options for safety. Two prevalent themes arose from these question types: (1) animals belonging to victims are frequently abused to control victims, and (2) tribal domestic violence shelters currently lack resources to keep victims and their companion animals together.

Some participants noted that their communities may have agreements with local veterinarians for low-cost boarding or limited foster homes; however, the majority of the domestic violence shelters do not allow or do not have the resources to provide dual-shelter for victims and their companion animals.

Many participants also answered “Unsure” as to the questions regarding animal abuse in cases of domestic violence and shelter resources. In the commentary, some participants expressed their own lack of knowledge as to animal abuse in domestic violence cases and/or available resources. Many participants stated interest in learning more about animal abuse in domestic violence cases and available options for their tribal communities.

While this survey’s value is limited due to the size and nature of participants, several important themes emerged that could be used to develop an action plan for a tribal government seeking to modernize its animal laws, particularly in the areas of overpopulation of dogs and the intersection of animal abuse and domestic violence.

#### *B. Potential Contemporary Solutions for Tribal Nations*

This section focuses on proposed legal reform for tribal legislatures to consider. Tribal animal laws, to the extent they exist, may not reflect the actual values and aspirations of the community if they were not written internally or are part of “boilerplate” language that mirrors state law, reflecting none of the tribal traditional laws or principles.<sup>172</sup> Revitalizing customary principles by incorporating

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171. See generally ANDRE B. ROSAY, *VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN* (2016).

172. See generally Russel Lawrence Barsh & J. Youngblood Henderson, *Tribal Courts, the Model Code, and the Police Idea in American Indian Policy*, 40 L. & CONTEMP.



them in contemporary law has been the subject of tribal legal scholarship for the past twenty years. For example, Hopi legal scholar Pat Sekaquaptewa has provided some helpful structure to thinking about incorporating custom law in the contemporary context.<sup>173</sup> According to Sekaquaptewa, the adoption of customary, unwritten law should be an open and transparent process. She writes, “[I]t is critical that tribal leaders ensure that they have dedicated the time, attention, and funding to accurately identify and define custom law principles and that the public has notice and a real opportunity to comment upon proposed tribal legislation, including such custom law principles.”<sup>174</sup> Thus, the act of making laws on animals will necessarily result in community-wide conversations, which may ultimately yield creative problem-solving.

The authors of this article believe that the most common foundation for many tribal nations’ contemporary animal laws will be grounded in the concept of “respect” because of its central role in traditional belief systems. Anthropologist Dave Aftandilian explains, “The spiritual power of animals is another reason why people should treat animals with respect. If we do, animals may take pity on us, and share some of their power. If, on the other hand, we do not treat them with respect, they may take revenge against us.”<sup>175</sup> With this as the foundation, the authors posit that tribal animal laws can be crafted in such a way as to far exceed the protections found in American laws today. The entire paradigm shifts. Instead of framing animals as the problem, the authors see humans as the problem. We must all act with reverence for the harm that has been done to animal relatives.

Although there is a plethora of tribal animal issues that may be relevant to this discussion, the remainder of this article focuses on specific, discrete problems that are largely related to dogs. A comprehensive assessment of tribal animal laws would necessarily encompass many more issues, including hunting, farming, and wildlife management. Such an exploration is outside the scope of this article, although some of our analysis and prescriptions may inspire legislating animal laws in other contexts.

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PROBS. 25 (1976).

173. Pat Sekaquaptewa, *Key Concepts in the Finding, Definition and Consideration of Custom Law in Tribal Lawmaking*, 32 AM. INDIAN L. REV. 319 (2008).

174. *Id.*

175. Aftandilian, *supra* note 14.

As part of a comprehensive effort to codify laws, policies, and regulations to address challenges with dogs on tribal lands, the authors advocate that tribal nations reclaim their traditional tenets toward animal welfare by incorporating such principles into contemporary animal laws. Where appropriate, tribal legislatures can codify traditional principles by developing tribal statutes that include clear purpose and findings sections before the substantive provisions. Purpose and findings sections allow a tribal council to articulate the legislative intent behind the statutory scheme. Should an ambiguity in the law ever be identified by a tribal judge who is applying the law, these purpose and findings sections can guide that judge to interpret the law to be consistent with the tribal council's intent. Purposes and findings sections can also invoke the tribe's philosophy on animal law from a place of humility and reverence rather than one of paternalism and control. For example, a purpose section could include language such as the following (using a fictional tribe as an example):

Since time immemorial, the Fall River Tribe has cultivated a special relationship with the animal world. From our creation stories, we know that animals played a central role in establishing our clan system and our tribal worldview. Our clan identities are tied to specific animals, and our traditional hunting and fishing laws have established reciprocity with animals. The Fall River Tribe now seeks to continue our traditions by codifying honor and respect for all animals in our community. This code is intended to ensure that all animals are treated with reverence, given that our very existence depends on the well-being of our relatives in the animal kingdom. All laws in this code should be construed liberally in favor of our animal relatives.

A findings section is also a statement of legislative intent that establishes the myriad reasons that the tribal council is developing an animal protection code. A local survey distributed to tribal citizens may yield some useful information to be placed in this section. Again, presented below is some sample language that can be modified to meet the specific needs of a tribal government. If statistics are available, they can be incorporated into a findings section:

The tribal council finds that the following conditions exist in our community and are inconsistent with our tribal traditional belief systems regarding our animal relatives:

1. Our animal relatives, dogs, are suffering because of overpopulation, lack of veterinary services, and difficult access to spay and neuter programs.
2. Because of overpopulation, the dogs in our community suffer from disease, exposure, and hunger. This is an unacceptable condition for our relatives.
3. Overpopulation has led to roaming dog feral “packs” which are difficult to control and care for as our ancestors would have wanted.
4. Dogs, which have become “feral,” have sometimes become dangerous to our community through maulings and bites, some of which can be fatal. The tribal council finds that these incidents have become too common in our community and reflects a longstanding imbalance in the lives of humans and dogs.
5. Cruelty to animals has become too common in our community. Mistreatment of animals represents the ultimate breakdown in the respect we should have toward our relatives.
6. Some animal owners have neglected their animals by failing to provide food and shelter. This is inconsistent with our traditional principles of treating our animals with respect.
7. Some victims of domestic violence have reported that they fear leaving their abuser because of threats of harm to their companion animals.

1. *Overpopulation*

The most common problem identified in the NAHS survey was overpopulation. Tackling this problem is particularly difficult because a comprehensive solution involves the dedication of resources that are simply unavailable in many tribal communities. Thus, substantive provisions addressing the problem of overpopulation must be customized to each tribal nation’s unique needs and capacity. But solving the problem of overpopulation requires understanding the sources of this dynamic. In general, overpopulation is primarily due to two factors: (1) communities that are allowing or unable to control reproduction among companion animals, and (2) companion animals that are relinquished by their

owners to local shelters.<sup>176</sup> As discussed in the national survey, many tribal communities lack access to spay and neuter services. NAHS and other non-profit organizations dedicate many of their resources towards providing spay and neuter services, and NAHS is unique in that it approaches these services with cultural sensitivity and respect.<sup>177</sup> NAHS approaches each tribe to assess their needs and determines the best solution for the community to address the problem to better serve the community members and the animals.<sup>178</sup> NAHS has teamed up with the American Veterinary Medical Association, the ASPCA, other non-profits, and tribal communities to help provide spay and neuter services through free mobile veterinary clinics.<sup>179</sup>

Tribal leaders should consider reaching out to these non-profit organizations to seek lower-priced, if not free, spay and neuter services. However, some tribes have experienced cultural clashes with some mainstream non-profit organizations that may not respect tribal sovereignty. Some rescue organizations with no prior history of working with tribal communities arrive on the reservation with a paternalist attitude or “savior” mentality, which can disrupt a collaborative effort quickly.<sup>180</sup> Therefore, tribes should consult organizations like NAHS, which are designed to help tribes with such inquiries, in finding the appropriate services.

While spay and neuter services may be able to be identified, it is not clear exactly what type of tribal laws could be drafted to address the problem of overpopulation. In mainstream American communities, local governments penalize pet owners for not spaying or neutering as an effort to control the pet population.<sup>181</sup> It is not clear that such a strategy would make an appreciable difference in a tribal community with higher poverty rates and lower access to veterinary services.<sup>182</sup> Instead, tribal legislatures could also consider

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176. *Animal Population Control*, AM. HUMANE (Aug. 26, 2016), <http://www.americanhumane.org/position-statement/animal-population-control>.

177. See Ohnuma, *supra* note 154; E-mail from Diana Webster, *supra* note 157.

178. Ohnuma, *supra* note 154.

179. *Id.*; *Our Partners*, *supra* note 159.

180. See E-mail from Diana Webster, *supra* note 157; see also Ohnuma, *supra* note 154.

181. This is generally accomplished through lower fees for animals that are sterilized. See *Pet Sterilization in State and Local Law*, ALLIANCE FOR CONTRACEPTION IN CATS & DOGS, [http://www.acc-d.org/docs/default-source/5th-symposium/press\\_handouts.pdf](http://www.acc-d.org/docs/default-source/5th-symposium/press_handouts.pdf) (last visited Aug. 14, 2017).

182. See, e.g., KFBB.com, *Blackfeet Reservation Facing Cultural Dilemma over Animal*

offering incentives to tribal members who have spayed or neutered their companion animal. Such incentives could include bonuses, prizes, raffle drawings for utility coverage for a fixed term, or other creative ideas specific to each community.

As for companion animals that are relinquished, tribal governments should consider allocating more financial resources to their local animal shelter, building or expanding a shelter, or partnering with nearby foster services. These efforts may be implemented without the need for any particular statutes.

## 2. *Feral/Wild Dogs*

Feral/wild dogs are largely attributed to overpopulation.<sup>183</sup> Homeless dogs, running in packs, are far less domesticated and operate more as wild animals because they have not been socialized around humans.<sup>184</sup> There are varying degrees of wildness in feral dogs, dependent upon whether a dog was born wild or discarded or abandoned after a period of human interaction and, if discarded or abandoned, the interaction the dog had with humans before becoming homeless.<sup>185</sup>

There are risks to having feral/wild dogs roam free; maulings and dog attacks are more common in communities with feral packs.<sup>186</sup> There have been several high-profile dog mauling deaths on reservations in recent years.<sup>187</sup> Native children in some regions of the country experience dog bites at rates far exceeding those of the

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*Control*, ALL-CREATURES, <http://www.all-creatures.org/articles/ar-blackfeet.html> (last visited Aug. 14, 2017) (quoting a tribal police officer on the Blackfeet reservation asking, "Would you rather eat or have your dog neutered?").

183. *An Underground Epidemic: America's Wild Street Dogs, Bringing the Feral Dog Epidemic to the Forefront of Animal Welfare*, STRAY RESCUE OF ST. LOUIS, <http://www.lb7.uscourts.gov/documents/09-3010132.pdf> (last visited Aug. 14, 2017).

184. *Id.*

185. *Id.*

186. See Adam Bjork et al., *Dog Bite Injuries Among American Indian and Alaska Native Children*, 162 J. PEDIATRICS 1270, 1274 (2013).

187. See, e.g., *Dog Mauling That Killed 3-Year-Old Boy Angers Navajo Leaders*, ASSOCIATED PRESS (July 22, 2016), <http://krqe.com/2016/07/22/dog-mauling-that-killed-3-year-old-boy-angers-navajo-leaders/>; Jim Stasiowski, *A Year After Jayla's Death, Attacking Dogs Still Roam Pine Ridge Reservation*, RAPID CITY J. (Nov. 22, 2015), [http://rapidcityjournal.com/news/local/a-year-after-jayla-s-death-attacking-dogs-still-roam/article\\_ac6a602f-6d60-5827-a397-7ef88e32528b.html](http://rapidcityjournal.com/news/local/a-year-after-jayla-s-death-attacking-dogs-still-roam/article_ac6a602f-6d60-5827-a397-7ef88e32528b.html).

general population.<sup>188</sup> Thus, preventing dog attacks has become a priority for some tribal nations.<sup>189</sup> The dilemma is what to do with such animals. Many current tribal codes have animal control codes that require feral dogs to be euthanized or shot.<sup>190</sup> However, there are animal activists that argue that feral dogs can be rehabilitated through proper training.<sup>191</sup> More importantly, deliberately killing dogs can be contrary to deeply held spiritual beliefs for some tribal people.

Codes that require animal control to euthanize feral dogs but do not address the underlying root problems of over-population, lack of veterinary services, and lack of animal shelter services will likely not curb the problem of feral dogs. Tribal communities most certainly have an interest in decreasing feral dog pack maulings, but this can only effectively be achieved by preventing widespread dog overpopulation through spay and neuter access and veterinary services.

Tribal leaders should consider contacting NAHS or local veterinary services to coordinate and collaborate on how to address feral/wild dogs in their communities. Each community's needs are distinct from any other's; therefore, efforts to address this epidemic of feral/wild dogs will need to be tailored to each community. Through the resources that NAHS could provide, tribes could also consider creating education programs for their communities to prevent additional feral/wild dogs. Lastly, tribes that want to rehabilitate feral/wild dogs should certainly contact veterinary services and organizations like NAHS in order to be prepared and knowledgeable on what is needed to accomplish this goal.

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188. Bjork et al., *supra* note 186, at 1270–74.

189. See, e.g., *Dog Mauling That Killed 3-Year-Old Boy Angers Navajo Leaders*, *supra* note 187; Stasiowski, *supra* note 187.

190. See, e.g., Dog Registration and Control of Dangerous Dogs Ordinance, LEECH LAKE BAND OF OJIBWE TRIBAL COURT CODE § 12(C) (2013); SWINOMISH INDIAN TRIBAL COMMUNITY CODE tit. 10, ch. 3 (2003).

191. See *An Underground Epidemic: America's Wild Street Dogs, Bringing the Feral Dog Epidemic to the Forefront of Animal Welfare*, *supra* note 183; *Can Street Dogs Become Good Pets?*, COMPANION ANIMAL PSYCHOL. (Mar. 25, 2015), <http://www.companionanimalpsychology.com/2015/03/can-street-dogs-become-good-pets.html>.

### 3. *Abuse and Cruelty*

Many tribal governments already have animal abuse ordinances within their tribal codes.<sup>192</sup> However, many of these codes mirror non-Native animal abuse codes and do not address tribal cultural adherences for the treatment of animals. These copied codes typically do not include penalties that extend beyond citations or low-level misdemeanors.<sup>193</sup> Tribal governments could consider including penalties that address their culture's treatment of animals, extending beyond the western legal context. Statutes, ordinances, and codes only address the act of animal abuse and mistreatment, not the underlying cause or effect. Animal abuse and mistreatment statutes could include penalties that require convicted defendants to attend cultural courses with community leaders, community service, and/or therapy. Tribal legislatures could further require that those convicted of animal abuse or maltreatment be banned from owning or housing any animal within the community, subject to higher penalties if violated. This could require routine home visits from tribal police, animal control, or community advocates. Furthermore, tribal legislatures could require that those convicted of animal abuse or maltreatment pay for the animal victim's veterinary medical costs, kenneling fees, or foster fees.

### 4. *Domestic Violence*

As discussed earlier, researchers have confirmed that companion animals are frequently abused in order to intimidate, control, and threaten human victims.<sup>194</sup> Tribal governments should consider amending, re-writing, or creating domestic violence legislation that explicitly includes companion animals and livestock as protected parties. This would encompass not only criminal statutes within tribal codes but also any civil ordinances enacted by tribes. Courts could include companion animals or livestock in orders of protection, conditions of release, and any other orders or injunctions imposed by the court. Courts could also impose post-conviction requirements that are focused more towards rehabilitation, such as cultural courses or therapy.

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192. See Smith, *supra* note 151, at 109.

193. See *id.* at 118–20 (discussing several tribal codes and their respective penalties for animal abuse).

194. See Clifton P. Flynn, *Women's Best Friend: Pet Abuse and Role of Companion Animals in the Lives of Battered Women*, 6 VIOLENCE AGAINST WOMEN 162, 174 (2000).

Based off of the results of the national survey, there appears to be a lack of both temporary foster programs or animal shelters and animal-friendly domestic violence shelters in tribal communities. Domestic violence shelters are mainly operated by non-profit organizations; these shelters primarily gain financial resources through donations or competitive grants. Many shelters, both in tribal and non-tribal communities, lack sufficient beds for victims seeking refuge, and a large majority of shelters do not take in companion animals with their pet owners.<sup>195</sup> Studies have shown that victims are more likely to delay leaving their abusers for lack of pet friendly-shelters and fear that their pets will be harmed if left with their abusers.<sup>196</sup> Where possible, tribal legislatures should consider allocating more financial resources towards expanding their community's domestic violence shelter space in order to accommodate companion animals. If such resources are not available to fund new development for the shelters, tribal legislatures could also require that those convicted of domestic abuse with allegations of animal abuse be required to pay for any veterinary medical costs, foster fees, or kenneling fees of their victims' companion animals. Tribal legislatures could also provide incentives for community members to become foster homes; such incentives would have to be tailored to each community's needs.

##### 5. *Caution Against Reactionary Laws Such as Breed Bans*

Tribal communities are encouraged to be thoughtful and reflective when crafting solutions to their unique dog problems. Reactionary laws, passed in emergency sessions, are often flawed. As noted earlier, attacks by feral dogs are quite common on some reservations, causing the death of children and elders.<sup>197</sup> Following these attacks, many tribes have created response legislation, codes, and ordinances, and these laws primarily focus on breed-specific bans. Breed-specific bans and legislation primarily target dogs that possess certain physical characteristics resembling those of “pit bulls”; however, these bans also can include Rottweilers, Dobermans,

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195. *See id.* at 164 (discussing a survey of forty-eight shelters of which only thirteen even asked any questions about pets in the intake interview and just six had arrangements with veterinarians or animal shelters to provide animal care).

196. *See id.* at 174.

197. *See, e.g.,* Bjork et al., *supra* note 186; *Dog Mauling That Killed 3-Year-Old Boy Angers Navajo Leaders*, *supra* note 187; Stasiowski, *supra* note 187.



and boxers.<sup>198</sup> Experts believe that breed is only one factor to be considered in determining a dog's bite tendency and aggression.<sup>199</sup> Experts also have not found a decrease in dog bites or attacks since the widespread enactment of breed-specific legislation.<sup>200</sup> Since a large majority of these breed-specific bans require tribal animal control departments to seize and euthanize a banned dog, it is a logical conclusion that owners of affected dogs may not seek veterinary or training services in their tribal communities. Poverty, stigma, fear of seizure and destruction of the dog, fear of arrest or citation, fear of children's services or adult services initiating cases, or other extenuating circumstances all contribute to owners' reluctance to seek help from tribal authorities when it could result in euthanasia of their dogs.

## V. CONCLUSION

By combining a tribal nation's historical and cultural reverence for animals with the need for contemporary regulations and policies, it may be that tribal nations are in the best position to articulate a new socio-legal response to address the abuse and mistreatment of animals, as well as to help victims of domestic violence. Reframing the "dog problem" as a human problem and not an animal problem—a complete paradigm shift—may yield solutions that are more effective than the status quo. By addressing the dynamics that have caused animal mistreatment in tribal communities, we will be able to heal both the animals and Native people suffering from this long-standing crisis. The hope is that the animals *will* take pity on us as we humbly seek to restore fundamental relationships.

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198. *Why Breed-Specific Legislation Is Not the Answer*, AM. VETERINARY MED. ASS'N (Aug. 4, 2016), <https://www.avma.org/public/Pages/Why-Breed-Specific-Legislation-is-not-the-Answer.aspx>.

199. Safia Gray Hussain, *Attacking the Dog Bite Epidemic: Why Breed-Specific Legislation Won't Solve the Dangerous Dog Dilemma*, 74 *FORDHAM L. REV.* 2847, 2869 (2006) (citing Rebecca Simmons, *Pooch Prejudice: Why Breed Bans Aren't the Answer*, HUMANE SOC'Y (June 3, 2005), [http://www.hsus.org/pets/pets\\_related\\_news\\_and\\_events/pooch\\_prejudice.html](http://www.hsus.org/pets/pets_related_news_and_events/pooch_prejudice.html)).

200. *Dog Bite Risk and Prevention: The Role of Breed*, AM. VETERINARY MED. ASS'N (May 15, 2014), <https://www.avma.org/KB/Resources/LiteratureReviews/Pages/The-Role-of-Breed-in-Dog-Bite-Risk-and-Prevention.aspx> (citing B. Klaassen, J.R. Buckley & A. Esmail, *Does the Dangerous Dogs Act Protect Against Animal Attacks: A Prospective Study of Mammalian Bites in the Accident Emergency Department*, 27 *INJ.* 89, 89–91 (1996)).

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