

The Art of
Environmental Law
Governing with Aesthetics

Benjamin J Richardson
Professor of Environmental Law
University of Tasmania

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Vanquished Nature

I. FAKING NATURE

AT AMSTERDAM'S BUSTLING Schiphol airport travellers may find respite in a quiet, eco-themed lounge. In the 'airport park', as it's known, restless jetsetters can put aside their smart phones and laptops to relax on fake tree stumps while listening to the calming chirpings of birds piped through speakers concealed in real or fake greenery, and watching digital images of butterflies fluttering on the walls.¹ This synthetic nature is far more common in our lives than you might realise: hotel lobbies adorned with artificial shrubs and miniature waterfalls; pigeon-detering, imitation raptors perched on buildings; fake lawn turf covering our cities; artificial snow groomed onto ski resorts; and the ubiquitous food colourants and sweeteners. With the prospect of climate geo-engineering, we may one day routinely encounter fake trees designed to sequester carbon dioxide more 'efficiently' than the real ones.

The prospect of this synthetic caricature was discerned in 1974 by legal scholar Lawrence Tribe in his prescient essay 'Ways Not to Think About Plastic Trees'. He saw 'the perpetually green lawn and the plastic tree, far from representing the outcroppings of some inexplicable human perversion' as expressive of 'a view of nature fully consistent with the basic assumptions of present environmental policy'.² Those assumptions include environmental decisions based on 'satisfaction of individual human wants as the only defensible measure of the good',³ whether determinable by 'objective' cost-benefit analyses or pushy property owners and business moguls. The plastic nature we encounter is a creation licensed by the law to meet human needs, be it decoration, shade or ambience, in place of a real nature increasingly removed from our everyday lives.

Our synthetic world not only replaces nature, it degrades it. Plastic debris has within a mere few decades become identified by scientists as an insidious threat, especially to the oceans where fish, sea mammals and birds ingest or become entangled in it. Half of all the plastics in human history were produced

¹D Netburn, 'Amsterdam: Schiphol's New "Airport Park" Alive with Greenery, Chirping Birds' *Los Angeles Times* 12 May 2011.

²LH Tribe, 'Ways Not to Think about Plastic Trees: New Foundations for Environmental Law' (1974) 83(7) *Yale Law Journal* 1315, 1317.

³*Ibid*, 1325.

in just the last 13 years, since 2006.⁴ In 2015, some 322 million tonnes of plastic were manufactured worldwide, of which an estimated 6 to 20 million tonnes entered the oceans.⁵ Experts predict these numbers to get worse, perhaps doubling by 2050.⁶ Without any break-through in clean up technologies, this problem will also endure because petroleum-based plastics degrade very slowly. Synthetic lawns, increasingly used for children's playgrounds, sport fields and suburban gardens, are also made from plastic composites, and they leave a biological desert in their wake that threatens 'butterflies, bees and garden birds as well as creating waste which will never biodegrade'.⁷ Plastics are not the only menace; with the propagation of genetically modified organisms (GMOs), some of it aimed at enhancing aesthetic elements such as colour and aroma that appeal to human enjoyment, we have entered the realm of synthetic biology. It poses risks to the wider web of life if altered species breed with unmodified creatures in their natural environment and thereby alter the balance of nature. Clearly, the synthetic hell that Lawrence Tribe warned of has become diabolical in extent in a mere few decades.

We might view the foregoing as merely an extension of a habit deeply etched in human history to remake nature for our comfort, convenience and aesthetic pleasure. The declaration of the Anthropocene represents the culmination of a long history of anthropogenic environmental change. Not only did the advent of agriculture, and later the urban and industrial revolutions, dramatically reshape the biosphere, even hunter gatherer livelihoods precipitated major ecological changes as mega fauna were killed off.⁸ When Robert Elliot argued in his 1997 book that environmental restoration projects are morally troubling for 'faking nature',⁹ because human ingenuity could not recreate the 'original' state of nature, he was rightly criticised for assuming the existence anywhere of a pristine, unadulterated nature. Yet while we should recognise that that our planet has long been domesticated by *Homo sapiens*, this of course does not morally justify it, nor make further onslaughts acceptable.

We can now look more closely at a variety of realms where aesthetics is implicated in our domination and exploitation of nature. Firstly, this chapter considers the domestication of nature through colonial acclimatisation societies, as well as persecution of aesthetically 'disagreeable' wildlife. Next, we consider the exploitation of natural beauty itself, such as for furs, feathers

⁴ J Buffington, *Peak Plastic: The Rise or Fall of Our Synthetic World* (ABC CLIO, 2019) 43.

⁵ M Landon-Lane, 'Corporate Social Responsibility in Marine Plastic Debris Governance' (2018) 127 *Marine Pollution Bulletin* 310, 310.

⁶ N Simon and ML Schulte, *Stopping Global Plastic Pollution: The Case for an International Convention* (Heinrich-Böll-Stiftung, 2017).

⁷ S Laille, 'Growth in Artificial Lawns Poses Threat to British Wildlife, Conservationists Warn' *The Guardian* 4 July 2016.

⁸ SL Lewis and MA Maslin, *The Human Planet: How We Created the Anthropocene* (Yale University Press, 2018).

⁹ R Elliot, *Faking Nature: The Ethics of Environmental Restoration* (Routledge, 1997).

and gemstones. Thirdly, we turn to the role of natural history museums in institutionalising memories of vanquished nature. The final theme of this chapter is contemporary factory farms and the role of the law in suppressing sensory awareness of their horrors, a case study that illustrates how vanquishment of other species may sometimes necessitate concealing the aesthetic horrors that would repulse many.

II. DOMESTICATING NATURE

A. A Long History

Nature has been heavily customised for human convenience and aesthetic preference – indeed its reconfiguration has a much deeper history than our recent synthetic, ersatz nature. It's this history that occupies this chapter's opening story about how our aesthetic predilections, with the complicity of the law, have shaped the exploitation and domestication of nature. It thus helps illuminate the dyadic character of environmental aesthetics, which contribute to harmful practices with sometimes an intensity equal to their positive benefits.

The looting of nature because of economic greed has dominated accounts of environmental history. In this narrative, environmental damage has ensued because of a desire to transform nature, even its most beautiful places, into practical economic benefits. Consider the following evocative description penned by an intrepid explorer of the island of Tasmania in the 1830s:

The path they now pursued was one of exceeding grandeur – fine open forest-land, studded with lofty trees of stupendous growth. [...] Who can tread the wilds of unfettered nature, and contemplate her in all her desolate grandeur, without feeling impressed how insignificant an atom he is amid her glorious works – and how utterly dependent upon his kind? The floral mead – the pearly stream – the godly grove, however they delight the eye, or ravish the imagination – what are they all? A worthless waste, until the genius and industry of man converts and fits them for the welfare and improvement of his kind.¹⁰

This lyrical account, by settler David Burn from Scotland, illuminates how many of his (and later) generations viewed their new surroundings: despite obviously awed by the landscape's grandeur, he took for granted it was destined for the axe or plough. The same attitude could be found throughout much of Australia, and indeed the domestication of nature was often celebrated with its own aesthetic, as depicted in Figure 4.1 showing a Christmas card rejoicing in the felling of behemoth forests.

¹⁰D Burn, *Pictures of Van Diemen's Land* (Cat and Fiddle Press, 1973) 126–27; original in *The Colonial Magazine*, volume III (Fisher, Son and Co, 1840) 353, 363–64.

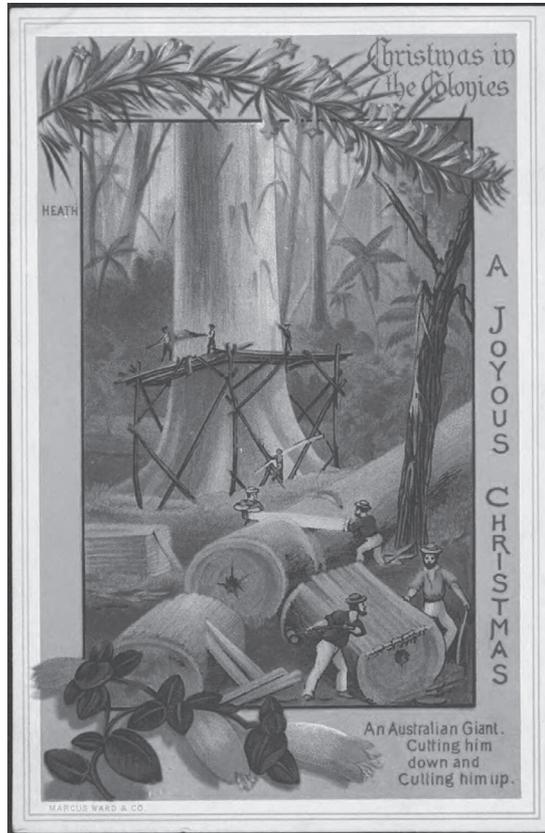


Figure 4.1 *Christmas in the Colonies, an Australian Giant, Cutting Him Down and Cutting Him Up*, 1869; Edward Roper (1832–1909), engraving; National Library of Australia

While economics is crucial to understanding the vanquishment of nature, the role of aesthetics in this story is less well known. Aesthetic factors have incited people to degrade or transform nature, from the extermination of ‘unattractive’ wildlife to the domestication of landscapes through the introduction and breeding of more congenial plants and animals.¹¹ Species have been bred for selective traits that people find more agreeable and attractive; and the fate of some species has hinged on how well they appeal to our aesthetic taste; consider that some 500 million dogs populate the world relative to just 300,000 gray wolves (*Canis lupus*).¹² Nature’s beauty itself has been coveted for exploitation, often with results just as destructive as those wreaked on that designated as more aesthetically disagreeable. Such wantonness has a long, sordid history.

¹¹ S White, ‘British Colonialism, Australian Nationalism and the Law: Hierarchies of Wild Animal Protection’ (2013) 39(2) *Monash University Law Review* 452, 461–62.

¹² RK Wayne and C Vila, ‘Molecular Genetic Studies of Wolves’ in LD Mech and L Boitani (eds), *Wolves: Behaviour, Ecology and Conservation* (University of Chicago Press, 2010) 218, 230.

The Roman emperors enthralled their vulgar subjects with shows in amphitheatres featuring exotic animals slaughtered in fights with one another or human combatants. The menagerie of exotic beasts captured from the vast reaches of the Imperium Romanorum included panthers, lions, bears, crocodiles and even elephants. The scale of the blood sports is shocking: the Emperor Titus inaugurated the Colosseum with a 100-day festival in which about 5,000 beasts were slaughtered. The practice has survived into the present era in the less gruesome form of the Spanish bullfight. Reflecting Romans' aesthetic awe of

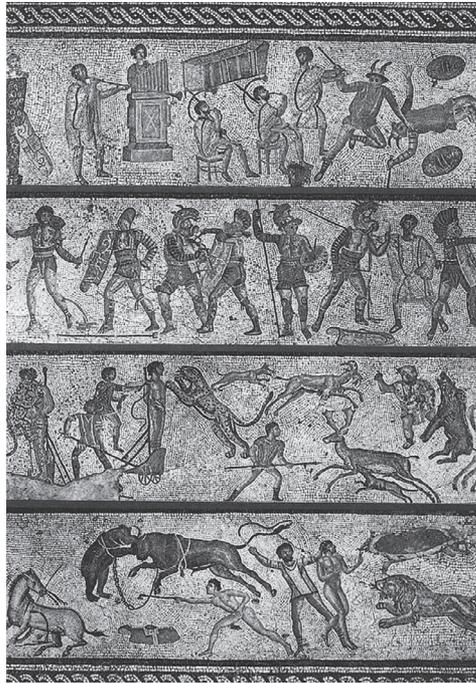


Figure 4.2 Zliten mosaic, Roman Empire (Zliten, Libya), second century CE; Archaeological Museum of Tripoli

butchered fauna, scenes of hunters capturing or killing them in 'heroic' combat were a common motif of Roman mosaics, vases and other art forms. The spectacular second century CE Zliten mosaic, found in the town of Zliten in modern Libya, depicts such blood scenes (see Figure 4.2).

Grisly blood sports have retained a place in our history. In *Macbeth*, William Shakespeare included a scene where the protagonist exclaims that his enemies 'have tied me to a stake; I cannot fly. But, bear-like, I must fight the course'; a line that refers to a popular pastime of this era, where crowds flocked to watch bear-baiting and other deadly jousts involving animals.¹³ The practice

¹³ W Shakespeare, *Macbeth* (c 1606) Act V, scene 7.

in England continued until banned in 1835 by the Cruelty to Animals Act.¹⁴ Bullfighting remains popular entertainment in modern day Spain and Portugal where many consider it an art form. In 2010 the Madrid municipal government declared bullfighting a legally protected piece of its region's cultural patrimony, defying calls by animal welfare campaigners to ban it.¹⁵

Persecution of fauna was also pursued with gusto because the activity of hunting wildlife brought much aesthetic pleasure. In many parts of the world, hunting has long been revered as a noble pleasure of aesthetic elegance, and even prized as a way to be 'closer' to nature despite the paradox of subjugating it.¹⁶ The tradition of organised fox hunting in rural Britain with hounds and horses was defended as a 'central element' of the 'fabric of British life' before the law severely restricted it in 2004.¹⁷ Not surprisingly, hunting has been a staple subject for many artists since time immemorial, such as Paolo Uccello's exquisite painting *The Hunt in the Forest*, 1470.



Figure 4.3 *The Hunt in the Forest*, 1470, Paolo Uccello (1397–1475), oil on canvas; Ashmolean Museum, Oxford

An aesthetic by-product of hunting is the trade in animal fur, feathers and other accoutrements. The North American fur industry, beginning in the sixteenth century and peaking in the nineteenth, was driven by the economic opportunities from the market for warm and attractive animal pelts. Millions of beavers, bears, wildcats and other fur-bearing creatures were slaughtered to meet the aesthetic tastes of consumers. The fur trade was legalised through licences and concessions issued to the trappers and retailers. A few companies operating under royal charter and collaborating with Native Americans who undertook

¹⁴ 5 and 6 Will 4, c 59.

¹⁵ G Tremlett, 'Madrid Protects Bullfighting as an Art Form' *The Guardian* 7 March 2010.

¹⁶ N Wolloch, *Subjugated Animals: Animals and Anthropocentrism in Early Modern European Culture* (Humanity Books, 2006) passim.

¹⁷ S Moss, 'Hunting the Hunters' *The Guardian* 13 June 2000. See further Hunting Act 2004, c 37, which does not ban all forms of fox hunting.

most of the harvesting, dominated the industry. The British chartering of the Hudson's Bay Company in 1670 created, with the imprimatur of the law, one of the most dominant participants in the fur trade for two centuries.¹⁸

The Victorian-era penchant for souveniring eggs and feathers, and creating taxidermy trophies for exhibit in natural history museums, sometimes with the blessing of the law in an era where wildlife conservation law was rudimentary,¹⁹ also levied an onerous burden on the prized species. Some became extinct, such as the great auk, a large flightless bird whose soft down was coveted by textile makers. The taxidermy collections and dioramas of natural history museums today are memorials to a vanquished nature, lost to a perverse aesthetics.²⁰ The exploitation of natural beauty persists today on a large scale, notably the poaching of mega fauna for their prized horns and tusks, but it mostly occurs illegally despite a raft of legal controls such as the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).²¹

B. Acclimatisation Societies

Aesthetics has an unsavoury history implicated in colonisers' efforts to civilise and tame 'alien' landscapes and creatures, particularly to make settlers feel more at home. Such 'ecological imperialism', as Alfred Crosby labels the export of plants and animals to far-flung colonies, has, along with the imposition of foreign environmental husbandry practices, left a terribly legacy. Fugitive exotics are recognised by the IUCN as one of the leading, systemic drivers of biodiversity loss around the world,²² causing the demise of 91 (54 per cent) of 170 extinct birds and mammals.²³ These grim numbers are not generally the result of careless mishaps that allowed rogue species to escape but ensued from orchestrated campaigns to disseminate fauna and flora internationally.

So-called 'acclimatisation societies' were created in a number of countries during the nineteenth century to formally facilitate the introduction of plants and animals for reasons of sport, commerce and aesthetic pleasure. It was a 'conquest by assimilation', as Harriet Ritvo characterised the assault.²⁴ Acclimatisation societies became means for 'civilising' the landscape with

¹⁸RS Mackie, *Trading Beyond the Mountains: the British Fur Trade on the Pacific 1793–1843* (UBC Press, 1997) 31.

¹⁹For a detailed history of these practices in the UK, see R Lovegrove, *Silent Fields: The Long Decline of a Nation's Wildlife* (Oxford University Press, 2008).

²⁰ST Asma, *Stuffed Animals and Pickled Heads: The Culture and Evolution of Natural History Museums* (Oxford University Press, 2003).

²¹TIAS 8249; 993 UNTS 243.

²²IUCN, 'Invasive Species', www.iucn.org/theme/species/our-work/invasive-species.

²³N Sodhi, BW Brook and CJA Bradshaw, 'Causes and Consequences of Species Extinction' in SA Levin et al (eds), *The Princeton Guide to Ecology* (Princeton University Press 2009) 514, 516.

²⁴H Ritvo, *The Animal Estate: The English and Other Creatures in the Victorian Age* (Harvard University Press, 1987) 241.

domestic livestock and plants and ‘securing the land from native incursions of all kinds’,²⁵ while also for sentimental or nostalgic reasons bringing comfort to homesick settlers by importing familiar song birds and ornamental plants.²⁶ Very occasionally, their focus was importing wildlife from the foreign periphery to the imperial metropole. The first acclimatisation society was La Société zoologique d’acclimatation, founded in France in 1854 as an offshoot of Paris’ Muséum national d’histoire naturelle, with the belief that animals could adapt to new habitats.²⁷ Its original goal was to introduce and adapt foreign animals, and later plants, to France, and in 1861 it established the Jardin d’acclimatation in Paris to showcase the exotica to the French public.

More commonly, however, acclimatisation societies served to export European species abroad. While most efforts were intended to be somehow beneficial or economically valuable, such as crops and livestock to support agriculture, some were proposed on aesthetic grounds such as songbirds and flowers to remake nature in the image of the settlers’ ancestral homes. The following observations by natural historian George Thomson, writing in 1922 about the New Zealand experience, capture well this sentiment:

Here in a land of plenty, with few wild animals, few flowers apparently, and no associations with streams almost destitute of fish, with shy songbirds and few game birds ... it seemed to them [early settlers] that it only wanted the best of the plants and animals associated with these earlier memories to make it a terrestrial paradise. So with zeal unfettered by scientific knowledge, they proceeded to endeavor to reproduce – as far as possible – the best-remembered and most cherished features of the country from which they came.²⁸

These acclimatisation associations, though privately initiated and operated, operated within state-backed regulatory regimes. Governments supported acclimatisation programs through a variety of techniques including: official registration of acclimatisation societies; provision of financial benefits such as duty-free imports of animals and plants; allocation of property to manage to facilitate establishment of imported species, such as trout and salmon farms; and legislative protection to the most desirable imports against uncontrolled hunting or other threats. Thereby, acclimatisation groups functioned as important agents of governance in the environmental agendas of the settler states.

The American Acclimatization Society was founded in 1871 for introducing European fauna and flora into North America for economic and cultural reasons.

²⁵ H Rangan, A Wilson and C Kull, ‘Thorny Problems’ in J Frawley and I McCalman (eds), *Rethinking Invasion Ecologies from the Environmental Humanities* (Routledge, 2014) 116, 118.

²⁶ C Lever, *Naturalised Birds of the World* (T and AD Poyser, 2005) 15.

²⁷ M Osborne, ‘The Société Zoologique D’acclimatation and the New French Empire: Science and Political Economy’ in P Petitjean, C Jami and AM Moulin (eds), *Science and Empire* (Springer, 1992) 299.

²⁸ GM Thomson, *The Naturalisation of Animals and Plants in New Zealand* (Cambridge University Press, 1922) 21–22.

Among the introductions it undertook were European songbirds such as blackbirds and skylarks, ‘which were useful to the farmer and contributed to the beauty of the groves and fields’ according to reporting of the time.²⁹ Some of these introductions devastated native flora and fauna across landscapes often far from the originating release sites.³⁰ The European starling is one such culprit, whose release into the United States in the late nineteenth century was allegedly because the then chairman of the American Acclimatization Society believed that ‘any bird worthy of inclusion in Shakespeare’s works deserved a place in North America’.³¹

The acclimatisation agenda was particularly common in the British Empire. The British Acclimatisation Society, founded in 1860, undertook to disseminate the country’s wildlife across the Commonwealth, in partnership with locally established acclimatisation clubs in each colony.³² While the transmission of animals was supposed to be reciprocated, it was largely a one-way process with far fewer animals brought from the colonies, and they ‘were mostly treated as curiosities for exhibit, dead or alive’.³³ Australia, with its own regional acclimatisation societies established between the 1850s and 1890s, received numerous imports. Christopher Lever explains that ‘members of the societies looked on Australia as a country bereft of such attractions as melodious songbird and animals of the chase – omissions which they sought to remedy.’³⁴ The first of such local societies, the NSW Acclimatisation Society, founded in 1852, declared that its objects:

shall be the introduction, acclimatisation, and domestication of all innoxious animals, birds, fishes, insects, and vegetables, whether useful or ornamental; the perfection, propagation and hybridisation of races newly introduced or already domesticated; the spread of indigenous animals from parts of the colonies where they are known to localities where they are not known.³⁵

Fortunately, most such introductions – many of which would have been particularly pernicious to Australia’s native fauna such as monkeys, mongooses and raccoons – never established self-sustaining wild populations.

Of those that did, the red fox (*Vulpes vulpes*) became the most destructive, spreading to occupy about 70 per cent of Australia and devastating its

²⁹ ‘American Acclimatization Society’ *New York Times*, 15 November 1877, 2.

³⁰ AW Crosby, *Ecological Imperialism: The Biological Expansion of Europe, 900–1900* (Cambridge University Press, 1986).

³¹ D Taft, ‘European Starling, the Bard’s Bird’ *New York Times* 8 January 2016.

³² C Lever, *The Naturalised Animals of the British Isles* (Hutchinson, 1977).

³³ G Moore, ‘Beasts, Birds, Fishes, and Reptiles: Anthony Trollope and the Australian Acclimatization Debate’ in LW Mazzeno and RD Morrison (eds), *Animals in Victorian Literature and Culture: Contexts for Criticism* (Palgrave Macmillan 2017) 65, 72.

³⁴ C Lever, *They Dined on Eland: The Story of the Acclimatisation Societies* (Quiller Press, 1992) 100.

³⁵ Quoted in P MacInnis, ‘When Learned Men Schemed to Create a Land of Alien Species – The Acclimatisation Societies of the Late 19th Century’ (1996) 18(3) *Geo: Australasia’s Geographical Magazine* 68, 71.

small marsupials, many becoming extinct.³⁶ The beautifully coloured North American monarch butterfly has also established virulent populations in Australia since the 1870s, and unlike the fox has become widely admired as a ‘romantic addition’ to Australian ecosystems despite its invasive reach.³⁷ Numerous plants came too, often for ornamental reasons, and later spreading as noxious weeds: plants introduced to decorate Australian gardens now account for 72 per cent of its environmental weeds and 69 per cent of its agricultural weeds.³⁸ One of the most noxious is *Lantana camera*, introduced to decorate gardens with its vivid red-orange flowers, and now occupying about 4 million hectares of the continent. Another menace is bridal creeper (*Asparagus asparagoides*), a South African species introduced in the nineteenth century as a garden plant for use in wedding bouquets, but since spreading to become one of southern Australia’s most virulent of invaders. The Jacaranda (*Jacaranda mimosifolia*), admired for its violet-blue flowers, was imported from Brazil in large numbers. The gardening correspondent for the *Sydney Morning Herald* in 1868 explained: ‘[t]he most beautiful flowering tree is a native of Brazil, and no garden of any pretensions can be said to be complete without a plant of it. [...] Its beautiful rich lavender blossoms, and in light feathery foliage, render it the gem of the season’.³⁹ Some Australian authorities now regard the Jacaranda as a weed.

In the United States, the terrible beauty of invasive plants has also stirred public controversy. Take purple loosestrife (*Lythrum salicaria*), a lovely but aggressive invader, introduced by settlers in the early 1800s. It poses a particular threat to wetlands, choking off native plants where fish and wildlife would feed and spawn. Although its environmental impact is now well publicised, some local communities still resist eradication efforts because they associate the beautiful flower with a positive presence in nature.⁴⁰ The same dilemma arises with deer, which although native to the United States, have increased in plague proportions owing to the removal of their predators such as wolves, coupled with a public that attaches far greater aesthetic pleasure from deer owing to the influence of popular culture, such as the Disney 1942 animated film *Bambi*, a touching tale of a fawn’s life in the forest.⁴¹ Amusingly, perhaps, in 2018 a Missouri court that

³⁶ On the fox and other exotic pests brought to Australia, see EC Rolls, *They All Ran Wild: The Story of Pests on the Land in Australia* (Angus and Robertson, 1969).

³⁷ A Jones, ‘The Bitter Taste of the Monarch Butterfly’ *ABC (Off Track)*, 27 October 2018, www.abc.net.au/radionational/programs/offtrack/the-bitter-taste-of-the-monarch-butterfly/10391428.

³⁸ J Virtue, S Bennett and RP Randall, ‘Plant Introductions in Australia: How Can We Resolve “Weedy” Conflicts of Interest?’ in BM Sindel and SB Johnson (eds), *Weed Management: Balancing People, Planet, Profit: 14th Australian Weeds Conference, Papers and Proceedings* (Weed Society of New South Wales, 2004) 42.

³⁹ *Sydney Morning Herald* 3 December 1868, quoted in G Greer, *White Beach: The Rainforest Years* (Bloomsbury, 2013) 84.

⁴⁰ Y Saito, *Aesthetics of the Familiar: Everyday Life and World-Making* (Oxford University Press, 2017) 142.

⁴¹ MM Eaton, *Merit, Aesthetic and Ethical* (Oxford University Press, 2001) 182.

sentenced a deer poacher to one-year's imprisonment added the stipulation that the offender must watch *Bambi* every month.⁴²

Deer are also a prevalent exotic in New Zealand, now overrun with invasive species that have devastated the country's endemic avifauna, and making a mockery of the country's tourist slogan of '100 per cent pure'.⁴³ The acclimatisation process became institutionalised there in the 1860s, with the tone set by one tabloid article in 1861 that complained 'there is perhaps no country in the world the natural zoology of which supplies so little to the subsistence or enjoyment of its inhabitants, as New Zealand'.⁴⁴ What followed has left a terrible legacy. Mustelids imported to control rabbits – another ill-considered import, later declared as 'vermin' – soon turned on New Zealand's native birds, rendering many extinct. Also, Australian brush-tailed possums introduced in 1837 to start a fur industry – another aesthetic-driven folly – decimated the native vegetation that birds feed on. Of the approximately 130 birds brought to New Zealand, 39 species established themselves including the melodious blackbird.

The first introductions into New Zealand, in the 1840s, were privately sponsored without legislative controls, although Governor George Grey himself set an example by importing zebras and monkeys. Regulations enacted in 1846 incentivised such activities by giving duty-free status to all live animal and plant imports.⁴⁵ Acclimatisation societies established in the 1860s engendered a more orderly process with official blessing, and legislation passed in 1867 with the purpose of 'encouragement of acclimatisation societies in New Zealand' helped leverage substantial public money to spur the imports.⁴⁶ While it had previously been tacitly lawful for anyone to introduce any species, the 1867 legislation tightened controls and barred introduction of 'any fox, venomous reptile, hawk, vulture or other bird of prey'.⁴⁷ By 1894 the local press were voicing the need for greater governmental oversight to prevent importation of 'animals or birds that might become nuisances to the community'.⁴⁸ It was not until the early twentieth century, with the Animals Protection Act of 1907,⁴⁹ that a comprehensive ban on the introduction of any animal without a permit was introduced with the belated aim to safeguard the rapidly dwindling native biodiversity. In sum, the work of acclimatisation societies in New Zealand, more than any other factor, has been responsible for the country's recent ecological upheavals and biological losses.⁵⁰

⁴² CR Wootson Jr, 'A Poacher Who Killed Hundreds of Deer was Sentenced to Repeatedly Watch "Bambi"', *Washington Post* 17 December 2018.

⁴³ RB Allen and WG Lee (eds), *Biological Invasions in New Zealand* (Springer-Verlag, 2006).

⁴⁴ Quoted in 'Acclimatisation' *The Press* 17 August 1861, 1.

⁴⁵ An Ordinance to Alter Certain Duties of Customs, No XIV 1846, table of duties of customs.

⁴⁶ Protection of Animals Act 1867, 31 Victoria 1867, No 35, long title.

⁴⁷ *Ibid*, s 28.

⁴⁸ 'The Wood Pigeon Question' *The Press* 23 May 1894, 5.

⁴⁹ 7 EDW VII 1907, No. 66.

⁵⁰ N Pears, 'Familiar Aliens: The Acclimatisation Societies' Role in New Zealand's Biogeography' (1982) 98(1) *Scottish Geographical Magazine* 23.

Not all settlers shared the aesthetic criteria of the acclimatisation societies. James Cook who ‘discovered’ Australia for Great Britain, named Botany Bay, near where the colony began, after the large variety of plants collected there by his companion Joseph Banks. In the ensuing years numerous acknowledgements to Australia’s native biodiversity and topography were memorialised as toponyms on maps, such as ‘kangaroo point’, ‘emu plains’ or ‘cockatoo island’, although frequently the Aboriginal place names were erased in the effort to build the new national identity.⁵¹ In *The Colonial Earth*, Tim Bonyhady traces a more environmentally sensitive aesthetic taste in some of the early settlers to Australia who came to admire, not destroy, the sights and sounds of their new environs.⁵² One example is Eugene von Guérard, who was painting Australian landscapes in the 1850s and 1860s. In seeking to transcend the aesthetic landscape tropes of European art, von Guérard tried to evoke the grandeur of his new surroundings untainted by human interference. His iconic painting *Ferntree Gully in the Dandenong Ranges* (1857) was so masterful in evoking the beauty of the place that the national publicity caught the attention of timber-cutters and fern-collectors who invaded to plunder its riches.⁵³

Despite the twentieth-century shift in sentiment to safeguard native biodiversity, plus the advent of extensive biosecurity laws in recent decades to exclude potential pests, many exotics persist with official tolerance. In Australia, known environmental weeds are commonly available in nurseries,⁵⁴ and about 10 million ornamental, aquarium fish are imported annually with risk of carrying pathogens and parasites that could devastate local aquatic life.⁵⁵ In the United States, hundreds of known weeds have yet to be listed and banned by authorities under the Noxious Weeds Act 1975.⁵⁶ Even the UK, historically an exporter of destructive plants and animals, is itself now under siege as global trade brings pests to its own shores.⁵⁷ Gray squirrels (*Sciurus carolinensis*), native to North America, were introduced to Britain in the 1870s as fashionable additions to the landed estates, but now threaten the smaller red squirrels (*Sciurus vulgaris*).

Established exotic species may also be pardoned because of their aesthetic values or cultural significance. In Canberra, Australia’s capital city, authorities had to abandon a plan to cull a feral population of peafowls (*Pavo cristatus*) after local residents clamoured for the colourful birds originating from India

⁵¹ See H Koch and L Hercus (eds), *Aboriginal Placenames: Naming and Re-naming the Australian Landscape* (ANU E-Press, 2009).

⁵² T Bonyhady, *The Colonial Earth* (Melbourne University Publishing, 1998).

⁵³ *Ibid.*, 106.

⁵⁴ R Groves, R Boden and M Lonsdale, *Jumping the Garden Fence: Invasive Garden Plants in Australia and their Environmental and Agricultural Impacts* (WWF-Australia, 2005).

⁵⁵ A Sallem, ‘Aquarium. Fish “Threaten Biodiversity”’ *ABC Science* 18 May 2007, www.abc.net.au/science/news/stories/2007/1925566.htm.

⁵⁶ Public Law 93–629, 88 Stat 2148, 1975; see US Congress, Office of Technology Assessment, *Harmful Non-Indigenous Species in the United States* (US Government Printing Office, 1993) 26–27.

⁵⁷ CM Braiser, ‘The Biosecurity Threat to the UK and Global Environment from International Trade in Plants’ (2008) 57(5) *Plant Pathology* 792.

to be spared.⁵⁸ In New Zealand, conservation authorities' efforts to eradicate the egg-eating kiore rat (*Rattus exulans*) from areas set aside for the recovery of endangered birds have clashed with the desires of some Māori people to protect the cultural icon, which arrived in New Zealand with their Polynesian ancestors.⁵⁹

C. An Ugly Truth: Persecuting the Unsightly

The influx of exotica is only part of the story of the domestication of nature; the other is the persecution of native wildlife. The war waged against creatures branded as vermin, varmint, pest or similar epithet is bound up in a mix of scientific, economic and aesthetic factors. Evolutionary psychologists suggest human beings retain a deep-seated loathing of certain hostile species once frequently encountered in our ancestral environments, such as spiders and snakes.⁶⁰ Some of these fears have been stoked by religious dogma; the Christian New Testament in the *Book of Revelation* associates the serpent with Satan, while the Jewish *Book of Genesis* depicts a serpent as a trickster who seduces Eve into eating the forbidden fruit in the Garden of Eden.

Ostensibly, the law delineates the status of wildlife on more rational or objective grounds, such as rarity or ecological significance. Abundant species might exist without legal protection, and thus be open to exploitation, while those considered threatened or endangered will usually be prioritised for conservation. Some societies also use the law to encourage extermination of unwanted species, through legal duties on landowners to remove designated vermin or offering bounties that give a financial incentive for so doing. Classification of vermin may reflect scientific advice about species' threat to other wildlife, or economic considerations such as the impact of pest insects and rodents on agricultural production. Species offering lucrative returns as food, clothing or other benefits will rarely be spared from exploitation, but licensing schemes control harvesting at 'sustainable' levels.

Importantly too, the foregoing decisions can reflect aesthetic preferences. Just as charismatic animals tend to receive additional legal protection, the reviled are readily marked out for persecution, especially where they conjure up negative emotions associated with pestiferous or fearsome traits. Campaigns to exterminate vermin or predators may be embellished by depicting the targeted species as having undesirable aesthetic qualities or effects. The same tactic can validate destruction of vegetation or entire ecosystems.

⁵⁸S Groch, 'Proposed Peacock Cull Cancelled After "Overwhelming" Community Outcry' *Canberra Times* 20 June 2018.

⁵⁹K Chanwai and BJ Richardson, 'Re-working Indigenous Customary Rights? The Case of Introduced Species' (1998) 2 *New Zealand Journal of Environmental Law* 157.

⁶⁰On this deep-rooted fear, see D Quammen, *Monster of God: The Man-Eating Predator in the Jungles of History and the Mind* (WW Norton, 2004).

Swamps have a particularly poor image, with many destroyed in the name of economic progress. When Donald Trump was bidding for the US presidency, he promised to ‘drain the swamp’ in Washington DC to rid it of corruption and cronyism. He could assume that voters understood the slogan without explanation, as a swamp, in the English language at any rate, represents a dark, dirty and dismal place. In Western folklore, swamps have been a caricature for the obstacle to the domestication of nature, an unruly and even haunted place that needs subduing.⁶¹ Much ‘progress’ has been made in clearing swamps and other types of wetlands, with scientists estimating that one-third of the planet’s wetlands have been lost.⁶² Despite an international treaty in place since 1971 to protect wetlands,⁶³ in recognition of their significant value for providing wildlife habitat and services like water purification and protection from coastal flooding, swamps continue to suffer pollution or drainage for economic development.⁶⁴ So long as swamp loathing remains a cultural pastime, nourished by films and novels about swamp monsters and bog beasts, the draining and filling of wetlands will probably persist.

Unappealing wildlife have also suffered. Australia has a sordid history of exterminating wildlife. In the nineteenth century so-called ‘Marsupial Destruction Acts’ were enacted to facilitate removal of wildlife for economic and aesthetic reasons. Queensland’s efforts, beginning with the 1877 Act to Facilitate and Encourage the Destruction of Marsupial Animals, paid professional ‘scalpers’ who helped with the ensuing destruction of at least 27 million animals such as kangaroos and wallabies, and non-marsupial dingoes and foxes, over 54 years.⁶⁵ The parliamentary debates reveal the passion of the law’s sponsors, and their vivid language, with the grass-devouring marsupials excoriated as ‘pests’ or ‘vermin’, swarming in ‘plague’ proportions, and causing great ‘evil’, ‘ruin’ and ‘waste’ to the detriment of farmers.⁶⁶ Though the animals’ appearance themselves could not easily be characterised as unattractive, their environmental and economic effects certainly were in the eyes of many landholders.

Tasmania also used bounties to persecute native fauna threats, focusing on its unique marsupial carnivores. The thylacine (*Thylacinus cynocephalus*) was the most despised. In 1805, two years after the Van Diemen’s Land colony was founded (as Tasmania was then known), Governor William Paterson set the

⁶¹ A Wilson, *Swamp: Nature and Culture* (University of Chicago Press, 2018).

⁶² S Hu et al, ‘Global Wetlands: Potential Distribution, Wetland Loss, and Status’ (2017) 586 *Science of the Total Environment* 319.

⁶³ Convention on Wetlands of International Importance especially as Waterfowl Habitat, (1972) 31 *ILM* 963.

⁶⁴ See eg M Hettiarachchi, TH Morrison and C McAlpine, ‘Forty-three Years of Ramsar and Urban Wetlands’ (2015) 32 *Global Environmental Change* 57.

⁶⁵ FC Hrdina, ‘Marsupial Destruction in Queensland 1877–1930’ (1997) 30(3) *Australian Zoologist* 272.

⁶⁶ Queensland Parliamentary Debates [Hansard], ‘Devastation by Marsupials’, Legislative Assembly, 16 November 1876, 953–54; ‘The Marsupial Pest’, Legislative Assembly, 23 November 1876, 1374–75.

tone when he penned the first account of ‘an animal of a truly singular and nouvel description’ and ‘destructive [...] in the form of a hyaena’.⁶⁷ Over the next century, salacious press and mythologising demonised the creature colloquially known as the ‘tiger’: it was branded a ‘mischievous and rapacious carnivorous brute’,⁶⁸ ‘vermin’⁶⁹ and ‘cowardly in proportion to its size’.⁷⁰ After sheep farming came to the island in the 1820s, the thylacine was scapegoated as a bloodthirsty sheep killer, and mercilessly persecuted through various government and private bounty schemes until the early 1900s.⁷¹ On 10 July 1936, shortly before the last known specimen died in a Hobart zoo, the thylacine received complete legal protection under the Animals and Birds Protection Act because of its value to science.⁷²

Scientific rarity, it would seem, can shift aesthetic appreciation. Fascination with the thylacine has grown with alleged sightings,⁷³ and the public has come to appreciate the animal as ‘majestic’⁷⁴ and a ‘rare beauty’.⁷⁵ It has now become a ‘potent cultural icon’ for Tasmania with increasing nostalgic representations in its tourism and travel literature.⁷⁶ The thylacine room at the Tasmanian Museum and Art Gallery is its most popular attraction, displaying a taxidermy specimen, film clips and other memorabilia that evoke the aesthetics of an animal now admired for its uniqueness.

Owls are another interesting example of ambivalent aesthetics and variable legal status. In many cultures owls foment superstitious beliefs of death and bad omens, perhaps because the creature is mostly a bird of the night, when such fears are heightened. John Lewis-Stempel describes some of these beliefs in his exploration of *The Secret Life of the Owl*: ‘a Suffolk superstition which lingered into the Victorian era held that an owl flying past the window of a room in which a sick person lay meant that death was near’.⁷⁷ He also cites how ‘Chinese children born on the day of the owl, the summer solstice, were considered to have a matricidal personality (... from the Taoist belief that young owls would

⁶⁷ Papers of Sir J Banks, ‘Description of a Tasmanian Tiger Received by Banks from William Paterson, 20 March 1805’, quoted in P Olsen, *Upside Down World: European Impressions of Australia’s Curious Animals* (National Library of Australia, 2010) 30.

⁶⁸ ‘The Kangaroo Bill (to the editor) *Mercury* 21 October 1873, 2.

⁶⁹ ‘Tiger’ (to the editor) *Tasmanian News* 6 September 1887, 4.

⁷⁰ ‘The Royal Society of Tasmania’ *The Courier* 16 June 1858, 2.

⁷¹ R Paddle, *The Last Tasmanian Tiger; The History and Extinction of the Thylacine* (Cambridge University Press, 2000).

⁷² 1928, 19 Geo V, No 51.

⁷³ Eg A Park and R Scott, ‘Tasmanian Tiger. Extinct or Merely Elusive’ (1986) 1(3) *Australian Geographic* 67; ‘Thylacine Tracks Found, Cast’ *Mercury* 12 January 1953, 6; ‘“Phantom” Animal May be Tasmanian Tiger’ *Mercury* 1 June 1949, 5.

⁷⁴ ‘Scientists Search for Extinct Tasmanian Tiger After Sightings in Australia’, *Inquirer* 27 March 2017, <http://technology.inquirer.net>.

⁷⁵ S McGrath and A Darlison, *Stripes of the Forest: Story of the Last Wild Thylacine* (Big Sky Publishing, 2016).

⁷⁶ SS Turner, ‘Negotiating Nostalgia: The Rhetoricity of Thylacine Representation in Tasmanian Tourism’ (2009) 17 *Society and Animals* 97.

⁷⁷ J Lewis-Stempel, *The Secret Life of the Owl* (Transworld Publishers, 2018) 64.



Figure 4.4 Thylacine gallery; collection of Tasmanian Museum and Art Gallery

pluck out their mother's eyes or even devour her)'.⁷⁸ Yet, with their human-like face, large eyes and solitary existence, owls are sometimes also equated with wisdom. In many cultures, such as Native American tribes, owls invoke beauty and spiritual power.⁷⁹

Snakes and spiders are among the most despised creatures of all. The antipathy stirs from an early age. A British study in the 1960s found that 27 per cent of the children surveyed identified snakes as their least liked animal.⁸⁰ Andrew Knight tested undergraduate students whether species such as snakes and spiders are perceived differently based on aesthetic preferences and other attitudes, and how this correlated with their legal status, finding that aesthetics is an important variable.⁸¹ Periodic community-run, rattlesnake roundups in the

⁷⁸ *Ibid.*, 65.

⁷⁹ L Calvez, *The Hidden Lives of Owls* (Sasquatch Books, 2016) xii.

⁸⁰ R Morris and D Morris, *Men and Snakes* (Hutchison, 1965).

⁸¹ AJ Knight, "Bats, Snakes and Spiders, Oh My!" How Aesthetic and Negativistic Attitudes, and Other Concepts Predict Support for Species Protection' (2008) 28(1) *Journal of Environmental Psychology* 94.

southern United States result in tens of thousands of snakes being displayed and then slaughtered for public entertainment. Although snakes themselves conjure negative aesthetics, their skins are prized for their beauty and many are killed in countries such as Indonesia to make designer handbags, belts and shoes.⁸² Official legal protection given to snakes in many jurisdictions is poorly enforced because of the exemption for killing a snake in self-defence.

Even environmental organisations supposedly more attuned to appreciating wildlife on scientific grounds rather than folklore or aesthetic appeal, show a bias against the unattractive. Charismatic, ‘flagship’ species such as the panda bear, gorilla, dolphin and elephant appear often in the logos and marketing for environmental NGOs, and government agencies too, while amphibians, reptiles or spiders are not.⁸³ The WWF symbol displays the panda bear, while the Kenyan Wildlife Service has the elephant. But a few exceptions break this pattern: the Rainforest Alliance logo features a frog. Curiously, in 2012 the Ugly Animal Preservation Society was established, using comedy and theatre ‘to raise the profile of some of nature’s more aesthetically challenged creatures’.⁸⁴

The aesthetic disparagement of animals can also aid environmental policy when applied to invasive species that are truly destructive to biodiversity. Consider the cane toad (*Rhinella marina*), a native of South America, disseminated during the past century to various Pacific islands and Australia to control pest insects but becoming pests themselves. The media has thrown much vitriol against the toads, and militaristic jargon such as ‘frontline’ and ‘invasion’ to stoke anxiety about their ‘march’ across Australia. Many ‘toad busting’ community groups wage ‘war’ against the ‘ugly beasts’.⁸⁵ The cane toad is a declared pest under legislation such as Western Australia’s Biosecurity and Agriculture Management Act 2007 and New South Wales’ (NSW) Biosecurity Act 2015.

In sum, adverse environmental aesthetics are complicit in a variety of environmental practices and regulations that aim to domesticate wildlife or biomes. The unappealing imagery of some species that pose genuine environmental threats can assist with governance actions, but more commonly these culturally constructed aesthetics can be counter-productive. Folklore has sometimes not kept pace with the development of environmental laws to protect swamps or owls, creating an impediment to their implementation.

III. LOOKS THAT KILL: PERSECUTING THE BEAUTIFUL

Beauty affords no assurance for nature’s legal protection either. Indeed, its most beautiful features have sometimes suffered more than its ugly ones.

⁸²T Thornhill, ‘Inside the Indonesian Slaughter House Where Snakes are Killed and Skinned to Make Designer Handbags, Jackets and Shoes’ *Daily Mail* (UK) 4 March 2014.

⁸³R Home et al, ‘Selection Criteria for Flagship Species by Conservation Organizations’ (2009) 36(2) *Environmental Conservation* 139.

⁸⁴See <https://uglyanimalsoc.com>.

⁸⁵See eg Kimberley Toad Busters, www.canetoads.com.au/hewslet21.htm.

Animals coveted for their attractive feathers, furs, skins, horns and tusks have been slaughtered on industrial scales to satisfy the aesthetic tastes of men and women, with the horrors peaking in the late nineteenth and early twentieth centuries before the advent of environmental law controls. Plants too, such as precious orchids and other ornamentals prized for their fragrance or colour, have also been plundered through both legal and illegal trade.

Of numerous examples, birds offer a particularly telling story. The brutal millinery industry from the nineteenth century intensified as global trade in the imperialist economies expanded access to sources of exotic feathers. Much of the horror was documented in William Hornaday's *Our Vanishing Wildlife: Its Extermination and Preservation*, published in 1913 at the height of the slaughter.⁸⁶ Hornaday was an American taxidermist, zoologist and prescient conservationist who sought to raise awareness of endangered wildlife. The plumage trade continues to haunt us, with contemporary writers and artists seeking to maintain a vigil about the atrocities, as for instance documented in the 2011 exhibition *Fashioning Feathers: Dead Birds, Millinery Crafts and the Plumage Trade*, curated with the Material Culture Institute of the University of Alberta.⁸⁷

The imperial trade centered on London, while its manufacturing hubs were in Paris and New York. The trade catalogues document the extent of the sordid business: one covering December 1864 to April 1885 recorded '404,464 West Indian and Brazilian birds of various descriptions, 356,389 East Indian birds, 6,828 Birds of Paradise, 4,974 Impeyan pheasants and 770 Argus pheasants'.⁸⁸ Fashionable woman would wear hats adorned with not merely feathers but wings and even entire taxidermied specimens. Many live specimens were also poached from the wild to supply the growing demand for pet birds; one consignment that left Australia for London in the 1860s carried 5,000 pairs of cockatoos, according to Jon Simon's account of the then fauna trade.⁸⁹

The feather fashions drove the extinction of several species: the coveted New Zealand huia (*Heteralocha acutirostris*) and the US Carolina parakeet (*Conuropsis carolinensis*) disappeared in the early twentieth century. Many others such as the snowy egret (*Egretta thula*) and the great egret (*Ardea alba*) veered close to decimation: Hornaday, calculated that over one nine-month period the London market had traded feathers from nearly 130,000 egrets.⁹⁰

Agitation about the carnage and cruelties of the millinery trade contributed to the creation in Europe and North America of conservation societies such as

⁸⁶ WT Hornaday, *Our Vanishing Wildlife: Its Extermination and Preservation* (Charles Scribner's Sons, 1913).

⁸⁷ See <https://fashioningfeathers.info>.

⁸⁸ M Patchett, 'Murderous Millinery', <https://fashioningfeathers.info/murderous-millinery>.

⁸⁹ J Simons, 'The Scramble for Elephants: Exotic Animals and the Imperial Trade' in M Boyde (ed), *Captured: The Animal within Culture* (Palgrave Macmillan, 2014) 26, 34.

⁹⁰ W Souder, 'How Two Women Ended the Deadly Feather Trade' *Smithsonian* March 2013, www.smithsonianmag.com.



Figure 4.5 Head and shoulders of model wearing ‘Chanticleer’ hat of bird feathers, 1912; US Library of Congress

the Audubon, who sought to ban the plumage trade and change ladies’ fashion. Although women were the wearers of bird millinery, some were also the leading protesters against it. On 22 May 1875 *Harper’s Bazaar* (a popular fashion magazine for well-to-do women) published an article by Mary Thatcher (later Higginson) entitled ‘The Slaughter of the Innocents’, which fuelled increasing public debate about the ethics of the plume trade and contributed to its eventual demise with shifts in ladies’ fashion and law reform. The Audubon Society, established in 1905, had its roots in the Massachusetts Audubon Society founded in 1896 by Harriet Hemenway and Minna B Hall. Audubon supporters helped secure a variety of government-backed conservation measures, including the first National Wildlife Refuge, at Pelican Island in Florida, in 1903, the Lacey Act 1900⁹¹ that prohibited interstate commerce in birds taken in violation of state laws, and of the Migratory Bird Treaty Act 1918.⁹² In the UK, similar legislative protections to curb the worst excesses were enacted, such as the Sea Birds Preservation Act 1869 and the Wild Birds Protection Act 1872, and even more importantly the foundation of the Royal Society for the Protection of Birds in 1889 (incorporated by royal charter in 1904). The latter body was founded through the efforts of Emily Williamson, who was concerned about plummeting British bird populations and the cruelty of their hunting. Yet, a succession of

⁹¹ Ch 553 s 1, 31 Stat 187 (1900).

⁹² Ch 128, 40 Stat 703 (1919); see further RW Doughty, *Feather Fashions and Bird Preservation: A Study in Nature Protection* (University of California Press, 1975) 103–15.

‘plumage’ bills designed to restrict the international trade stalled in the House of Commons until the early 1920s.⁹³

The fur industry, still with us although of diminished stature, offers a tale equally barbaric. Wearing of animal furs is probably as old as *Homo sapiens*’ evolutionary history, but the modern fur industry took off under the auspices of the imperial trading business, the Hudson’s Bay Company, founded in 1670. It established a network of trappers, traders and manufacturers across North America and the UK for some two centuries, catering to the epicurean taste for fur coats and hats fashioned principally from otter or beaver pelts.⁹⁴ Established by royal charter, the Hudson’s Bay Company enjoyed a privileged legal position to exploit natural resources, with the explicit mandate of ‘finding some trade for furs, mineral and other considerable commodities’.⁹⁵

Other corners of the world also got into the business. During the nineteenth and twentieth centuries Australia slaughtered millions of possums, koalas, kangaroos and other fur-bearing marsupials for the global fur trade, and even shipped possums to New Zealand so that it could develop its own fur industry (the imported creatures have now become one of New Zealand’s worst pests). To indicate the scale, in Queensland during the first three decades of the twentieth century, between 400,000 to three million possums and between 450,000 to one million koalas were taken annually.⁹⁶ While this fur industry declined substantially from the 1930s, it persisted in Tasmania where possum pelts were still harvested for several decades.⁹⁷ From around 1920 public opinion began to shift, as evident by letters to newspapers from school children, scientific groups, prominent community members and some farmer groups agitating over fauna population declines and cruel harvesting methods.⁹⁸ A newspaper story in 1929 entitled ‘The Slaughter of the Innocents’ described public opposition to the Queensland government’s then recent declaration of an open season against koala, which one group praised as ‘one of the most lovable and harmless little animals in the world’.⁹⁹

The rarity or prevalence of a species has had a bearing on the public’s valuation of its aesthetic properties. Take the cockatoo, a parrot family comprising 21 species found especially in Australia. During the late nineteenth century, the common sulphur-crested cockatoo (*Cacatua galerita*) was increasingly persecuted as a ‘pest’ because of its apparently large populations and tendency to

⁹³ Ibid, 117–23.

⁹⁴ EJ Dolin, *Fur, Fortune and Empire* (WW Norton, 2010).

⁹⁵ The Royal Charter for Incorporating the Hudson’s Bay Company, 1670, preamble, <http://caid.ca/HubBatCha1670.pdf>.

⁹⁶ F Hrdina and G Gordon, ‘The Koala and Possum Trade in Queensland, 1906–1936’ (2004) 32(4) *Australian Zoologist* 543, 571–72.

⁹⁷ Department of Primary Industries, Parks, Water and Environment (DPIPWE), *Management Plan for the Commercial Harvest and Export of Brushtail Possums in Tasmania 2010–2015* (DPIPWE, 2010) 7–8.

⁹⁸ Hrdina and Gordon, ‘The Koala and Possum Trade’ (above n 96) 546.

⁹⁹ ‘The Slaughter of the Innocents’ *Telegraph* (Brisbane) 2 May 1929, 8.



Figure 4.6 Truck load of koala skins in the Clermont area, Queensland, 1927; G Pullar; John Oxley Library, State Library of Queensland

browse on farmers' crops; yet, the 'extremely rare' black cockatoo were 'prized as novelties' and sought out for the international pet trade.¹⁰⁰ The New Zealand huia (*Heteralocha acutirostris*), now extinct, was treasured for its feathers and skins, and its growing rarity simply made the species even more coveted. While the bird had legal protection from 1892 under the Wild Birds Protection Act, its feathers could still be traded, thus condoning the illegal hunting.¹⁰¹ The last huia was seen in 1907.

Natural beauty below the ground is also coveted. Mining of precious metals, such as gold, and gemstones like diamonds and opals, owes to the desire to design jewellery and other works of art, as well to create tangible stores of wealth. Mining has a deep history, with the earliest example in the archaeological records being the 42,000-year-old Ngwenya mine in Swaziland, where red ochre was extracted for use in rock paintings and other purposes.¹⁰² Gold mining is nearly 7,000 years old, as gold artefacts have been found in graves at the 4,600 BCE Varna Necropolis in Bulgaria. Diamonds were perhaps first collected in India about 400 BCE.

Extracting nature's subterranean beauty has wreaked a heavy environmental burden. A miner's description of the onslaught of the Australian gold mining

¹⁰⁰ Greer, *White Beach* (above n 39) 308.

¹⁰¹ M Szabo, 'Huia, the Sacred Bird' *New Zealand Geographic*, October–December 1993, www.nzgeo.com/stories/huia-the-sacred-bird.

¹⁰² The site is now listed under the World Heritage Convention: <http://whc.unesco.org/en/tentativelists/5421>.

rush in the 1850s confesses: ‘we are horribly destructive of the picturesque [...] The trees are felled by thousands; the creeks are laid open in long stretches to the day, by the tea-trees and scrub being cut down’.¹⁰³ Twentieth-century industrial technologies enabled even greater devastation. American writer Wendell Barry in 1972 described the ruin brought by strip mining in the Appalachians in his polemic ‘Mayhem in the Industrial Paradise’ as follows:

[i]n some eastern Kentucky counties, for mile after mile, the land has been literally hacked to pieces ... Whole mountain tops have been torn off and cast into the valleys. ... It is a scene from the Book of Revelation. It is a domestic Vietnam.¹⁰⁴

In addition to its unsightly scars, mining is sometimes leveraged with toxic chemicals such as arsenic and cyanide that poison the water and soil. Mining sludge and tailings ponds can leave enduring deathtraps for unwary birds and other creatures that might visit, and occasionally these impoundments break, as occurred in 2015 at BHP’s Samarco mine in Brazil when the collapse of its waste dam wall released a lethal torrent of sludge that destroyed a village and its environs.¹⁰⁵ Legal measures to restore mining sites to their former condition are discussed in Chapter 6 on the aesthetics of ecological restoration.

IV. MUSEUMS FOR NATURE’S RELICS

Natural history museums, often established by governments, have become prominent forums for demonstrating not only the societal importance of the natural sciences but also our colonisation of nature. The galleries of taxidermy specimens and landscape dioramas allow museum visitors to encounter memorials to a vanquished nature that has been souvenired and decorated for voyeuristic pleasure.¹⁰⁶ Crowds throng to the ghoulish taxidermy displays at Paris’ Le Musée de la Chasse et de la Nature, New York’s American Museum of Natural History or Berlin’s Museum für Naturkunde.

Collecting natural ornamentals has a long history. Cabinets of curiosities such as shells and skulls became common among the affluent during the European Renaissance, while the fashion intensified in the nineteenth century owing to scientific curiosity and to celebrate the imperial acquisition of exotic fauna from far-flung colonies. Museums such as King Leopold II’s Royal Museum for Central Africa in Tervuren, Belgium, became imperial archives complicit with empire-building. Apart from zoos, such collections were (and remain) sometimes the only means by which the general public could observe

¹⁰³ Quoted in R Annear, *Nothing But Gold: The Diggers of 1852* (Text Publishing, 1999) 179.

¹⁰⁴ W Berry, *A Continuous Harmony: Essays Cultural and Agricultural* (Harcourt Brace Jovanovich, 1972) 170.

¹⁰⁵ JD Carneiro, ‘Brazil Dam Burst: Six Months on, the Marks Left by Sea of Sludge’ *BBC News* 6 May 2016, www.bbc.com/news/world-latin-america-36230578.

¹⁰⁶ Asma, *Stuffed Animals* (above n 20).

wild animals 'in the flesh'. While zoos of this era were generally entertainment gardens, museums assumed a more pedagogic role associated with scientific research and educating visitors about the taxonomy of the animal kingdom and species' biogeographical distributions.

Taxidermy itself became a fad in the nineteenth century, coinciding with the height of European empires.¹⁰⁷ The taxidermist removed the decaying parts from dead animal bodies and refilled them with wire and stuffing that recaptured the physicality and even some behaviours of the living original. The display of taxidermic objects commonly comes with information panels about the species' behavioural and geographical traits. The expatriate elite would return home with their spoils and souvenirs to adorn their billiard rooms and hallways, and the zoomorphic craze of the era resulted in many specimens reshaped into footstools, waste bins, walking-stick stands, lamps, ashtrays and other household wares.¹⁰⁸ For specialist game hunters, their country estates bristled with sets of antlers and mounted animal heads as reminders of their 'heroic' subjugation. Though taxidermy no longer is so fashionable, it continues to appeal to hunting enthusiasts; contemporary hunting magazines often feature photographs of trophy heads.¹⁰⁹

Museums acquired taxidermy collections to appease scientific interest and voyeuristic curiosity, and some specimens were incorporated into substantial three-dimensional dioramas that depicted animals in realistic habitat settings. The word 'diorama', from the Greek for 'to see through', was coined by the French artist Louis Daguerre who in the 1820s began staging theatrical entertainments embellished with realistic scenes painted on background screens. A method transposed to the natural history context in the late nineteenth century, the life-size, three-dimensional environmental diorama added a picturesque backdrop, comprising a painted panoramic setting such as a savannah, or mountain range along with 'foreground' accessories of real-world size such as shrubs, leaf litter and rocks to create a realistic depiction of a large scene in a compact space. Museum curators often perched the animals in action poses, such as birds feeding or a carnivore pursuing its next meal, and the frequent use of dim lighting helped to create a cinematic effect. The moose diorama at Philadelphia's Academy of Natural Sciences, shown below, illustrates how these displays allowed visitors to get tantalising close to the life-like wildlife, offering an intimacy that only zoos could rival. In 2012 the Academy upgraded the dioramas in its North American Hall by adding sound effects including the calls of bears, bison and other creatures to deepen visitors' aesthetic experience.¹¹⁰

¹⁰⁷ PA Morris, *A History of Taxidermy: Art, Science and Bad Taste* (MPM Publishing, 2010).

¹⁰⁸ A Turner, *Taxidermy* (Thames and Hudson, 2013) 136.

¹⁰⁹ L Kalof and A Fitzgerald, 'Reading the Trophy: Exploring the Display of Dead Animals in Hunting Magazines' (2003) 18(2) *Visual Studies* 112, 115.

¹¹⁰ 'Unfrozen in Time – New Sound Installation Brings Historic Dioramas to Life at the Academy of Natural Sciences', Drexel NOW, 3 July 2012, <https://drexel.edu/now/archive/2012/July/Unfrozen-in-Time-Sound-Installation-Dioramas-Academy>.



Figure 4.7 Moose diorama, 1935, with my niece Ramona; Academy of Natural Sciences, Philadelphia; photograph by Tobias Richardson

Carl Akeley pioneered the design of habitat dioramas, beginning at the Milwaukee Public Museum in 1889. Later he worked at the American Natural History Museum in New York, a trailblazer in the art of habitat dioramas of astonishing realism.¹¹¹ Typically, scientists, artists and taxidermists organised expeditions to collect specimens and accurately document their habitats for re-creation in the diorama, suggestive of Carlson's ideas about the importance of grounding the appreciation of environmental aesthetics in scientific knowledge. Their techniques were also influenced by the artistic conventions of the picturesque and the sublime that remained influential during this formative period.¹¹² Ironically, museums displayed animals killed partly in the name of conservation. Carl Akeley himself dispatched many, even gorillas, for his dioramas, and he confessed in 1925:

I have been constantly aware of the rapid and disconcerting disappearance of African wildlife. [This] gave rise to the vision of the culmination of my work in a great museum exhibit, artistically conceived, which should perpetuate the animal life, the native customs, and the scenic beauties of Africa.¹¹³

¹¹¹ SC Quinn, *Windows on Nature: The Great Habitat Dioramas of the American Museum of Natural History* (Abrams, 2006).

¹¹² C Kamcke and R Hutterer, 'History of Dioramas' in SD Tunnicliffe and A Scheersol (eds), *Natural History Dioramas* (Springer, 2015) 7, 7.

¹¹³ CE Akeley, *In Brightest Africa* (Garden City Publishing, 1925) 251.

Many of the specimens collected by the Smithsonian National Museum of Natural History were provided by former US President Theodore Roosevelt, whose 1909 expedition to East Africa sponsored by the Smithsonian bagged 11,788 animals, many killed by Roosevelt personally who (incongruously) had formerly created the US Forest Service, established five national parks and numerous other wildlife reserves.¹¹⁴

Taxidermy and dioramas, it may surprise you at this point, have a variety of connections to the law. As 'a classificatory system through which the natural world was understood',¹¹⁵ such as cabinets displaying like 'classes' (eg felines, primates, ungulates), taxidermy resembles the law in its approach to bring social order and structure. Natural history museum collections also served to educate the public about natural values and thereby to promote their conservation. Frank M Chapman, the American Natural History Museum's first bird curator, used dioramas for this purpose, with the museum's Pelican Island diorama helping to win federal support for the first national bird reserve.¹¹⁶ While stuffed specimens and habitat dioramas may be artistic gems, they can make for a poor way for the public to experience nature and promote conservation. As the US Ninth Circuit noted, 'Congress did not mandate that the [National Park] Service preserve the wilderness in a museum diorama [...] that we might observe only from a safe distance, behind a brass railing and a thick glass window'.¹¹⁷ Environmental law interacts most directly with the taxidermy business through its controls on the trade in endangered species and their parts. The Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 obliges state parties to restrict trade in species listed under the treaty, covering trade in both live and dead specimens, and their parts such as ivory carvings, animal pelts and taxidermy mountings.¹¹⁸ Complementary provisions in domestic law, such as licensing of taxidermy practices and prohibitions on stuffing species listed as protected, add to the legal context.

The aesthetics of dioramas and taxidermy became decisively less appealing in the late twentieth century. One turning point might have been the original *Planet of the Apes* film, released in 1968, which shocked audiences with its scene of taxidermied human beings displayed in dioramas for the pleasure of the apes. In one incident the desperate Taylor, the sole surviving astronaut fleeing the apes, stumbles across one of his fellow travellers now rendered into an inert museum exhibit. Interest in dioramas and taxidermy also waned as film itself introduced new, more lifelike perspectives of wildlife.

¹¹⁴T Roosevelt, *African Game Trails: An Account of the African Wanderings of An American Hunter-Naturalist* (Scribner, 1910).

¹¹⁵J Philip, 'The Natural Object: Exhibiting the Macleay Museum's Specimen Collections' (2016) 29 *Journal of Museum Ethnography* 11, 15.

¹¹⁶A DenHoed, 'The Making of the American Museum of Natural History's Wildlife Dioramas' *The New Yorker* 15 February 2016.

¹¹⁷*Wilderness Watch, Inc v U.S. Fish and Wildlife Service*, 629 F 3d (2010) 1024, 1033.

¹¹⁸(1973) 12 ILM 1085.

The fetishistic memorialisation of nature has since attracted a range of artistic critiques. One is the travelling show *In Nanoq: The Great White Bear: A Survey of British Taxidermic Polar Bears 2001–2004*, created by Bryndis Snæbjörnsdóttir and Mark Wilson in 2006.¹¹⁹ Opened at Oslo’s Polar Fram Museum, their photography exhibition challenged the mythology of the ‘gallant’ hunter of the polar bear, an animal now the proverbial ‘canary in the coal mine’ for global warming. The artists photographed 34 taxidermic *Ursus maritimus* from British collections, with each photograph captioned with details about the bear’s biography including where and how it met its demise. The exhibition, which moved through a variety of museums and art galleries over the next three years, sought to celebrate the bear rather than its hunter, taxidermist or collector. For one rendition of their show, ten of the bears were relocated to an art gallery space at Spike Island, England, allowing the specimens to exist on their own terms within viewers’ imagination. Snæbjörnsdóttir and Wilson’s exhibition gave these animals a new life, and emphasised how symbols and narratives shape our understanding of nature.

Increasingly aware of such sensitivities, some natural history museums have reframed their collections. The Natural History Museum in London informs visitors that: ‘the Museum is concerned about the conservation of animals in the natural world and no longer collects skins for taxidermy displays. The specimens in these displays are from the Museum’s historical collections’.¹²⁰ The curatorial practices of many natural history museums (eg Smithsonian Institution and the Australian Museum) have now transformed these institutions into interactive and educational sites. Inclusion of a ‘discovery room’, interactive games, a ‘live’ corner (eg small aquarium), are part of the new generation of curatorial techniques that encourage the audience to question, test and evaluate exhibits.¹²¹

V. OUT OF SIGHT, OUT OF MIND

This chapter’s final story concerns animals whose suffering is kept out of sight, and thus often out of mind. Despite much progress in legislating animal welfare over the past two centuries, as documented in Kathryn Shevelov’s masterpiece *For the Love of Animals*,¹²² animal abuse continues on a vast scale, with millions of livestock cruelly slaughtered for our food while millions of other creatures are guinea pigs for testing cosmetics or pharmaceuticals. Animal cruelty may

¹¹⁹ M Wilson, *Nanoq: Flat Out and Bluesome: a Cultural Life of Polar Bears* (Black Dog Publishing, 2006). The exhibition was later called *Nanoq: Flat Out and Bluesome*.

¹²⁰ Quoted in R Poliquin, *The Breathless Zoo: Taxidermy and the Cultures of Longing* (Pennsylvania State University Press, 2012) 138.

¹²¹ See SM Nair, ‘The “Greening” of Natural History Museums’ (1996) 48 *Museum International* 8.

¹²² K Shevelov, *For the Love of Animals: The Rise of the Animal Protection Movement* (Henry Holt, 2008).

not be as overtly barbaric as in the eighteenth century before legislative reform began, but because of factory farming and the global cosmetics industry it is more prevalent and institutionalised. Not only does the law tolerate the status quo through weak animal 'welfare' standards, it helps conceal it by criminalising covert, unauthorised filming or photography in factory farms or other premises where animals suffer. Censorship has become a powerful tool for lawmakers to control the aesthetics of animal welfare and thus to protect the economically lucrative industries that profit from it.

Historically, animals' misery was much more public and indeed popular entertainment. Using her training as a historian, Shevelov takes us back to eighteenth century England to reveal in vivid detail the attitudes and practices under which many animals suffered. Exploited as beasts of burden, horses and donkeys were habitually exhausted to near-death by sadistic stagecoach drivers and haulers. Blood sports were popular with all classes, with bear gardens and cockpits attracting both the *hoi polloi* and the nobility. Shevelov recounts how one such spectacle, involving a tiger pitted against several dogs, caused 'a parliamentary bill concerning the old East India Company to los[e] by ten votes because so many of its supporters in the House of Commons had gone to see the tiger baiting instead'.¹²³ While wilful ignorance and greed today hinder the humane treatment of animals, two hundred years ago in England it was the belief that cruelty toward animals was not morally wrong.

The focus for animal welfare today has shifted to different contexts. Deploying industrial-like procedures, factory farms maltreat cattle, pigs, poultry and innumerable other creatures in the quest to satiate consumers' desire for convenient, cheap meals and other products such as clothing. Even modest legislative proposals to mitigate abuses face stiff opposition from agricultural businesses and the fast food industry. While many consumers profess empathy for these animals, few will change their dietary preferences or purchase goods certified as 'cruelty free'.

The law is complicit in animal cruelty. Not only may governments appease big business with lax animal welfare standards, or fail to enforce ostensibly stricter ones, they may use the law to conceal the horrors within factory farms and animal testing laboratories. The latter measures are colloquially known as 'ag-gag' laws, serving to gag whistle-blowers by criminalising undercover investigations on farms, especially by film or photography. Ag-gag laws shield the agricultural sector from public scrutiny by concealing abuse such as cramped cages and inhumane slaughtering. Violations of such laws can attract harsh penalties, and thus may deter employees or animal rights activists who wish to publicise animal husbandry malpractices. Activists thus see their most important strategy as not simply theoretical elaboration of their position, as in Peter Singer's ground-breaking work,¹²⁴ but to foster social change by making the public more directly and intimately aware of animal suffering.

¹²³ *Ibid.*, 44.

¹²⁴ P. Singer, *Animal Liberation: A New Ethics for our Treatment of Animals* (Random House 1975).

As the animal rights group Voiceless explains, ‘surveillance footage, which is often graphic and confronting, promotes public awareness of these issues. This in turn leads to open dialogue, which is essential in shaping public opinion and encouraging law reform’.¹²⁵ Such surveillance footage may also provide evidence to support prosecution of animal welfare offenders. An example of this strategy is the effort in Australia to curb the live animal export trade. The exposé *A Bloody Business*, aired on national television, showed millions of viewers footage of Australian cattle being abused in Indonesian slaughterhouses. The uproar led Australian authorities to suspend the live animal exports to Indonesia, and introduce the Export Supply Chain Assurance Scheme to improve regulatory oversight of the trade.¹²⁶ The issue remains contentious, with covert footage of distressed sheep exported on ships to the Middle East shown on Australian media in 2018 sparking calls for permanent bans of the trade, but resulting only in rules requiring more space be given to shipped sheep to improve ventilation.¹²⁷

Ag-gag laws emerged only recently. Devised in the United States, seven US states had enacted them as of early 2019, although courts struck down two of these efforts because they violated freedom of speech. Idaho’s Agricultural Security Act 2014 was ruled unconstitutional in August 2015, and the same fate was met by Utah’s ag-gag statute in July 2017.¹²⁸ Although the US Congress Animal Enterprise Terrorism Act 2006 does not contain explicit ag-gag provisions, it serves a similar goal to intimidate and stigmatise animal welfare advocates perceived as attempting to disrupt farming operations, even by such innocuous means as leafleting.¹²⁹ With similar aims to thwart transparency, so-called food libel laws have been enacted in some US states, and they were sensationally used by the beef industry against Oprah Winfrey in 1998 after her remarks about the ‘mad cow’ disease scandal.

Ag-gag laws have caught the attention of some Australian legislators, albeit without progress so far. In NSW, the Animal Protection and Crimes Legislation Amendment (Reporting Animal Cruelty and Protection of Animal Enterprises) Bill 2018, which lapsed without being passed in February 2019, envisioned new criminal offences that target the whistle-blowing activities of animal rights activists, and to require any footage of cruelty to animals to be handed over to the police. At federal level, the Criminal Code Amendment (Animal Protection) Bill 2015, which has also lapsed, sought to create new offences in relation to failure to hand over to authorities any visual recording of malicious cruelty to domestic

¹²⁵ Voiceless, ‘Ag-Gag’, www.voiceless.org.au/hot-topics/ag-gag.

¹²⁶ Australia Department of Agriculture and Water Resources, ‘Exporter Supply Chain Assurance System’, www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/information-exporters-industry/escas.

¹²⁷ G Brown and E Ritchie, ‘Call for Live Animal Trade Ban After TV Footage of Dying Sheep’ *The Australian* 9 April 2018.

¹²⁸ *Animal Legal Defense Fund v Otter*, 118 F Supp 3d 1195 (D Idaho 2015); *Animal Legal Defense Fund et al v Herbert*, 263 F Supp 3d 1193 (D Utah 2017).

¹²⁹ Public Law 109-374 (2006).



Figure 4.8 Iowa Ag-Gag protest 2012; Mercy for Animals; licensed under Creative Commons

animals, and interference with the conduct of lawful animal enterprises. Legislative reform has, however, succeeded in the other direction; the Australian Capital Territory's Animal Welfare (Factory Farming) Amendment Act 2017 effectively bans factory farming through prohibitions on certain cruel animal handling facilities and practices. From England, another positive step is an obligation introduced in 2018 on all abattoirs to install CTTV so that veterinarians can monitor how animals are housed and killed to ensure better compliance with animal welfare standards.¹³⁰

Concurrent with efforts to suppress ugly imagery of their operations, food companies peddle a deceptive aesthetic of bucolic farming. Corporate greenwashing is examined in detail in Chapter 5, but a few comments will help here to flesh out this discussion. Food packaging, including for meat products, commonly contains images of serene agrarian farming at odds with industrialised production methods. Images of golden wheat fields, apple-cheeked farmers and rustic barns, accompanied by slogans such as 'humanely raised' and 'family farms', help to seduce shoppers. This pastoral fantasy also helps to dull their awareness of the supermarket milieu itself, disconnected from the sounds and images of the countryside where previous generations lived. The Animal Welfare Institute's review of 25 food labels approved by the US government on meat products found that it 'regularly approv[es] the use of animal welfare and

¹³⁰ Mandatory Use of Closed Circuit Television in Slaughterhouses (England) Regulations 2018, No 556.

environmental claims with little or no supporting evidence documenting the accuracy of the claims'.¹³¹

The law also mediates the aesthetics of drug and cosmetic safety testing on animals through similar techniques of criminalising undercover investigations and restricting publication of photographs or films. Ironically, cruelty to animals is often done in the name of beauty, as cosmetics are tested on monkeys or guinea pigs to improve consumers' appearances. Unlike factory farms, however, animal rights are increasingly affirmed in the realm of lab testing. Leading the way, the EU's Cosmetics Directive 2003 introduced bans on testing cosmetic products and their ingredients, and marketing of any such cosmetics tested elsewhere, which was phased in over the following six years.¹³² As of early 2019, four US states have legislated bans on testing cosmetics on animals, beginning with California's decree in 2002.¹³³

Animal cruelty and its regulation are thus mired in a political struggle between the food and cosmetic industries and animal welfare proponents over not merely the underlying animal handling standards but also public transparency. For the perpetrators, 'out of sight, out of mind' matters. For their opponents, the preferred adage is 'seeing is believing', thus seeking to educate consumers and politicians through not merely reasoned argument but raw images and sounds of animal suffering to provoke empathy.¹³⁴ The book's closing chapter examines the animal rights activists' promotion of a counter aesthetic through undercover operations.

VI. CONCLUSION

The aesthetics of colonised nature are increasingly contested socially and legally, as pressures grow for a more enlightened, post-colonial outlook. The penchant for domesticated nature, from the inert museum specimens to the pacified countryside, is challenged by a new politicised aesthetics in which the public has to confront environmental violence and animal cruelty. The law has already shown considerable evolution in responding to the shifting aesthetics of the natural environment. Some animals once considered unsightly vermin are now cherished with full legal protection. The law has also maintained or tightened controls on the global trade in nature's endangered beauty, such as shells, horns, tusks, skins

¹³¹ Animal Welfare Institute, *Label Confusion: How 'Humane' and 'Sustainable' Claims on Meat Packages Deceive Consumers* (Animal Welfare Institute, 2014) 1.

¹³² Directive 2003/15/EC of the European Parliament and of the Council of 27 February 2003 amending Council Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products, OJ L 66/26, 11.3.2003.

¹³³ California Civil Code (2002), s 1834.9.

¹³⁴ RK Wrock, 'Ignorance is Bliss: Self-regulation and Ag-Gag Laws in the American Meat Industry' (2016) 192 *Contemporary Justice Review* 237.

and flowers, though illegal practices have proved difficult to control. The history of acclimatisation societies shows a similar movement; their legacy brings shame today as citizens of the Antipodes take greater pride in their natural landscapes and native fauna as part of their redefined national identity, as evident in the motifs that appear on their nations' bank notes, coins, coats-of-arms and other stately symbols.

Yet, obstacles to change persist. In the food industry, political and business elites obstruct greater transparency of factory farm horrors for fear of how a shocked public would react. Indeed, in some jurisdictions they enlist the law to hide animal suffering from public observation. Public sentiment to animal welfare can also be highly contradictory: consider how many cultures view the dog as 'man's (sic) best friend', yet concomitantly persecute wild dogs (including wolves and dingoes). One chilling example I wish to mention is from the scene in the film *Ghost Dog* (1999) where the protagonist, an African-American hit man seeking to emulate the noble samurai warrior tradition, encounters two white hunters who have just illegally killed a black bear. After one of the poachers defends the killing because 'there are not too many of these big black fuckers left around here', the vigilante replies after shooting both dead that, 'in ancient cultures bears were considered equal with men'. Just as animals can conjure up mixed feelings, the same can be said for places; we may admire a beautiful forest in a national park but prefer to remove trees if they block scenic views, especially of water.¹³⁵ Aesthetic values thus often have highly situation-specific or place-based contexts.

And new threats loom, associated with the replacement of real nature with synthetic versions. At least public awareness of the menace of plastics has grown rapidly to the point that some businesses now voluntarily take symbolic measures, such as removing plastic bags, while the EU has adopted legislative controls, with agreement reached in May 2019 for a new directive to curb use of certain plastics.¹³⁶ The EU law seeks to ban a variety of single-use plastics (eg straws and cups) by 2021 and oblige Member States to recycle 90 per cent of all single-use bottles by 2025. A similar legal battle festers over GMOs. Aesthetics animate these struggles.

¹³⁵This is more common than you might think: see eg, J Armstrong, 'Socialite in Scandal Over Chopped Trees' *Globe and Mail* 22 August 2000.

¹³⁶Council of the European Union, Proposal for a Directive of the European Parliament and Council on the Reduction of Certain Plastic Products on the Environment, 5483/19, 18 January 2019; C Sanz, 'Single-use Plastics will be Banned in EU by 2021' *The Times* 22 May 2019.