Living with Owning

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ABSTRACT

In October, 2011, Terry Thompson committed suicide by gunshot after cutting open the cages of fifty-six exotic animals on his farm in Zanesville, Ohio. Fearing for public safety, law enforcement officers systematically hunted down the escaped animals in an episode that garnered international attention and prompted renewed discussion of the propriety of exotic animal ownership. Through an examination of the events leading to Thompson’s suicide and release of his animals, this article discusses theoretical underpinnings of property rights, stewardship of animal life, and social organization in regulated societies. After a brief introduction to the law and policy of owning exotic animals, the subsequent text considers thematic and ideological structures that underlie the tension between Terry Thompson and the government, his community, and his closest friends and subjects. Though he had acquired his menagerie through legal means, Thompson resented oversight of government authorities, and that resentment played a nontrivial role in causing the Zanesville animal massacre. The article concludes with discussion of the need – contra Terry Thompson – to surrender control in ownership relations, community life, and ultimately the modern technocratic state.

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All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring possessing, and protecting property, and seeking and obtaining happiness and safety.

- Ohio Constitution, Art. 1, Sec. 1

Private property shall ever be held inviolable, but subservient to the public welfare.

- Ohio Constitution, Art. 1, Sec. 19

THE KINGDOM

Terry Thompson had built a kingdom. His seventy-seven acres of farmland hosted a shanty village of crates, cages, gates, lean-tos, and shelters that housed fifty-six nonhuman animals. Of those animals, two bears lived in an empty pool basin. A Siberian tiger roamed the nearby lawn. Inside the brick farmhouse that Thompson shared with his wife Marian, three macaques groomed themselves in a dirt-floor den. Surrounding the macaques were motorcycle parts, vintage guitars, and a collection of 133 firearms, including an unregistered semi-automatic rifle and eight other guns that violated federal registration or ownership laws. Wedged between Kopchak Road and a stretch of Interstate 70 in Zanesville, Ohio, the Thompsons’ kingdom held a wealth of subjects that was inimitable.

Their kingdom was equally precarious. In 2008, federal agents from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) breached the gate of the property and affixed a red laser sight on Terry’s chest. Rushing to the back of the house, the agents found Marian, unclothed as she changed between feeding different animal species so their scents would not carry. The week prior, Thompson had threatened a United States Department of Agriculture inspector. Bragging about his gun collection, Terry promised that he would shoot anyone who stepped foot on his land. Thompson did not fulfill that promise; he was overwhelmed by the raid. Three years later, he was convicted and sentenced to twelve months of incarceration on federal firearms charges. Eighteen days after his confinement ended, Thompson released his animals from their prisons, cutting bolts and destroying fencing on many of his animals’ cages – ensuring that the animals could not easily be recaptured after their release – and then fired a bullet through his throat.

The chaos that followed was well-documented, and heartbreaking. With the concurrence of Jack Hanna – celebrity zookeeper and director emeritus of the Columbus Zoo – deputies from the Muskingum County Sheriff Office hunted down the animals one-by-one overnight and into
the early morning. They worked to stem any harm the animals might otherwise cause to the residents of Zanesville or to motorists on nearby Interstate 70. As the night progressed, surreal dispatches from the heartland helped garner unwanted international media attention for Zanesville: the audio recording of an improbably calm elderly neighbor calling 911 to report, “We live next to Terry Thompson and there’s a bear and a lion out”\(^1\); a highway warning sign worthy of magical realist fiction; photographs of the limp carcasses of lions, bears, wolves, and other once fearsome creatures neatly arrayed for accounting outside a barn on the Thompson property. After seventeen hours of response and rescue work, the cadavers of eighteen domesticated “Buckeye” Siberian tiger hybrids lay on the rain-soaked Thompsons’ property, along with dozens of other slaughtered animals in a display of embarrassment to the excesses of the Muskingum County Animal Farm.

What this saga says about property, community, chaos, fear, and love is remarkable for its broad relevance. Far from exotic, the story highlights conceptual matters that are foundational to law and living, that motivate decisions and actions with profound consequences, yet that escape our mental grasp. Such matters include: the presumed distinction between a category of living beings considered legal “persons” and a category of ownable “things”; the aim of the liberal political tradition to somehow promote, with equal verve, both liberty of action and security from harm; the paradigms of “ownership” and “stewardship” that compete for dominance within property law theory and that purport to characterize, in distinct ways, the rights and obligations of property holders; the juxtaposition of democratic self-regulation and technocratic managerial control and as alternate rather than interdependent modes of governance; our human love of “wild” animals and desire for closeness with them, even as we fear their lethality and try to contain it within cages; and, ultimately, the grand dialectic of control and chaos that laid tracks that October night in Ohio. Although studied here through a singular Midwestern tragedy and a seemingly idiosyncratic area of law – exotic animal ownership regimes – these conceptual tensions are, we believe, emblematic of fundamental conversations about the place of property in society. Lacking satisfactory intellectual coherence, they nonetheless persist and reach toward a greater understanding of the nature of community and why – in Thompson’s case – the community ruptured and failed.

**CULTIVATING THE GARDEN**

At common law, wild animals are neither possessed nor self-possessed.\(^2\) Deer, foxes, and canaries serve as famous examples.\(^3\) Feed a fox daily with scraps from your cutting board: The shrewd attendee won’t be yours. It is not until he is caught or killed that the fox will become the

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\(^3\) See, e.g., Buster v. Newkirk, 20 Johns. 75 (N.Y. Sup. Ct. 1822) (deer was unowned until killed); Pierson v. Post, 3 Cai. R. 175 (N.Y. Sup. Ct. 1805) (mortal wounding and continuous pursuit, ensnaring, or actual possession of the fox was required for ownership); Manning v. Mitcherson, 69 Ga 447 (1885) (an escaped and ensnared canary was property of the original owner, as the canary had been domesticated).
behavior’s property. Even after being caught, wild animals who escape or are released may cease to be the property of previous owners. Absolute ensnarement typically must occur through taming or domestication. Until that point, loose, wild animals in most jurisdictions are objects of the state and capturing and killing them requires a permit and a license. In this way, each state in the United States enjoys some of the privileges of sovereignty that the King of England had in owning the forest and its wildlife.  

Notwithstanding this ownership regime, most exotic animals owned by individuals fall into a separate category of property: They are not wild. They have been bred in domestic settings or are otherwise domesticated, even if they remain far more dangerous and unfamiliar than the average house pet. On the Thompson’s farm, for example, the tigers mistakenly portrayed by news reports as wild and endangered Bengal tigers were actually a domesticated cross of Siberian and Bengal tigers that had been bred in Ohio for several generations. Most statutes considering exotic animals refer to them as just that: exotics, not as “formerly-wild” or “often-found-in-the-wild.” The law passed in Ohio after Terry Thompson killed himself refers, alternately and somewhat confusingly, to “dangerous wild animals,” a category that includes twenty species whose wildness seems inherent to their name – such as bears, wildcats, and wolves – but whose bodies are subject to ownership and control. Domestication aside, the construction of the statute and the moniker “dangerous” reflect a public safety motive for regulating exotic animal ownership. To be “owned” by a private person in the conventional sense, the animal must be tamed, yet the possibility remains that the animal will be incompletely broken.

Ohio’s Dangerous Wild Animals Act was a direct response to Thompson’s death and the mismanagement of his operations. But its roots run to another tragedy: The law mimics an executive order that was promulgated after the mauling of twenty-four-year-old, Ohio-native Brent Kandra by a captive black bear in August 2010. Kandra was employed as the animal caretaker of another notorious exotic animal owner, Sam Mazzolla, who lived southwest of

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4 Id.
5 Id.
6 See, e.g., Nicholson v. Smith, 986 S.W.2d 54 (Tex. App. 1999); Geer v. Connecticut, 161 U.S. 519 (1896). “Ferae naturae is a common law doctrine tracing its origins back to the Roman empire whereby wild animals are presumed to be owned by no one specifically but by the people generally. Specifically, ferae naturae provides that wild animals belong to the state.” Nicholson v. Smith, 986 S.W.2d at 60.
7 See WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, BOOK II. THE RIGHTS OF THINGS. 356 (Ed. William Hardcastle Browne 1982). [MATT: say a little bit more about Blackstone.] Granted, in states where the federal government owns and controls vast quantities of land, the permitting and licensure requirements of the state are far more geographically limited.
8 The Third Restatement of Torts § 22(b) defines a wild animal, for which an owner may be held strictly liable for harm caused, as “an animal that belongs to a category of animals that have not been generally domesticated and that are likely, unless restrained, to cause personal injury.”
10 Ohio R.C. § 935.04(D).
Cleveland, across the street from a new high-end suburban development. Mazolla’s collection rivaled Terry Thompson’s: eight bears, twelve wolves, a lion, four tigers, and likely coyotes, dogs, and skunks as well. Mazolla had filed for bankruptcy several months before the mauling death – financial insolvency apparently stalks owners whose ability to acquire exotic animals outpaces their ability to keep them. Mazolla lost his license to exhibit animals, and pled guilty to the illegal sale and attempted sale of skunks and transport of a black bear to Toledo without a license. Kandra’s death disturbed Ohioans and awoke the governor’s office to the state’s regulatory void. More directly, Sam Mazolla’s operation menaced his neighbors as they lay in bed on Ohio’s late summer nights. As in Zanesville, the crepuscular groans of nonhuman animals rattled their neighbors’ ears and imaginations.

Given the physical omens vibrating in these towns – and the presence of other attacks prior to 2010 – the lack of regulation in Ohio prior to Thompson’s death raises hackles. At the time of Thompson’s suicide, Ohio had the least-developed exotic animal ownership laws in the United States. Indeed, essentially no restrictions applied to a noncommercial owner such as Terry Thompson. The severity of the regulatory void is underscored by a little-noted infraction issued in connection with the Muskingum County Animal Farm massacre. Late on the evening of Terry Thompson’s death, as word of the events spread, five young residents from a nearby town drove to the Thompson farm and surreptitiously loaded one of the fallen tigers into the back of their Jeep Cherokee. After they were caught and the tiger carcass returned – whose absence otherwise would have thrown off the sheriff department’s count and perpetuated the Zanesville chaos – the youth were charged with misdemeanor theft of property. Apparently, in this Buckeye rendering of the Nightwatchmen’s State, no other legal or regulatory stricture described their actions. To the observing global public, a senseless slaughter of animal life had followed an inexplicable breakdown of personal and communal order. To the extant legal system, five private parties stole chattel from another – never mind that both the chattel and its owner were dead.

A LEXICAL DIVISION

More so than regard for public safety, international attention to the Zanesville massacre was motivated by an outpouring of grief and concern over loss of the Thompsons’ animals – a motive premised on what we might call the unspeakable kinship that humans hold with

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12 See Carolyn Pesce et al., Scary safari in Ohio ends with carnage, questions, USA Today, (Oct. 19, 2011, 10:20 PM), http://usatoday30.usatoday.com/news/nation/story/2011-10-18/exotic-animals-loose-ohio/50821092/1 (“Ohio has some of the nation’s weakest restrictions on exotic pets and among the highest number of injuries and deaths caused by them. The Humane Society of the United States has documented 22 incidents with dangerous exotic animals in Ohio since 2003, demonstrating risks to public health and safety and animal welfare.”).  
13 Speaking of his animals to a local news reporter, Thompson said, “I have them because I love them and am willing to do whatever I have to take care of them. What I don’t have them for is profit . . . .” Weisensee Egan & Truesdell, supra note 12. Ohio drew a distinction between commercial and non-commercial owners of exotic animals, holding the former to more stringent regulations than the latter. At common law, many jurisdictions applied a lower standard of care to public zookeepers than private owners of wild animals. See JAMES A. HENDERSON, JR., RICHARD N. PEARSON, DOUGLAS A. KYSAR, THE TORTS PROCESS 452-453 (8th ed. 2011).  
14 Jones, supra note 1.
nonhuman animals. This kinship is “unspeakable” because our very language tends to prefigure a distinction categorical in nature between human and nonhuman animals. To even describe the relation is to do violence to it. Ironically, the English “human” draws from Genesitic notions of flesh coming from clay, inanimate earth, and more directly, medieval dichotomies of earth and heaven, whereas the word “animal” draws from notions of air, inhalation, or even of souls. Absent this elemental and seemingly reversed schism – between human and animal, earth and air – it is possible to imagine a more fully realized communion among animals, a communion of the kind apparently sought by Terry and Marian Thompson.  

Regard and respect for nonhuman animals became an unmistakable theme during and after the Zanesville, Ohio event. Many reporters asked why the animals were not tranquilized and recaptured, a humane alternative that officials like Hanna had deemed too risky under the circumstances.  Television journalist Diane Sawyer led Hanna to admit the event would haunt him “for the rest of [his] life,” even as he held firm to the view that no other route of response was viable during the crisis. For months afterwards, animal lovers around the world reportedly called the Zanesville 911 hotline to curse and berate the dispatch operator for her perceived role in the massacre. When someone finally called with an actual emergency, the operator broke down in relief. Closer to the scene, Marian Thompson revealed her filial connection to the animals by pleading, “Please don’t take my babies.” Hanna reportedly secured her consent to the removal of the few remaining live animals only by promising, “I’ll take care of your children.”

Marian’s words were reflective of her and Terry’s possessive and well-documented love for their animals, a love that was echoed in the broad and fierce response to the hunting death

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15 Perhaps this communion was the one glimpsed by Derrida in a brief passage involving his cat and his own surprise at having experienced embarrassment when he was seen naked by his cat following a shower. That sensation of self-consciousness before the gaze of a cat suggests a kind of mutuality or kinship that may have existed “before the names,” or perhaps “outside of the names.” After all, why should I be embarrassed before you, a mere thing?  
16 Alexander Chancellor, The Killing of Exotic Animals in Ohio Unleashed Wild Sentimentality The GUARDIAN (Oct. 20, 2011 3:00 pm), http://www.theguardian.com/commentisfree/2011/oct/20/exotic-animals-ohio-wild-sentimentality. See also Jones, supra note 1 (describing the difficulty of safely tranquilizing large animals, especially under rainy nighttime conditions).  
18 Chancellor, supra note 8.  
19 Hanna and the Columbus Zoo did not fulfill this promise: While in the custody of the Zoo, one of the Thompsons’ animals – a panther named Anton – “was euthanized after a steel door slammed on his neck while he was being transported from one cage to another.” Kathy Thompson, Ohio Exotic Animal Owner Speaks Out 1st Time Since Ordeal, USA TODAY (Jan. 23, 2013, 4:09 PM), http://www.usatoday.com/story/news/nation/2012/10/18/ohio-exotic-animals/1640871/.  
20 Reflecting on his visit to the Thompsons’ farm a year before Terry’s suicide, Dr. Robert Masone stated, “If I could describe what I felt that day on that farm with one word it was ‘love.’” Nicole Weisensee Egan & Jeff Truesdell, Exotic Animal Owner Terry Thompson: What Happened?, PEOPLE (Oct. 22, 2011, 4:20 PM), http://www.people.com/people/article/0,,20539200,00.html.
of Cecil the Lion by a Minnesotan dentist in 2015. Although most U.S. citizens live a great distance from the physical needs and majesty of exotic or wild animals, our culture rings with a pronounced concern for their well being. That popular concern does not transfer to all species, as animal rights proponents lament. Nonetheless, a broad scholarly literature has developed applying notions of animal “rights” to the numerous agricultural, laboratory, and companion animals that populate our nation alongside human animals. Acknowledging such rights – e.g., the right to a safe living environment free from abuse – implicitly treats nonhuman animals as subjects that may hold interests of their own accord in our legal system. Whether chimpanzees have legal standing, for example, has been discussed in at least one recent court order in a case brought by The Nonhuman Rights Project. In addition to its symbolic value, such legal standing can provide a form of practical vindication for those outraged at cruelty or neglect of animals.

Most proponents of animal rights hold grander aims than passage of anti-cruelty statutes and recognition of legal standing. What they ultimately seek is to problematize the dividing line that separates “persons” from mere “things” at the basic level of language, cognition, and culture. That line does unnoticed yet foundational work in identifying the individuals who are eligible to join the political community with all its attendant rights of membership, including the right to own non-eligible individuals. When Marian Thompson lamented the loss of “49 beings that were the heart and soul of [her] existence,” she hinted at a vision in which all life is considered sovereign, co-equal, and capable of communion with other life. Such a vision is, of course, fanciful, as the Thompsons’ own backyard rendering attests. But we must also question the conventional vision of a stable hierarchy of being, especially one that has historically viewed political membership as tightly bound up with the ability to own things and that has often been constructed in ways grotesque. Neither vision reflects a natural order; instead each is a product of human ethical imagination, or lack of imagination.

21 Christina Capecchi & Katie Rogers, Killer of Cecil the Lion Finds That He Is Now, a Target of Internet Vigilantism, THE NEW YORK TIMES (Jul. 29, 2015).
22 Eric de Place, Charismatic Animals Get All the Love, GRIST (May 5, 2005), http://grist.org/article/the-case-for-charisma/.
23 See generally ENCYCLOPEDIA OF ANIMAL RIGHTS AND ANIMAL WELFARE: SECOND EDITION (Mark Bekoff Ed. 2010)
24 Order to Show Cause & Writ of Habeas Corpus, The Nonhuman Rights Project v. Stanley, No. 152736/2015 (N.Y.S.C.E.F. 2015). Proponents of animals’ legal standing often cite the fact that animals were periodically treated as legal subjects in medieval court proceedings. See generally Anila Srivastava, Mean, Dangerous, and Uncontrollable Beasts: Mediaeval Animal Trials. 40 MOSAIC: A JOURNAL FOR THE INTERDISCIPLINARY STUDY OF LITERATURE 127. The social meaning and significance of this legal practice is hotly contested among historians, with many viewing animals’ legal standing in ecclesiastical courts as signifying a felt need to reinforce a Biblically-ordained hierarchy of being rather than actual beliefs regarding animal moral agency.
25 Thompson, supra note 11.
26 Problematically, to underscore the line’s significance, animal rights activists sometimes cite historical periods in which whole classes of humans were similarly disempowered or even subject to ownership and enslavement. See PETER SINGER, ANIMAL LIBERATION (1975). The analogy is uncomfortable because it seems capable of working in two directions, validating either the dignity of animals or the indignity of humans.
Respecting that nuance, this article does not specifically interrogate questions of standing for animals or the traditional legislative aims of animal rights proponents. Instead we examine a broader, more conflicted social element of property ownership which is present regardless of animals’ legal standing: the concept of “stewardship” of resources, goods, or other tangible or intangible items.

FOR I ALSO AM A STEWARD

In conventional usage, “stewardship” provides an ethical and historical counterpoint to notions of property focused narrowly on individuals’ selfish interests in ownership. While stewardship is often discussed in the context of resource management – be they financial or natural resources – it is less prominent in debates over animal ownership. Notions of stewardship have been applied to the goals and methods of the Endangered Species Act, but the purpose of that act is to conserve species as collective entities, rather than necessarily to protect...
any individual lives comprising a species.\(^\text{29}\) Regardless, popular opinion often cuts to the contrary: We express outrage at the death of individual animals as subjects more than we do at the diminution of species over time.\(^\text{30}\) Principles of animal rights better lend themselves to this popular sentiment than principles of stewardship. However, both of these strains of thought provide important tools for reexamining the tangled lives of wild or domesticated animals and their human owners, caretakers, hunters, managers, and companions.

For all its failings, the Thompsons’ farm was not devoid of a sense of stewardship. Terry, Marian, and their caretaker, John Moore, carefully orchestrated animal feedings. They scavenged for road kill and bought bulk meat waste from grocers. With considerable patience and effort, they treated all items before feeding them to the animals. Hundreds of pounds per day passed through their hands.\(^\text{31}\) They did so to nourish and satisfy each one of their flock, and in a way that shielded the animals from acquiring a taste for fresh meat. Such an effort necessarily entailed an aspect of service and stewardship, and it was done for, if not a community good, at least a benefit that surpassed the Thompsons’ private sphere. Their collection provided some excitement to the town and some recognition as well: The exotics had been displayed on local TV shows and had achieved national exposure through Leno, Letterman, and Rachael Ray, and through appearances at events such as Bloomberg’s corporate parties.\(^\text{32}\) Closer to home, the Thompsons often showed their smaller animals at schools, 4-H meetings, and other children’s events. Of course, not all of the excitement was welcome in town. Police had been called dozens of times to Kopchak Road on reports of stray animals.\(^\text{33}\) Most often horses had escaped, but a mountain lion and grizzly bear had also left the grounds, only to be led back by the weighty hand of Terry Thompson.

This ambivalent approach of Thompson’s – at times stewarding and at times neglecting responsibility – mirrors a broader societal ambivalence towards the dominion or stewardship of animals.\(^\text{34}\) Rooted in the Book of Genesis, that ambivalence has pervaded Western understanding of creation and its Biblical purpose. Even Thompson, admittedly not a religious man, was heard

\(^{29}\) 16 U.S.C. 35 § 1531. For a fascinating back-and-forth on this distinction that devolves into a proxy battle over abortion rights couched in terms of whether the impairment of breeding habitat causes “harm” to a living piping plover or only to its potential offspring, see the opinions of Justice O’Connor and Justice Scalia in Babbitt v. Sweet Home Chapter of Cmty for a Great Or., 515 U.S. 687 (1995).

\(^{30}\) See Editorial, The Death of Cecil the Lion, (Jul. 31, 2015) http://www.nytimes.com/2015/07/31/opinion/the-death-of-cecil-the-lion.html. For a contrary view, see DAVID WOOD, THE STEP BACK: ETHICS AND POLITICS AFTER DECONSTRUCTION 185 (2005) (“Every species that dies out is the loss of an adventure with the future. And with such loss of differentiation we also lose ecological complexity, and hence the diminution of constitutional relatoriality in nature.”).

\(^{31}\) Siebert, supra note 6 at 27-28

\(^{32}\) Id.

\(^{33}\) See infra note __.

\(^{34}\) See JOHN GRIMM AND MARY EVELYN TUCKER, RELIGION AND ECOLOGY 36-40 (ISLAND PRESS 2014); L. White Jr., The Historical Roots of Our Ecological Crisis, 155 SCIENCE 1203 (1967).
to reference Genesis when defending his practices. The ambivalence is understandable, given
the text’s dual charge. The first two chapters of Genesis include an imperative to alternately (1)
cultivate and (2) subdue – or have dominion over – the “fish of the sea and over the birds of the
sky and over every living thing that moves on the earth.” A second quote – from the second
creation story in Genesis – even hints that cultivation is not only humankind’s responsibility, but
the very purpose for which humans were created: “Then the LORD God took the man and put
him into the garden of Eden to cultivate it and keep it.”

No one should be surprised by this Janus-faced aspect of the property relation. Any
cultivation requires a modicum of control of the thing to be cultivated. Eve and Adam would fail
their garden-tending duties if they were not licensed to prune diseased trees or set fire to
overgrown thickets. They would need to exert control, much as we do now to fine-tune plant
genetics and much as earlier civilizations did to radically alter their landscapes. As it happened,
Eve and Adam could not exert control over themselves. Likewise, Thompson failed his
stewardship duties when he chose to abandon control of himself. Thompson also would have
failed if he was unable to control others, for example, by leading back the stray grizzly or
mountain lion that had left his land, foreign creatures that threatened to do mischief on the land
of another less versed in their care and management.

OUR BROTHER’S KEEPER

Biblical defenses notwithstanding, Thompson was a divisive and often feared member of
his community. The instances of animal escape mentioned above were mere nuisances compared
to Thompson’s threats to those who dared cross him. Thompson’s 82-year old neighbor, Fred
Polk, found himself on the wrong side of Thompson’s glare when the latter’s Rottweilers
escaped and attacked one of Polk’s calves. The first time it happened, Thompson said it would
never happen again. The second time, the Rottweilers killed two of Polk’s calves, and Polk shot

35 Terry Thomas was not known to be religious but he once told Kathy Thompson: “If people would just read the
Bible, then why would they call these animals exotic? A camel was in with Jesus. What’s so exotic about that?”
Siebert, supra note 6 at 22.
36 NEW AMERICAN STANDARD BIBLE, Genesis 1:26.
37 NEW AMERICAN STANDARD BIBLE, Genesis 2:15.
38 The mixed-prairie woodland systems of Ohio’s pre-European landscape were the product of human manipulation
by fire, clearing, cultivation, seed selection, and other manipulations. See Doug MacCleery, Understanding the Role
the Human Dimension Has Played in Shaping America’s Forest and Grassland Landscapes, 23.1 AMERICAN
FORESTS AND PAPER 1 (1993); Kendra McLauchlan, Plant Cultivation and Forest Clearance by Prehistoric North
Americans: Pollen Evidence from Fort Ancient, Ohio, USA. 13 THE HOLOCENE 557 (2003). In 2000-1500 bce,
“North American Woodland societies were likely modifying vegetation more extensively through agriculture and
other land-clearing activities than has been assumed previously.” See McLauchlan, supra note 37.
39 Self-control is regrettably gendered in this creation story and most renderings of it. In Thompson’s story, Marian
seems to be the model for self-control in balance to Terry’s excesses, but such a dynamic also can be
problematically gendered, if, for example, one holds Marian to such a standard of control but not Terry.
40 Cf. Rylands v. Fletcher.
41 Siebert, supra note 6 at 28-29.
the dogs dead. Thompson silently put the sacrificed animals in the front seat of his pickup truck and drove off. In the months and years afterward, whenever Polk invited friends to hunt on his property, Thompson would pace the adjacent border with a gun on his shoulder. Thompson’s reaction was tied to his love of animals and his hatred of hunting generally. It was a fierce love, one that could sever ties with his human animal counterparts. Another neighbor, Sam Kopchak, once declined Thompson’s offer to pet a bear cub that Thompson was cradling in his lap. Following the refusal, Thompson reportedly snapped at Kopchak, “People don’t understand animals.” Reading these words, it is not hard to imagine that in Thompson’s lexical division, “people” are the disfavored subjects.

Thompson’s behaviors suggested a more violent break. When inspectors appeared on his property, Thompson would allegedly growl; “I’ll be damned . . . I’ll let them animals go!” Thompson reportedly threatened similar harm at his sentencing after the ATF raid. Further authorities’ actions before the attack suggest a widespread awareness of Terry Thompson’s volatility and the real threat he posed to those around him. Unnamed sheriff deputies observed that Thompson had left prison only to return to a trap of his own making. Three days before the outbreak, they knew the time was ripe for something wicked: “We were just afraid that this was going to happen. It wasn’t a matter of if it was going to happen, it was a matter of when,” David Durst, the Muskingum County Humane Officer, declared.

For all the awareness of Terry’s threats and resulting effort to remove his animals, local authorities and state actors failed to avert disaster for this small town and for Marian, the animals, and Terry himself. Some, such as Ohio Governor John Kasich, greeted the tragedy with equanimity, reasoning that “[a]ll the statutes in the world don’t keep something like what happened from happening. I mean, who would have ever dreamt the guy’s gonna commit suicide, open up the cages?” On this view, liberal legal orders seem required to endure occasional spasms of violence simply as part of the price of freedom. But Kasich’s question was rhetorical and defensive. His administration was under fire for allowing former governor Ted Strickland’s executive order on exotic animals – the one that was passed after Brent Kandra’s death – to expire. Kasich’s question also seemed ignorant of Terry Thompson’s specific alleged threats.

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42 Id.
43 Id.
44 Id.
46 Siebert, supra note 6 at 33
47 Jones, supra note 1.
48 Drash, supra note 44.
50 Id.
Even with those threats and Terry’s likely financial and personal implosion apparent to nearby observers, the events raise additional questions more germane than Kasich’s: Who was stewarding Terry Thompson and why was that charge unfulfilled? Does the price of freedom also include abandonment of those who take its promises too seriously? Where between neglect and antagonism is the intervention that might reach our troubled brothers?51

STEWARDS OF THE WILD

Outside Zanesville, the larger Ohio community of exotic animal traders held divided views about the Thompsons. It was a surprisingly robust community owing to Ohio’s lax regulations prior to the Zanesville escape. However, several years before Terry shot himself, the nearby and nationally prominent Mt. Hope exotic animal auction ceased carrying animals deemed to be dangerous to public safety, citing bad publicity and scrutiny of such sales when the animals later escape into surrounding communities.52 In the wake of Thompson’s death, many auction buyers expressed resentment that Thompson’s actions would jeopardize their ownership of seemingly non-dangerous animals as well.53 Others expressed sympathy for Thompson and fear that their animals would be seized by federal authorities. Some went so far as to posit that Thompson’s suicide was staged as a rationale by unknown possessors of government authority to seize his animals.

Conspiracy theories aside, the actions of the Mt. Hope auction owner-managers, Thurman and Chester Mullet, represent what one might consider preemptive self-regulation on the part of animal traders. The traders made a decision that limited their business, but in a self-interested way. The minority of dangerous animals that they sold could lead to a public relations nightmare if one of the animals injured or killed a human neighbor. Even a series of non-violent animal escapes could turn the tide of public opinion against the auction, if the public became convinced the animals were a threat to lives they considered sacrosanct. Such a fear is not without basis. Most individuals outside of the exotic animal community are likely unaware of its scope and impact: As many as 30,000 large privately owned exotic animals live in the United States, including 10,000 to 15,000 big cats;54 as many as 246 maulings and 21 deaths from captive large cats alone have occurred in the past 11 years.55 The policy change the Mullet brothers enacted at

51 Members of the Zanesville City Planning Commission worried in a 1913 report that the city’s very culture was one of individual isolation and disinterest in communal well-being: “It seems that each citizen has been content with his lot, and selfish in his personal well-being, either too busy or too strangely indifferent to care for or interest himself in the general welfare of the city and its people. It is not one man alone, or any one set of men, who is thus afflicted, but it is a disease that seems to have become a general affliction. The spirit seems to be one of general apathy, with a motto: ‘Let the other fellow do it.’”
52 Siebert, supra note 6, at 22.
53 Siebert, supra note 6, at 23.
54 See Note, Keeping Lions, Tigers, and Bears (Oh My!) In Check: The State of Exotic Pet Regulation in the Wake of the Zanesville, Ohio Massacre, 24 VILL. ENVTL. L. J. 125, 126 (2013).
the Mt. Hope auction was a way of imposing self-constraints in advance of, and hopefully instead of, a public outcry and a subsequent shift in law and regulation.

As is now well appreciated, self-limitation and internal norm imposition is pervasive in merchants’ guilds and similar networks, including those formed for the purpose of hunting wild animals. In their heyday, hunters of whales, foxes, ducks, etc., typically claimed their property via rules that took the form of social norms or customs rather than formal legal fiat. Robert Ellickson’s analysis of whaling cultures powerfully evidences this local process as a natural, sociologically-driven means of property rule development rooted in community but respected by law. The self-limitation was placed on the individual in these settings, but it was enforced socially. A whaler coming across a claimed mammal – marked by harpoon line, flags, or bomb lance – would leave it be, deliver it for a finder’s fee, or risk personal injury, threats, and the like from the rest of the whaling community. By observing such customs, ships limited themselves in ways that rewarded the efforts of pursuing ships, and made seemingly everyone – except the whales – better off.

Early property rules arguably developed collectively within these kinds of close-knit groups, rather than from a monarch or congress. Those groups could identify deviants, chastise them, and thereby protect the narrow interests of the people who were hunting. Other property rules might consider slightly broader interests. For instance, fox hunting adjudications might nod to interests of farmers in protecting their hens. Fencing norms might attend to interests of both crop owners and grazers. However, in most of these circumstances, the interests encompass a relatively narrow sphere of individuals with frequent contact, information sharing, and rough parity of power. The interests of the hunted nonhuman animals, not surprisingly, lay light-years

(asserting that, since 1990, more than 300 dangerous incidents involving privately owned big cats have occurred, including 20 human deaths).

50 Robert C. Ellickson, A Hypothesis of Wealth-Maximizing Norms: Evidence from the Whaling Industry, 1 J. Law Econ. Org. 83, 89-94 (1989); Pierson v. Post, 3 Cai. 175 (N.Y. Sup. Ct. 1805) (foxes). See also Hunud Abia Kadouf, LAW, CUSTOM AND PROPERTY RIGHTS AMONG THE ÂMA/NYIMAR OF THE NUBA MOUNTAINS IN THE SUDAN, 216 (2013) (“Should a person kill an animal, but not be quick enough to collect it before the corpse is touched by a fellow-hunter, then the person who has touched the corpse acquires a right to one foreleg of the dead animal.”); JAMES M. ACHESON, THE LOBSTER GANGS OF MAINE (1988).

51 Ellickson, supra note 53.

52 Ownership of right whales, for instance, was established by holding a harpoon line on the whale. Faster sperm whales could be claimed by affixing a parachute-like drogue or a flag. Finbacks belonged to the owner of the bomb lance that had killed them, usually from great distances. Id. at 93-94.

53 Id.

54 Id. at 94.

55 Id. at 85-86

56 Pierson v. Post, 3 Cai. 175, 180 (N.Y. Sup. Ct. 1805).

57 The classical example states that as grazers begin to outnumber row croppers, the burden to construct fences falls on the latter. More recent assessments also consider risk-spreading property regimes of pastoralists who prefer the diversification options that open lands provide them. Gary Thompson & Paul Wilson, Common Property as an Institutional Response to Environmental Variability, 12 CONTEMP. ECON. POLICY 10, 10-21(1994).
beyond the bounds of these rules. So too the interests of human whale watchers, beach goers, or novelists.64

Some decentralized property regimes might conceivably encompass broader interests not immediately represented or even readily apparent to holders of power. We could term these “stewardship regimes,” although the distinction is not complete. Public zoos across the United States, for example, are increasingly treating their animals in ways that acknowledge the animals’ emotional and physical needs in addition to their entertainment value.65

In 2004, the Detroit Zoo let go of its only elephants, Winky and Wanda, because it was unable to construct the 20-acre enclosure that would have been large enough for the ailing elephants’ needs.66 A zoo memorandum explained that Winky and Wanda had evolved to travel up to thirty miles per day, and that their relatively cramped quarters in Detroit had left them with severe arthritis.67 They were sent to a 510-acre refuge in California.

It is unusual for a zoo to willingly transfer flagship personalities. The charisma and presence of such creatures is a major selling point to public zoo-goers, especially young visitors who may influence family decision-making whether or not they appreciate the welfarist reasons that Winky and Wendy needed to move to California. Detroit zoo officials were reportedly the first to relinquish such marquee animals out of voluntary regard for the animals’ well being. However, other zoos are following suit with a host of similarly motivated managerial decisions. Many zoos are using enclosures with more natural plants and other sight obstructions that improve animals’ experiences even at the cost of reducing their visibility to human visitors.68

These decisions may indeed be acceptable to contemporary zoo-goers, but they clearly make sacrifices for the sake of constituents not directly represented in patron surveys, donor reports, or board membership. Stewardship might be said to exist in accepting such interests that are not merely derivative of those immediately represented, including those of the next generation, of animals, children, or other unenfranchised groups. More modestly, a sort of nested stewardship could occur where the interests of those unenfranchised groups grow embedded in the interests of acknowledged stakeholders. In either circumstance if stewardship and ownership are mutually dependent, the thread connecting them may lie here: where one considers interests not present in the negotiating room.

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64 Whaling customs inconveniently deviated from Hermann Meville’s monolithic description. See Ellickson, supra note 35 at 88.
67 See Id.
68 See Ellickson, supra note 35.
Stewardship in this way is not inimical to structures of property ownership. In fact, stewardship so conceived depends critically on many of the “incidents of ownership” that Honore famously laid out. It does not demand a giving over or relinquishment, but instead an active use and possession of the familiar sort, albeit focused on a larger set of interests than classically assumed. Without such traditional incidents of ownership, the steward’s goals would be unreachable under the general framework of government assumed in the liberal legal tradition. If the Smithsonian National Zoo lacked control over its pandas – including, it must be said, their reproductive organs – the Zoo would be powerless to affect its goal of breeding captive pandas. Similarly, if the Nature Conservancy did not own millions of acres of land and easements to that land, it would be an ineffective steward of those resources. The choice to exploit fossil fuels on its land may be a controversial decision, but the power to make that choice, one way or another, is necessary to effectuate the Conservancy’s mission of stewardship.

Ultimately, if ownership and stewardship are a dichotomy, each end of that dichotomy requires the other to exist. Stewardship requires some sense of control conferred by ownership, and ownership requires some sense of sustainability and prudence for the fruits of that ownership to be effectively realized. Even the animal owner who wishes nothing more than to consume his catch depends on a breeding stock that is not similarly devoured. The libertarian separatist can no more shed dependence on a well-stewarded commons than the selfless steward can avoid the mantle of domination. The Thompsons’ caretaker, John Moore, revealed something of this dialectic when he described his anguish at having to help tally bodies for Muskingum County Sheriff officials the morning after Terry Thompson’s death: “When you feed [the animals] every day and you water them and play with them and they respond to your love for them and love you back, how hard do you think that is?” Moore’s words speak of stewardship in pursuit of shared existence and requited love, even as the animals’ need for feeding and watering reveals their subjugation under human ownership.

TRAVERSING THE GULF

The twenty-four-year-old Brent Kandra, who died of a bear attack in August 2010, also bonded with the animals he cared for, including the bear that killed him. “It’s one that he played with constantly, every time that he was here,” Mazzola said. The familiarity was not enough to avert disaster. Brent died of blunt and sharp injuries. The bear was out of its cage for its usual

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69 Honore, supra note __.
70 Technically, the zoo does not “own” the pandas, as they are on loan from the Chinese government in exchange for annual financial contributions. The changing phases of China’s diplomatic use of pandas – from high-profile state gifts to long-term loans according to a “capitalist lease model based on financial transactions” to the use of pandas to promote “deep trade relationships characterized by trust, reciprocity, loyalty, and longevity” – deserves its own case study which, fortunately, exists: See Kathleen Carmel Buckingham, et al., Diplomats and Refugees: Panda Diplomacy, Soft “Cuddly” Power, and the New Trajectory in Panda Conservation, ENVIRONMENTAL PRACTICE (2013).
71 Justin Gillis, Group Earns Oil Income Despite Pledge on Drilling, N.Y. TIMES, August 3, 2014.
72 Siebert, supra note 6 at 40.
73 Id.
feeding. Sam Mazzola was the only witness. He had to blast a fire extinguisher on the bear to drive it back into the metal structure.

The fact that the bear’s provocation was unknown challenges the limits of our empathy for the attacker. “We don’t know whether something startled the bear or what prompted the bear to get aggressive with the caretaker,” Lorain County Sheriff’s Capt. James Drozdowski said. If Kandra knew of the bear’s trigger, of course, he might have evaded the attack. The counterfactuals are endless. Here, and in other instances, a gulf of language between us and our nonhuman counterparts aggravates the problem of interspecies stewardship. We have cultural heroes and heroines who seek to traverse that gulf, bringing back ethnographies of our nonhuman kin. Jane Goodall is only the most visible example. Hundreds of behavioral biologists have sought to transcribe the wants, needs, desires, fears, ailments, aspirations, and anxieties of myriad, distinct nonhuman individuals. Even so, the gulf of language and experience remains and has for millennia served as a blockade on empathy and stewardship. In that respect, the problem of other other minds is foundational to ethics, politics, and law. It haunts the liberal vision of equal regard in just the right way, exposing a gap between aspiration and action as vast and gnawing as a slaughterhouse.

Terry Thompson sought to defy that gap in his singular way, but his empathy was compromised. While he created something of a human-nonhuman world, he did not do so through careful study of animal signs, vocalizations, and behaviors. His means of defying the lexical gap was as most companion animal owners’: through physical contact and unilateral, despotic assumption of a custodial role. This is not to say that the kingdom lacked intimacy. In local footage aired later on ABC news, Thompson is seen giving his hand to a black bear who mouths on it, as if it were a pacifier. Marian was known to let one of the celebe crested macaques share her bed at night. News coverage of these familial relationships took on a pornographic air when covered nationally, a form of intrusion that, like ATF raids and tax liens, cannot contain its consequences. No matter, the upshot is that the Thompsons’ “babies” were swimming in a pool with no water: a financially-troubled operation that was headed towards insolvency.

75 See generally, Carl Safina, BEYOND WORDS: WHAT ANIMALS THINK AND FEEL (Macmillan, 2015).
76 It bears asking if successful stewardship requires empathy or if successful stewardship approximates empathy. If empathy requires envisioning the other’s thought process, we may ask ourselves if we can appropriately inhabit animals’ minds. See Safina, supra note 71. One answer: only through great effort, but empathy has always required effort. Id.
79 Kerley and Caron, supra note 71.
At his death, Terry had nearly $70,000 in unpaid taxes outstanding and fifty-six exotic animal mouths to feed, plus the mouths of other farm animals and dogs, his farm hand to pay, and his own needs to attend to. Up until Thompson’s death, there are no reported attacks initiated by these tigers, lions, bears, or monkeys. Perhaps the Thompson’s threadbare operation provided just enough empathic leadership to avert prior disaster. Perhaps as well, his sacrifice was genuine: His offer to take in orphans of other exotic animal owners seems – at least partially – directed toward some vaguely glimpsed vision of interspecies community. In this light, his willingness to take on insurmountable financial obligations can be read as a willing exposure to risk for the sake of others.

However in exposing himself, Thompson exposed his animals to risk as well. Thompson’s case therefore clarifies that sacrifice alone does not fulfill the role of stewardship. One can sacrifice in the name of others, but still harm their interests.80 Neither does volunteering alone constitute good stewardship. It was Thompson’s excessive volunteering of his resources to other burdened exotic animal owners that hastened his defeat. Many commentators, including Jack Hanna and Terry’s sister Polly, came to view Terry’s final actions as driven in part by his financial straits.81 With this burden in mind, Polly Thompson offered the unsettling vision of Terry Thompson at the end of his life, “looking at every animal, thinking, ‘How am I going to do this?’”82 She envisioned him “standing on that hill … [thinking] ‘Nobody wants me,’” as if he were occupying the same role that his animals did before he acquired them: orphaned and out-of-place in the peopled communities of rural Ohio.

True or apocryphal, these visions mirror a deeply-troubled Thompson, who failed as a steward in spite of – or perhaps hastened by – the efforts of local authorities. Thompson antagonized authorities by bringing young exotic animals, including a baby ape, to local pet fairs.83 But authorities and inspectors also antagonized him. Thompson was visited thirty-five times by the sheriff’s office prior to his death.84 The ATF covertly tracked Thompson through an informant.85 Sheriff Lutz openly discussed his intent to remove Thompson’s animals.86 When considered on their own, these actions appear as prudent efforts to contain a volatile figure. When viewed together – particularly through the lens of Lutz’s statements – they seem like a coordinated effort to deprive Thompson of his “children,” a campaign that helped drive Thompson to his end.

80 [MATT: explain this more fully, possibly through The Empathic Civilization.]
81 See Welsh-Huggins and Seewer, supra note 48, supra note 72.
82 Polly assented to the unfortunate role of testifying against her [older] brother during his trial for animal welfare violations. See Welsh-Huggins and Seewer, supra note 48.
83 See Drash, supra note 44.
84 See Jones, supra note 1.
86 See Jones, supra note 1.
In a classic regulatory scheme, inspections such as these provide a check against mismanagement. Other interventions include prosecutions, licensure, registration, permitting, record-keeping, audits, and bankruptcy proceedings. The first five of these measures are employed in the new Ohio Dangerous Wild Animal Law. Such formal means of interference in poor stewardship may divert potentially destructive personalities such as Terry’s from a perceived inevitable end. But an equally valid reading of Thompson’s story is that frequent contact with local and federal authorities itself fated his traumatic undoing. Thompson’s later years were ones in which the state’s tendrils extended repeatedly and deeply into his life. In addition to the ATF raid and the repeated visits of the Muskingum County Sheriff Office, two federal tax liens had been placed on Thompson’s property. A few years earlier, he had been convicted of animal cruelty charges that friends regarded as trumped up, and he endured a second failed attempt by authorities to prosecute him for animal mistreatment. Close acquaintances expressed the theme of a system exerting unsustainable pressure on Thompson: “He’d been pushed to the limit and he snapped,” said Dr. Robert Masone, an anesthesiologist and frequent social visitor to the Thompson farm. “Terry . . . was [driven] to the point where he didn’t have any other way out,” said Max Perdue, a longtime friend.

To offer another way out, the state of Ohio may have, and did eventually, focus efforts on preventative rather than post-hoc interventionist measures. The new regulations require surety bonds and liability insurance that raise the barriers to entry for owning exotic animals. The new financial requirements seem designed to filter out those prone to threadbare management, as Thompson was. The new law also bans sale or auction of dangerous wild animals. By focusing on the moment of acquisition, such a prohibition avoids the intervention trap that Terry and local authorities fell into. If men like Terry do not have exotic animals in the first place, the substance of their dispute is null. Of course, “men like Terry” in this analysis may include not only those prone to reckless decision-making, but also those who simply lack financial resources to meet the new Ohio requirements. As of early 2016, nearly half of all wild animals registered in the state of Ohio were housed at Noah’s Lost Ark of Berlin Center, a non-profit animal sanctuary in Mahoning County that depends on $1.3 million per year in private donations to sustain its operations. The executive director of Noah’s Lost Ark, Ellen Karnofel, expressed sympathy for

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87 Ohio R.C. §§ 935.04 (registration), 935.15 (record-keeping), 935.05-07 (permitting), 935.23 (prosecution).
89 In addition to the various raids and prosecutions that Thompson faced, officials also have used public nuisance suits as an ex post effort to address problematic exotic animal situations. See, e.g., Summit County Board of Health v. Pearson, 157 Ohio App.3d 105 (2004) (upholding determination that a privately owned “collection of exotic and domestic animals, including lions, tigers, leopards, bears, foxes, pigeons, dogs, and an alligator” posed a public nuisance due to excessive odor and unsanitary conditions).
90 Ohio R.C. §§ 935.05(d), 935.08(d).
91 Ohio R.C. § 935.18. There are no explicit exclusions for this provision as there are for the limits on possession of dangerous wild animals. § 935.03. However, Thompson’s or others’ acquisition of nonhuman animals from distressed owners would likely not be limited by this provision, as those are not sales or auctions.
92 From the organization’s website: “Noah’s Lost Ark is dependent on admission fees and donations in order to survive. Your admission helps us help those who cannot speak for themselves.”
those private owners who had bonded with their animals for years only to lose possession under the new regime. Such dispossession cuts especially deep given the endangerment of the very species from which exotics have been bred: “The animals are disappearing from our planet as we speak,” said Karnofel. “It’s very hard to keep going.”

Given their goals, John Kasich and the Ohio legislature were right to focus on the moment of acquisition. In doing so, they venture a reality in which other exotic animal owners in Ohio cannot accumulate a mass of nonhuman bodies ripe for failure. In this way, Ohio’s dangerous wild animal law is a law against creative destruction, and one that makes any failure less harmful to those in proximity to its collapsing columns. It is also a law that takes away autonomy from a class of individuals: Terry Thompson, Sam Mazolla, but also other exotic animal owners whose obsessions were comparatively tame. Given their generally libertarian outlook, these individuals hold little faith that governments and other instruments of officialdom will adequately protect endangered species in the wild. From their perspective, the new Ohio regime restricted not only their private kingdoms, but also their ability to serve as stewards of the diversity and grandeur of life.

SUBJECTS OF THE STATE

In addition to mandating liability insurance coverage or posting of a surety bond, the new Ohio laws require pre-existing owners of “dangerous wild animals” – a category including wolves, great cats, bears, alligators, other large mammals and reptiles, and most nonhuman primates – to register their animals, pay a substantial annual permit fee, pass a criminal background check, embed microchips in the animals’ bodies, own sufficiently sized and equipped animal shelters, adopt a plan of action in case of escape, and demonstrate proof of appropriate training and experience to house, feed, and handle the animals. Sterilization of certain dangerous male animals is also required unless a qualified veterinarian opines that sterilization is medically contraindicated. No new licenses would be issued for those wishing to raise or sell members of the defined category of “dangerous wild animals.”

93 “The real question is why did [Thompson] have all those animals to begin with?” Kerley and Caron, supra note 71.
94 This reality is compromised by the failure to limit in-kind transfers or other means of acquiring exotic animals. See supra, note __. In addition, officials estimate that as many as one in three exotic animal owners in the state are refusing to comply with the registration scheme and continue to hold unlicensed animals. [CITE]
95 Remarkably, the only human injury reported during the release, hunt, and transfer of the animals on Terry Thompson’s farm was an agent whose hearing was partially lost due to the incessant sonic blasts of gunfire during the hunt. Siebert, supra note 8. As journalist Chris Jones put it, “Depending on your proximity to Zanesville, Ohio, and your feelings about the relative value of animal life, what happened at the farm was either one of the worst mass shootings in American history or a miracle.”
96 See infra note __.
97 Ohio R.C. § 935.04.
98 Ohio R.C. § 935.06(A)(4). No similar veterinary advice exemption was included for the law’s microchipping requirement, an omission that became a central focus of a subsequent legal challenge to the law. See infra TAN __- __. Veterinary experts for plaintiffs expressed the view that anesthetizing elderly animals for the sole purpose of
Thus, if Mt. Hope had not taken itself out of the business of selling – or helping to sell – dangerous wild animals in Ohio, it would have been forced out in 2013. Other owners of bears, tigers, cape buffaloes, wild African dogs – the list is twenty items long – would need to comply with the new Ohio regulations or seek accreditation with the Association of Zoos and Aquariums (AZA) or the Zoological Association of America (ZAA) as an alternative private compliance method. In practice, people like Terry Thompson would have to get big or get out. Accredited zoos have much more infrastructure and costs than Thompson’s operation. Without an exemption, owners would see their collection steadily dwindle through death or confiscation. Anticipating the law’s effects, the state of Ohio constructed an animal-containment facility to temporarily house seized exotics a cost of $2.9 million. The era of Terry Thompsons was coming to an end via regulation. Those unwilling to yield control would have it wrested from them.

Aggrieved exotic animal owners filed suit in 2013, seeking an injunction against the new Ohio law and a declaration that its requirements violate constitutional rights to speech, property, and due process. The plaintiffs argued that the law’s onerous permitting requirements, coupled with the exemption from those requirements for accredited members of the AZA or the ZAA, compelled them to subsidize the speech of, and associate with, organizations they deemed objectionable. The state of Ohio candidly admitted that the permitting requirements under its new scheme were far more exacting than analogous accreditation criteria for the AZA or the ZAA. Thus, to plaintiff exotic animal owners, Ohio was forcing them either to surrender

inserting a microchip would be cruel and medically inadvisable, a view for which the district judge hearing the case expressed sympathy. “The Court is empathetic to the Plaintiffs’ situation in this case and especially to the difficulties faced in completely the microchipping requirement.” 913 F.Supp.2d at 539. Still, the plaintiffs’ concerns were dismissed with the faint promise that they might be able to invoke an “equitable defense” of medical necessity – not specified in the new law – in the event they were prosecuted for failing to microchip an elderly animal.

99 Ohio R.C. § 935.02(B)(1).
100 Ohio R.C. § 935.03(C).
102 See Alan Johnson, Fewer Wild Animals Being Kept by Ohioans in Wake of 2012 Law, COLUMBUS DISPATCH, February 14, 2016 (“There were 206 exotic animals, including snakes and reptiles, registered in the state last year, but that number is expected to shrink when the count is updated in a few weeks. At the same time, the list of owners of restricted species will drop to 52 or so this year from 56 last year. Only one new permit owner has been added, and several are dropping off the list as their animals die or are moved out of state.”).
103 See http://www.dispatch.com/content/stories/local/2013/06/30/nobody-home.html. It is worth contrasting Ohio’s decision to build this facility with the laws of states such as Pennsylvania that permit the government to euthanize seized animals. See PA. CONS. STAT. ANN. § 2963 (1986) (noting “disposal” of exotic animals as available penalty for violating regulatory provisions).
105 For instance, the regulations allegedly mandated a shelter size of 5,000 square feet for privately owned hyenas, whereas the standard under ZAA rules would only be 600 square feet. Wilkins v. Daniels, 913 F.Supp.2d 517, 528 (S.D. Ohio 2012). A member of the state task force that advised on the new regulations, Polly Britton, testified on behalf of the Ohio Association of Animal Owners, a loose network of exotic animal owners who opposed the regulations and the perceived hegemony of professional zoological organizations. Britton testified that state officials
ownership of their beloveds or to join an associational guild they found distasteful.106 Even sale – not that they desired it – was unavailable to the plaintiffs because the market value of covered animals had suddenly plummeted due to the new law’s breeding and transfer restrictions. These various serpentine incursions, so offensive to libertarian sensibilities, were all the more galling given that the plaintiffs, for their part, sincerely believed that their backyard republics represented a more perfect union, one inclusive of threatened and maligned creatures that “people don’t understand.”107

The plaintiffs lost at both the district and appellate court levels.108 At the appellate level, the court was quick to rule that the AZA/ZAA exemptions did not exert an unconstitutional pull on private unassociated owners, given the availability of other regulatory compliance options, such as exemptions for circuses, research facilities, or “educational institutions that display a single dangerous wild animal as a sports mascot.”109 The court failed to acknowledge that these exemptions were useless to plaintiffs and represented the comparative lobbying strength of the exempted organizations. No such political clout existed for plaintiffs, who the appellate court identified somewhat derisively as “self-described exotic animal enthusiasts.”110

Nor did the requirement to implant a passive integrated transponder (PIT) chip under the skin of living animals constitute a compensable physical taking of private property, given that it did not, in the court’s view, involve government occupation or a government-authorized occupation by a third party. Instead, the regulations were viewed as being akin to requirements for “license plates on cars, warning labels on packaging, lighting on boats, handrails in apartment buildings, and ramps leading to restaurants.”111 This result seemed ordained notwithstanding testimony from plaintiffs’ experts that some elderly animals might die during the anesthesia procedure required prior to implanting the animals with microchips. The plaintiffs’ fateful mistake on this score was to argue the case as a physical, rather than a regulatory, taking. To the appellate panel, the possibility of an offensive physical occupation just did not register: “[E]ven during task force meetings openly expressed a desire that the new rules “be so strict that owners could not, or would not, be able to keep their animals.” Wilkins 744 F.3d at 412.

106 The precise nature of the plaintiffs’ objections to the AZA and ZAA remained vague in the district court opinion. More helpful are various position statements issued by the Responsible Exotic Animal Ownership (REXANO), a non-profit organization that seeks to advance the interests of private exotic animal owners. See http://www.rexano.org/Rexano_Position.htm. REXANO appears to regard AZA/ZAA members as overly commercialized institutions that offer visitors only limited opportunity to encounter exotic animals. See John Curtis, The Myth of AZA Accreditation, Feb. 2007, available at http://www.rexano.org/AZAmythArticle.htm. REXANO’s strong support of private ownership rights is connected to a belief that such rights enable a fuller relationship and bond with exotic animals through more intimate, less mediated encounters.

107 Supra TAN __.


109 Id. at 412.

110 Id. at 413.

111 Id. at 419. See also 913 F.Supp.2d at 642 (“The procedure is undoubtedly at least minimally invasive to the animal, but this requirement is a function of government regulation of dangerous wild animals, not government physical appropriation or invasion.”)
after appellants implant the microchips, they retain the ability to use and possess their animals and implanted microchips.”

Giorgio Agamben’s notion of “bare life” here finds vivid illustration: Excluded from subjecthood, exposed to bodily violation, rendered perfectly legible to the state, exotics under the new regime seem perfectly assimilated to the property form, no different from the digital wafer embedded under their skin. Indeed, the animals hardly seem to be animate property at all, let alone sovereign lives capable of holding secrets even the state cannot know. At trial, the state’s experts testified at length regarding the public benefits of “microchipping” and “traceability” for potentially dangerous animals, focusing on issues of identification, containment, and disease control.

Plaintiffs’ experts, in contrast, emphasized the potential pain and health risks to the animals themselves from undergoing microchip implantation. The Sixth Circuit, for its part, elided the question of animal pain and subjecthood by simply stressing that the procedure is “commonly used.”

Here, as elsewhere, epistemic debates purportedly rooted in science and empiricism seem also to work as theaters for the expression of social values, anxieties, and commitments. Dr. Stull – the state’s expert, confident that he could anesthetize a sixteen year old African lion even though he had never personally examined it – represented technocratic expertise and all those who see their position validated and enhanced through its authority. The plaintiffs’ expert, Dr. Jo Anne Green, in contrast represented the relatively voiceless, including, in this litigation, those private individuals who own legally voiceless exotic animals. Dr. Green sought to validate the wisdom and experience of the plaintiff caretakers by dismissing the need for technocratic tracking devices. Speaking of plaintiff Cyndi Huntsman and her two elderly big cats, Dr. Green opined: “[Huntsman] has a history of both of the animals. She knows where they came from and how long they have been there. I don’t see any reason to PIT tag those animals.” Dr. Green contrasted Huntsman’s familiar, loving stewardship with the state’s “quite painful” intervention, which would necessitate “inserting a 14 gauge needle under the animal’s skin.” Speaking of the elderly cats, she opined that the state’s prescription “would be cruel and unjustified.”

This attempt to speak for the voiceless necessitated a response from the state’s experts, one of whom confidently claimed, “I have microchipped many animals who didn’t even notice anything was happening.” The problem of other other minds was here on full display. Unlike

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112 744 F.3d at 419. See also id. (“There is little difference between a law requiring a microchip in an animal and a law requiring handrails in apartment buildings.”).
113 Homo Sacer
114 913 F.Supp.2d at 529.
115 744 F.3d at 411.
116 Kahan
117 913 F.Supp.2d at 530.
118 Id. at 527.
119 Id.
120 Id.
121 Id. at 529 (Dr. Paul Stull, D.V.M, Assistant Chief, Division of Animal Health, Ohio Department of Agriculture).
philosophers and scientists, the legal system cannot withhold judgment pending further evidence and analysis, even with respect to unanswerable questions. Through the conjuring magic of burdens of proof and standards of review, plaintiffs’ claims failed, as did their appeal. A request for a rehearing in the Sixth Circuit was denied, after which the plaintiffs presumably accepted, albeit with regret, that the rule of law had definitively ruled against them. They had been forced to surrender control to the sovereign, and to the sovereign’s delegates. Lost in the proceedings was an opportunity to consider the animals’ interests directly, rather than through the related constitutional claims of their owners. Grappling head-on with the state’s desire for “traceability” might have been useful judicial practice for more worrisome efforts by the state in the future to categorize and control “bare life.”

On a deep level, Thompson never surrendered complete control. But as do all of us, he did surrender control through a lifetime of organized transactions. In the modern state, and in most any community we can imagine, surrendering control is necessary to co-exist with one’s peers. Even if the prospect of mandatory tracking chip implantation for human animals remains a distant dystopian future, control is and must be ceded in far more mundane and multifarious ways. Driver’s licenses, insurance requirements, traffic signs, language conventions, all kinds of behavioral proprieties: By limiting oneself to these customs and laws, we gain the ability to travel, work, interact, and generally not provoke or agitate one another, through a set of shared expectations. More fundamentally, we guarantee each other a greater freedom from harm by limiting our potentially harmful actions. Those harmful actions run the gamut from driving on the left side of the road to murder to waste dumping to releasing nonhuman animals thought to be dangerous. To avoid the consequences of these deeds, we collectively agree to refrain from perpetrating them.

Likewise we surrender control when we construct bureaucracies and technocracies for the collective good. When granting power to an agency, Congress – in the name of us – admits that we cannot control essential functions of our state and its economy democratically: setting environmental, health, and safety standards; regulation of banking or labor markets; provision of social services; and so on. On the first motion, we surrender partial control to our families and local communities. On the second, we surrender control to political systems. In the modern state, we yield to a third, surrendering control to technocratic agencies, admitting that we do not have enough information, expertise, or time to oversee those who make decisions nominally on our behalf. This line tracks technocracy as the outgrowth of democracy, rather than the enemy of it. Technocracy marks a collective surrendering of control amidst complexifications made possible by the very social systems over which we once asserted control. The Nightwatchmen’s State so well gestates freedom that it must thicken and adapt to tame its offspring.

122 The district court judge was particularly candid in noting the harm wrought by the act, despite its constitutionality: “As a final matter, the Court notes that it is sympathetic to the exotic animal owners who will not be able to retain possession of their beloved animals as a result of the operation of the Act, and it recognizes that the circumstances may lead to the severance of strong bonds between the animals and their owners.” 913 F.Supp.2d at 544.
We hasten to add a final and most inescapable dependency: the control wielded by nature over the conditions for life’s existence. Through human invention and management, we seek constantly to expand the possibilities frontier of nature’s bounty. We succeed to such a degree that some imagine us actually liberated from nature’s limits. Those thoughts too depend on phosphorous.

HERE’S THE THING

It is perhaps because of these multiple surrenderings that the desire for dominance over one’s possessions can be so strong. Not only material dominion but one’s sense of selfhood may be at stake. In the aforementioned Sixth Circuit suit, owners of “dangerous wild animals” argued they were unconstitutionally compelled to “subsidize the speech of their purely private political and ideological rivals,” the AZA or ZAA. The new Ohio law allowed exotic animal owners to avoid permitting, sterilization of their exotic animals, and microchipping requirements if they were members of the AZA or ZAA. Such exempting membership was alleged to be a compelled subsidy and a violation of the owners’ freedom of association rights. These associational objections were grounded in a fear that the state government was taking away they opportunity to pursue the primary “project” of many Ohioans’ lives: running personalized animal safaris in their back yards. For some, it was a business opportunity, but along with that a personal creative opportunity. With the new law, their fantastic kingdoms would be shuttered, not immediately but with certainty. The only game left would be those of their rivals.

The freedom to build one’s own creative kingdom is nowhere in the Declaration of Independence or the Constitution, but it can easily be seen to emerge from the rights enumerated in those documents. To many of Thompson’s kind, the threads of life, liberty, and property do not separate. Indeed, property ownership is arguably a necessary element of identity formation in modern societies. Terry Thompson, Sam Mazzola, and others take this sense of identity in property to impressive and highly visual proportions, given the nature and size of their collections. It is common to drive past rural homesteads and see similar collections, particularly

123 Julian Simon; Roberto Unger
124 Jacob Moleschott
125 See Margaret Jane Radin, Property and Personhood, 34 Stan. L. Rev. 957 (1982). For a chilling reinterpretation of Professor Radin’s personhood theory with potential relevance to the case of exotic animal ownership, see Daniel J. Sharfstein, Atrocity, Entitlement, and Personhood in Property, 98 Va. L. Rev. 635 (2012) (“If personhood is fostered by bad conduct, in cases where ‘human flourishing’ and ‘the freedom to live one’s life on one’s own terms’ through property ownership is a function of mistreating others, it becomes much more difficult to resolve property disputes on the basis of personhood.”).
126 Ohio R.C. § 935.03(B)(1)
128 Bernard Williams.
of nonfunctioning vehicles. In southern Missouri towns, decommissioned school buses are the special token seen in many people’s lawns. In western Pennsylvania, some yards boast a fleet of weathered fishing boats patiently awaiting restoration. An estimated three thousand fee-paying buyers and curiosity seekers showed up at the Thompsons’ farm when Marian held an auction of her dead husband’s sprawling collection. This role of property accumulation is not trivial; it shows a creative control that is more than just a means to a utilitarian end. This is why disposssession can be so severe an intrusion, even though the property lost may seem trivial or eccentric to others.

Still, when creative control is the primary or only end of one’s acquisitiveness, destruction can arise as the impossibility of complete control becomes apparent. Terry Thompson’s taste for acquiring unwanted animals grew disproportionate to his resources. As his collection grew, the guiding force of Terry’s habits seemed unmistakably to be empire-building rather than caretaking. Those who transferred their exotic animals to him were reportedly distressed by the ramshackle operation. “They’d visit and see the situation and they’d freak out,” County Officer David Durst said. “[T]hey’d call me… [and t]hey’d say, ‘I was horrified.’”

The acquisitions, although done for the promise of care, were driven by Terry’s penchant for over-sized risk-taking. He was also a speedboat record holder and was rumored to fly his crop-duster below a local highway overpass. In this frame, Thompson’s operation was indifferent to the possibility of collapse, or even encouraging of it. As evidenced by his frequent statements to that effect, Terry had destruction in mind as a final creative pathway for a sustained period of time. The day before he released the animals, Thompson told John Moore he had a plan to address his marital problems, adding, “You will know it when it happens.”

In his final act – when it happened – Thompson was an artist, deranged, that captured the imagination of the country and the world through his destructive performance.

A BID FOR CHAOS

Thompson’s ultimate means of creative destruction, and indeed self-necessitated vengeance, was an unpublicized artwork at first. The first person to notice anything wrong on that day in October was Sam Kopchak, Thompson’s neighbor. Kopchak was walking his

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131 Signs of our penchant for possession and collection can be found closer to urban and suburban areas as well. Just north of Cincinnati, the city of Lebanon, Ohio, boasts the Midwest’s largest flea market, Traders World, a vast emporium of crap. Traders World stretches across more than 500,000 square feet of retail space across sixteen pavilion-like buildings. When seen from the sky it mimics the austere grandeur of concentrated animal feeding operations. When seen up close, Traders World is replete: murals of thirty-foot long dolphins, life-size plastic giraffes and elephants. Much of it seems directed toward the animal kingdom in a strange resemblance of the exotic animal trade in Ohio. “It’s a shopping safari…Enjoy the hunt!” reads the main page of the Traders World web site. TRADERS WORLD, http://www.tradersworldmarket.com/ (accessed on Jan. 26, 2015).

132 Drash, supra note 44.
Arabian-pinto horse, Red, to the barn for the night, when the horse bolted uncharacteristically. Red’s behavior tipped Kopchak off to the broader disturbance he had not yet seen: horses in the nearby field circling proximal to the dark figure of a bear. The equine maelstrom was an omen. After securing Red in hand, Kopchak turned and started walking to the barn. He froze. An African lion stood fifteen feet to his left, its face against a wire fence. Kopchak and his horse made it to the barn, walking briskly and calmly.

It was the exotics that lost in this game of composure. When Sheriff Matt Lutz, Sergeant Steve Blake, and Deputy Jonathan Merry arrived after a calm but insistent call from the Kopchak’s house, they began tracking down escapees one by one. A lioness was shot under a neighbor’s porch after it bared its teeth at Merry, its pursuer. Likewise, a black bear charged Merry in Fred Polk’s driveway and was shot and killed at a distance of less than twenty feet. Merry and his colleagues killed two more lions, a tiger, and a wolf in the early going, with another forty-three large exotic animals to fall in the ensuing hours.

Overnight and through the next day, rain set in as the world learned of Terry Thompson and his defunct menagerie. Highway signs on interstate 70 flashed the surreal warning, “CAUTION EXOTIC ANIMALS,” and the sheriff’s men hunted into the night a scared and disoriented flock of animals meant for other lands. John Moore, the Thompsons’ animal caretaker, was enlisted to help find the animals, document their deaths, and identify them by their bodies. Many asked why tranquilizers were not used to bring down the animals, and the popular media mistakenly reported that eighteen of the dead were rare Bengal Tigers. Sedation was virtually impossible, animal handlers including Hanna explained. Tranquilizers act on a delay, and animals often charge in response to being shot by such darts. Regardless, John Moore asserts that up to six cats were shot in locked cages, including a pregnant tiger close to giving birth to her cubs. Another twelve animals shot by law enforcement were less than a year old and non-dangerous in Moore’s view. Despite these criticisms from a not-disinterested Moore, most commentators have supported the decisions and actions of the law enforcement officers.

The dangers were well apparent to Barb Wolfe, a veterinarian affiliated with the Columbus Zoo who assisted law enforcement officers on the night of the animal release. When a tiger was located the following morning loose and alive in some trees, Wolfe attempted to tranquilize the beast. After slowly creeping to within fifteen feet of the tiger, she raised her rifle and shot a dart into its hide. Someone observing from a distance shouted in excitement after she hit her target. The noise startled the tiger which leapt to its feet and charged Wolfe. She tried to retreat but became snagged in brush, at which point Jay Lawhorne, a former Marine and SWAT

133 The officers involved assert that large cut holes in the cages rendered them useless. Jones, supra note 1. 134 Moore testified for plaintiffs against the new Ohio Dangerous Wild Animals Law. He stated that, on the night of the tragedy, when he was trying to convince the initial deputies on the scene that he could safely re-confine many of the animals, “the next thing, a truck load of deputies come in with assault rifles and stuff. And that’s when it all took off.” Wilkins, 913 F.Supp.2d at 532. When he again told Sheriff Lutz that “we could put some of these animals back,” the sheriff responded, “it’s a public-safety thing, you know.” Id.
team member who had helped lead the overnight hunt, unloaded several rounds into the charging
tiger, enabling Wolfe to escape. Ten minutes later Wolfe crept back into the woods to find the
tiger still alive and conscious. At that point, “Lawhorne raised his M4 to his shoulder, and he
pulled the trigger, and the last Zanesville tiger finally fell, the sound of the bullets echoing
between the trees.”\(^{135}\)

Intentionally or not, Thompson had weaponized his animals in the eyes of the law. Most
were shot as they emerged from darkness or enclosures in a state of panic and agitation. The
moment of chaos extended for hours, and the officers doubted their ability to protect the land
beyond Thompson’s gate, where other animals and their children were bedding down for the
night.

**THE ABSENT STEWARD**

Terry Thompson had lived through Vietnam. He knew what carnage looked like. But he
did not see the carnage he created: officers shooting the flesh off tigers to retrieve Terry’s
splintered body, narcotics experts firing at the flaming thermal image of a grizzly in the night –
imagery that would torment the responders for months and even years afterward. Thompson shot
himself sometime before four-thirty in the afternoon. He made no immediate indication to his
friends what he would do that day. At his sentencing a year before, he allegedly promised to “let
all [his] animals loose and then blow [his] brains out.”\(^{136}\) But he was silent on that intention
nearer to the day of his death. John Moore, his farm hand, had talked with Thompson on the
phone for two hours the morning of the event. Thompson reportedly left saying “see you tonight
at five-thirty.”\(^{137}\) Moore, instead, was one of the first to see Thompson dead, with a gunshot
wound in his throat, a bite-mark on his head, and his pelvis in shreds. Thompson had smeared
himself with chicken guts before he shot himself. A “Buckeye” tiger had taken Thompson’s
invitation and was ripping the flesh from his crotch.

The final act of sacrifice was vintage Terry Thompson: absurd, messy, a memorial unto
itself. He created an image of hell that his animals and their pursuers could not escape. One
commentator likened his scattered beasts to “deeply disoriented carousel animals whose creators
had deserted them.”\(^{138}\) One bear, a former involuntary entertainer, was shot as it clung to the
heights of a telephone pole. Others wandered aimlessly only to charge when they were
confronted and then brought down with bullets. One of the monkeys, likely bearing hepatitis,
was eaten by a tiger. At the end of the carnage, only six animals were recaptured alive. The rest
were buried in a mass grave on the Thompson farm. Terry had cursed and killed his kingdom as
he died himself, part eaten by his beloved.

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\(^{135}\) Jones, *supra* note 1.  
\(^{136}\) Siebert, *supra* note 6 at 33  
\(^{137}\) Id.  
\(^{138}\) Id. at 9.
Perversely Christ-like, Thompson’s chicken-gut surrender is barbaric in a way that only animal sacrifice can echo. Fresh raw meat of any source claims a wildness most of us are not prepared to accept as nourishment. Thompson became that wildness. His sinews broke in the mouth of a tiger before the first of his animals would be shot. The only power left to Thompson was to relinquish control and let his kingdom collapse. Marian had left him. The state had subjugated his life, first with the trauma of an ATF raid then through the orderly proceeding of a court. Thompson’s private kingdom had been orchestrated with such a high degree of control that its resulting chaos was only a natural unwinding. It was as if a dam had been breached. Thompson said his last rites as the water began seeping through the cracks he created with bolt cutters, a Magnum revolver, and a dream of wildness.

Marian Thompson was not present to be swept away by the deluge. Thompson shot himself while she was out of state on horse-training work. Marian had allegedly left Terry for another man while Terry was in prison, likely to her benefit. Despite that choice, she was the one to come home to Kopchak Road, keep house, and take care of the remaining animals after the breach. After the dangerous wild animal law was passed, Marian duly registered those five animals. She also paid off the back-taxes on the Muskingum County Animal Farm and fought for, and won, the return of 40 weapons that were confiscated from Terry under the federal firearms charges. Marian strategically avoided media attention in the days and months after the release. After securing the return of her remaining animals which had been sent to the Columbus Zoo in the immediate aftermath of Terry’s breakdown, Marian did send an email to local press indicating that she would write a book on the episode. John Moore, the animal caretaker for the Thomsons, wrote one himself with little fanfare.

Absent Marian’s view, the story remains one dominated by male voices: Terry Thompson, John Moore the caretaker, Johnathan Merry, the deputy, the judge in Thompson’s sentencing, Fred Polk the neighbor, Jack Hanna, Chris Jones and Chris Heath who wrote feature-length articles on the massacre in Esquire and GQ respectively. The exceptions to this rule are Kathy Thompson, a local journalist, and Terry’s sister Polly, who testified against Terry in his animal welfare trial and spoke to reporters after his death. Marian was also, problematically, the one whose personal privacy was the most violated by the ATF raid as she stood for the entirety of the raid, given no opportunity to properly clothe herself while agents swept the house and confiscated at least 40 firearms. In the fuller story, she transcends the role that otherwise is pinned to her: the traumatized wife of the suicidal Thompson, the female body that was exposed by the raid. We don’t know more of her role, because of her understandable decision to limit her exposure. We do know that financially and physically, Marian bore the burden of establishing normalcy in a place that was publicly scarred by her husband’s ultimately selfish actions.

139 Six animals were seized; five were returned. See supra note __.
141 Veterinarian Barb Wolfe also achieves notice in the public reporting.
Thompson’s selfishness is visible even in acts that purport to kindness or self-sacrifice. In his final offering, a symbol of perverted love, Thompson baited his animals to a certain death. Any animal that fed on him would be marked and killed. More broadly, the fact of his death was more likely to lead to a fatal response. For one, the erstwhile hunters would have a palpable image of their own mortality and that of the nearby human residents they were meant to protect. Secondly, without the mystical guiding hand of Thompson, the response team was unlikely to trust Moore or any other trainer to secure the animals alive. Thompson’s act of release was meant to be irreversible: Cages were compromised such that they ceased to be a haven for those animals who might otherwise have survived the night. No refuge would be safe. Few bodies would be spared.

Further, with the sacrifice of his own body, Thompson crossed the line of language and of empathy heretofore discussed as dividing the species. He violated a sacrosanct directionality of meat implicit in our Western morality systems: Humans can eat nonhuman animals, but no one can eat human flesh. It is important to note that Terry’s attempted transubstantiation was seemingly done out of love for himself, rather than for his animals. Even in releasing his nonhuman animals and killing himself, Terry exercised creative-destructive control. Although they walked “free” for a matter of hours, their fates were sealed. Although they ate of his flesh, they did so at his direction. Terry’s distorted vision of a unified kingdom, a mutual domain of human and nonhuman animal life, was premised on denying his animals those things which he possessed: autonomy, property, land, and environs he could shape to his desires. Their environs were derelict cages in muddy fields, a continent and an ocean away from the terrain where most of their species originated.

The Dangerous Wild Animals Act may have averted the Zanesville, Ohio, animal massacre, had it been in place in the 1990’s and 2000’s. Terry Thompson’s acquisition would have been limited more directly by the strictures of the law. Without auctions of exotic animals, excluded now by the law, the Muskingum County Animal Farm may have never existed. Terry’s first exotic animal, a lion cub named Simba that he purchased for Marian’s birthday, may have never been sold in Ohio. Instead, once Terry Thompson acquired his flock, our stewardship of him became arguably doomed to fail. Any effort to dispossess him of his nonhuman animals drove him to threats and violence. The state could have enacted a law against suicide by exotic animal release and gunshot. It could have enacted a law hastening removal of exotics from violating parties. But to John Kasich’s point, once Terry decided to break the law, deterrence was pointless and confiscation almost certainly would have been pre-empted by disaster. In this narrative of failed stewardship, what’s missing is the state’s control.

The state could not control Terry in the way that he controlled his animals. Short of seizing the animal with a coordinated raid, the state had no power to dictate Thompson’s immediate actions. Thus the tensile dichotomy breaks down here: where the state’s control of Terry never was, or was . . . but snapped. Likewise, we may question how possible stewardship is of certain animals when control is limited by the gulf of language and autonomy. Stewardship
over animals and other beings is not complete unless, perhaps, we tame them. But in taming them their being is changed. To capture its motion, we grasp a spinning coin. To love another, we sometimes accept their death.

**SPEAKING IN WILD TONGUES**

Stewardship and ownership need the wisdom and control, respectively, of each to meet the goals of either. The other oppositions present in this story – order-chaos, love-fear, democracy-technocracy, freedom-security – also are complex and intertwined. Behind walls of apparent order destructive pressure builds. In loving truly we render ourselves vulnerable to fearsome pain and disappointment. A successful democracy could not function without deferring some decisions to unelected minds. Freedom from harm requires limitations on one’s own and others’ actions. Those limitations are themselves a type of harm. Real violence, for example, was perpetrated on Terry and Marian Thompson during the government’s ATF raid. This reciprocal nature of harm is well-known in the field of law and economics, though its tragic aspect fails to register there.

When acknowledging these poles and their co-existence, integrative thinking and perhaps religious guidance may be of some use: Religion, in its better shades, can offer individuals a means of accepting such dualities and limitations, or even acknowledging, grappling with, and sometimes overcoming seemingly fated failures. At its worst, individuals can use religion to justify violence when their limited world is threatened. Thompson did not profess a religion, but the specific choice of his bodily sacrifice amounts to a religious act: It expresses meaning through a ritual that has no clear economic import. Through the act, Thompson acknowledged, but lashed out at, a limitation on his life. It is an essential limitation: constraining one’s action to live in society, including close communities and the broader regulatory state. At times, Thompson seemed willing in his life to accept other fundamental limitations: the kind necessary to live in relationship with one’s immediate kin. Kin here includes the fifty-six nonhuman residents in Thompson’s home. They were the only kin Thompson had left at Kopchak Road when Marian left. He loved them, selfishly but intensely, and too consumingly to keep Marian, and others, in his life.

The distant world loved Thompson’s animals too, but was not willing to enter into their society unprotected. Kathy Thompson, a Zanesville reporter of no direct relation to Terry, had such intentions when she visited the Thompson’s property several years prior, anticipating that the big cats would be in cages. They were not: A full-grown panther walked through Kathy’s legs and looked up at her while she idly watched Marian bottle feed a cougar. Kathy, to her own surprise, petted a Siberian tiger in the Thompsons’ yard. “I thought I’m never going to have this opportunity again,” Kathy recounted about her visit to the Thompson’s. The latent power of these animals had thrilled her. In communing with them we become strangers to ourselves as

143 Siebert, supra note 6 at 13.
much as we become kin to the animals. Aldo Leopold understood the heart of this appeal when he described seeing the “fierce green fire dying” in the eyes of a wolf he had hunted. The fire was “something new to [him] … something known only to her and to the mountain.”

Leopold was etching a new conservation ecology narrative about wolves’ role as a keystone species, retelling an interconnectedness of things tracked by field notes and calculus. He also spoke to an intimacy inherent in our experience of predators. We love them because they threaten us like few other beings can. We experience an old adage in reverse: “Those who can hurt you, you may love the most.”

Thompson undoubtedly knew this as well, but he failed to limit himself in ways that were necessary to keep his beloveds in his life and he in theirs. He did not operate by the rules of his neighbors, guilds, or government. Years after his death, it was Marian who put their house in order, while his ashes rested in an urn emblazoned with the American flag. His collection of guns was not only illegal, but inordinate; and his penchant for antics betrayed a sense of defiant separatism. When Thompson was released from prison he bought a bicycle from Walmart and rode it eighty-five miles home to 270 Kopchak Road instead of calling a friend or family member for a ride. The decision echoed his walk home in a rainstorm from a local airstrip when he returned from Vietnam, a veteran.

Thompson reportedly felt betrayed by his country. (Who would not, brought home from indiscriminate horror to indiscriminate shame?) He was an isolated soul who had chosen not to play by the rules. His story calls us to consider how we reach those in universities, workplaces, small towns, and backwoods who choose self-immolation over self-limitation. How do we alter the paths of those who risk self-destruction and violence when they feel unfree?

Those questions notwithstanding, Terry Thompson *can* teach us where and how stewardship fails: when it operates ignorant of societal or physical limitations; when the “sovereign expressions of life” – any life – go unacknowledged; when pride relinquishes responsibility to others out of spite. Further, the response to Thompson’s actions can teach us how stewardship incrementally moves forward: with greater complexity and attention to the needs of others; with heeding of self-limitations required for healthy relationships, communities, and political systems within which we may otherwise feel encaged; with recognition that such self-limitation is actually necessary for any self-possession that can genuinely exist.

The slide into dysphoria had been long in the making for Zanesville. In the aftermath of the event, some of Terry Thompson’s neighbors recalled portents. Some described to reporters what it had felt like to be awakened at night by an occasional spine-dusting scream from Thompsons’ property, animalian sounds the neighbors described as “unreal” or “otherworldly.” Although owned by Thompson, those animals belonged elsewhere. Their presence often seemed

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145 Siebert, *supra* note 6 at 33
146 Id.
147 Knud Ejler Løgstrup
that of ghosts, even as the threat and suffering they represented was incarnate. Hence, the most basic lesson of the Zanesville saga: Our neighbors’ screams are real and of this world. Only in language and other models can harms be “external.”

The less basic lesson is harder to voice: Violence is not expunged from legal ordering, even when premised on stewardship. But violence accompanied by recognition and respect is not reducible to chaos. Consider again Ohio’s newly promulgated exotic animal ownership regime. By requiring fulfillment of stringent animal welfare standards or accreditation with zoological associations, Ohio’s statute moves toward a set of modified property rights that take into account a slightly larger sphere of interests: those of the nonhuman animals who have previously been treated little different from other kinds of ownable chattel. Although traced, micro-chipped, and other-ed by the law, they also are treated with the distance, space, and, yes, even fear that their selves and bodies command. Incorporating those dignity interests – even indirectly – is movement at the edges of the liberal state, where democracies consider the needs of those not formally present in deliberations or voting booths. Stewardship lies in that council. As it should: we should love those that speak in wild tongues, respecting limits we set to participate in our relationships, communities, democracies, and environments.