

VINDICATING  
*PIERSON V. POST'S*  
“SAUCY INTRUDER”

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Of Wildlife Crimes  
&  
Crimes Against Wildlife

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# WHAT ARE WE ABOUT TODAY?

## Introduction & Speaker Context

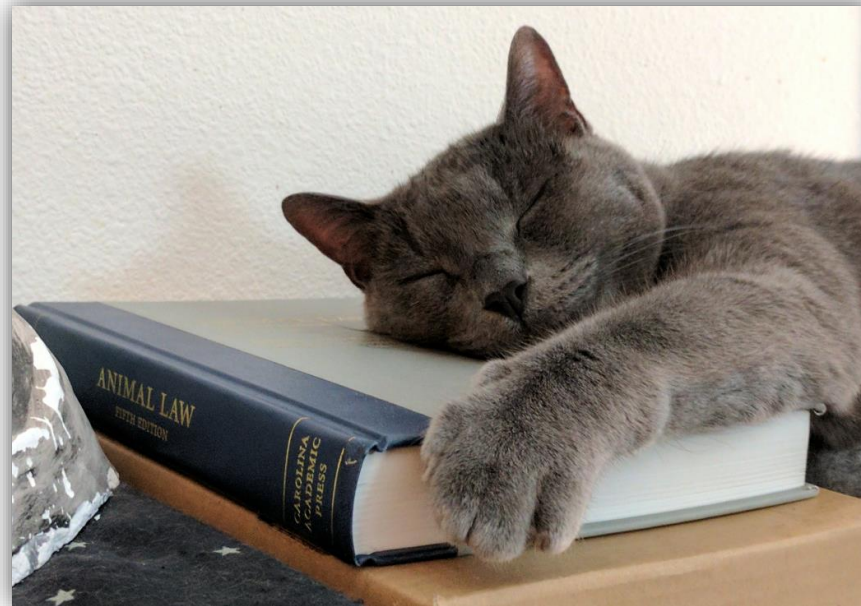
- The Animal Legal Defense Fund
  - ALDF's Criminal Justice Program

## Topics On Our Horizon

- Historical Background
- Disambiguating Wildlife
- Which Crimes?
- Practicable Law & Legal Theory
- Case Studies

## Topics (Largely) Left Behind

- Policy Judgements re: How We Ought Interact with Wildlife
- Jurisprudence re: Environmental / Animal Standing





# “I WANT TO SEE SOME HISTORY”

## A Venerable Legal History

- King Canute, the 1018 Oxford Witan, & Written Law
- William the Conqueror & Forest Law

## *Pierson v. Post*

- New York, 1802
  - Lodowick Post and friends chase fox
  - Jessie Pierson sees fox, kills fox, takes fox
- So, Who Has Property Interest in Fox?
- New York Supreme Court of Judicature
  - Court of luminaries:
    - Post’s Attorney: Future NY Mayor
    - Pierson’s Attorney: Future NY Chancellor
    - Judges: Future Fed Chief Justice; Future Fed VP; James Kent
- Is ownership achieved at the chase or the catch?
- Animals are *Different*
  - Particularly wildlife



# UNPACKING **LEGAL STATUS** OF WILDLIFE

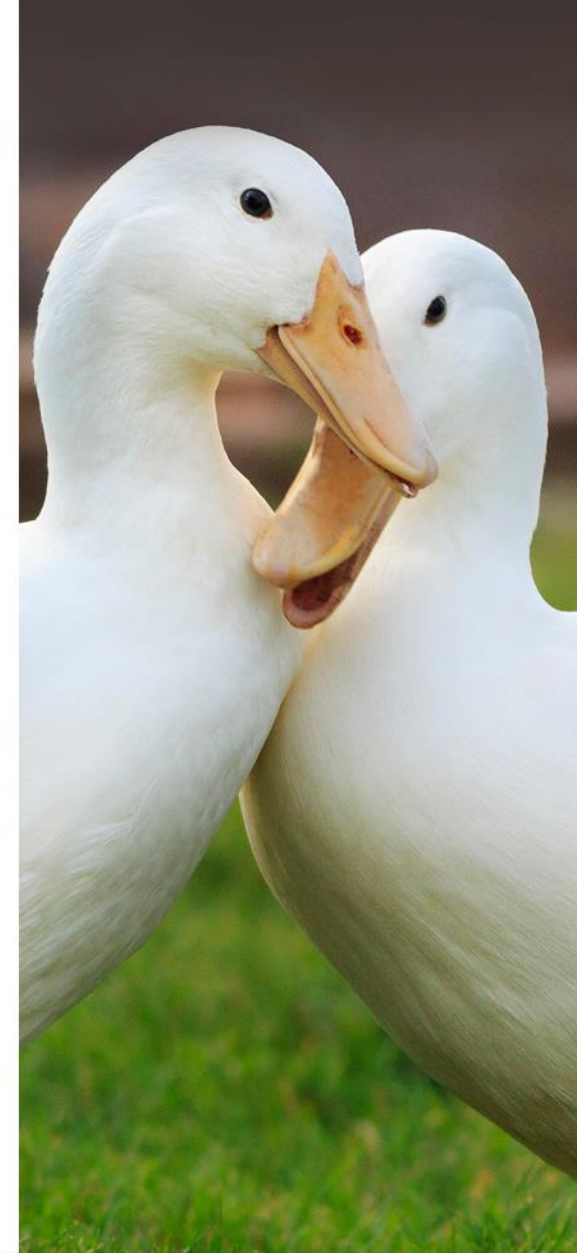
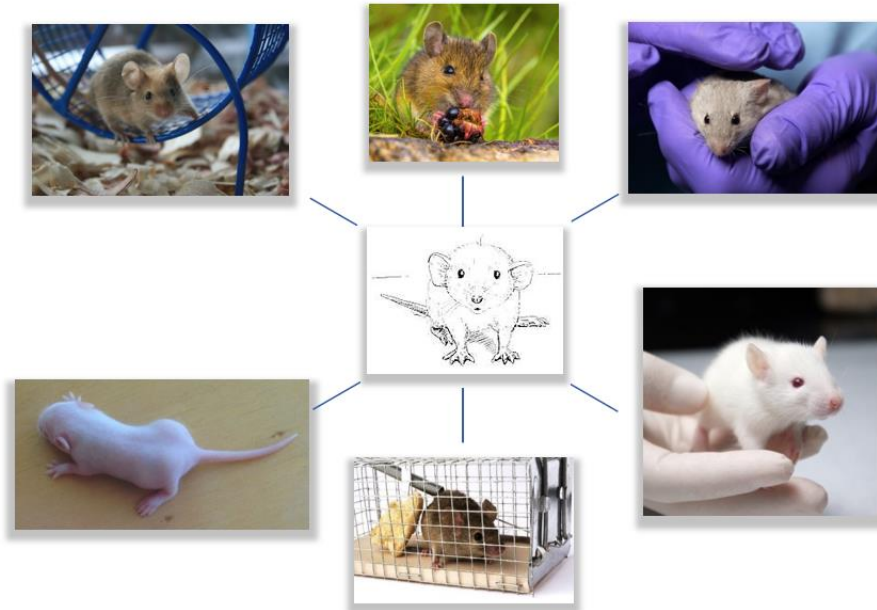
## Property Status

- But what Kind of Property?
  - Proprietary Ownership vs Sovereign Ownership
  - *Geer v. Connecticut* (1896) vs *Hughes v. Oklahoma* (1979)
  - Public Trust Doctrine?
- Susceptible to Being Property, Anyway



## Other Relevant Legal Statuses

- Exhibition
- Research Subject
- Pest
- Food Source
- Companion
- Endangered / Threatened





# WHICH ANIMALS ARE WILDLIFE?

## ‘Animals Living in The Wild’

- Animals Living w/o Human Support
  - But! Urban wildlife; captive wildlife

## ‘Animals Who Act Wild’

- Animals Unaccustomed/Ill-Disposed to Human Interaction
  - But! Tame wildlife

## ‘Genetically Wild Animals’

- Animals w/o selective breeding
  - But! Interbreeding

## The Feral Animal Problem

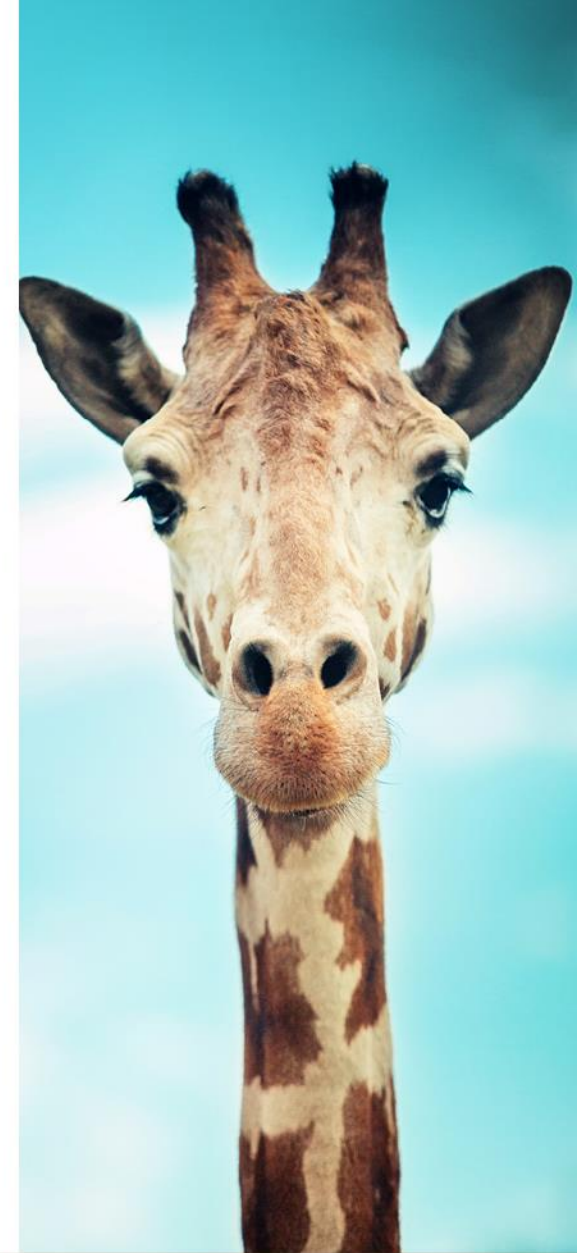
- e.g. Texas Feral Cat Cases



# OF WILDLIFE & CRIMES

## Types of Relevant Crimes

- Unhand The People's Duck: Resource Crimes
  - e.g. Poaching laws; hunting regs
- An Anti-Extinction Agenda: Environmental & Species Crimes
  - e.g. Endangered Species Act
- Predicate Required: Trafficking & Similar Crimes
  - e.g. Lacey Act
- The Animal's Experience: Cruelty Crimes
  - e.g. Neglect; abuse; fighting; etc.
- Why Not Both?: Cross-Over Category Crimes
  - e.g. Marine Mammal Protection Act 'take' provision



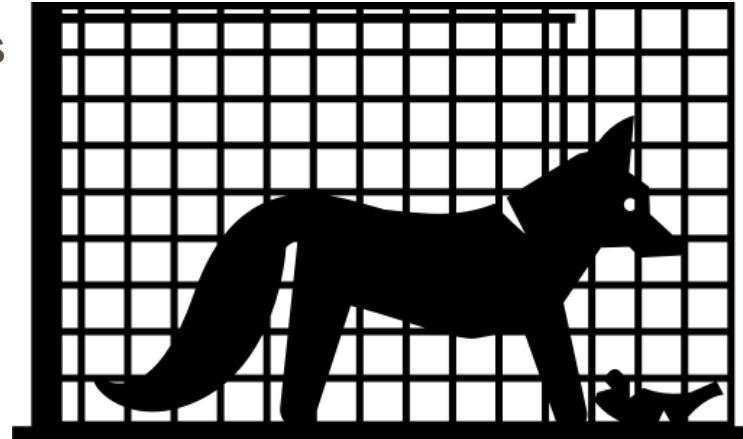
# NON-CRUELTY CRIMES

## Why Are These Crimes?

- Harms To...
  - ...Property
  - ...Utility
  - ...‘Commons’
- Malum In Se
  - Conduct which is a crime because inherently wrong
    - e.g. Anti-extinction crimes
- Malum Prohibitum
  - Conduct which is a crime because against rules
    - e.g. Hunting lawfully but for lack of license

## Whose Interests Are Vindicated?

- State / Society
- Animals as Species





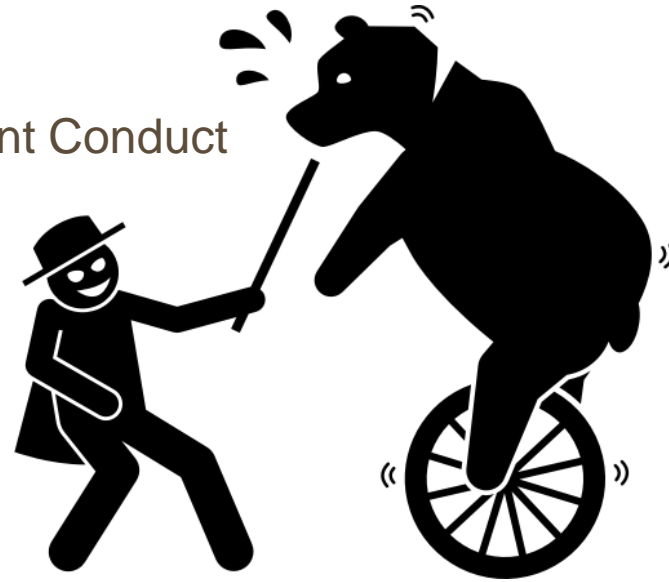
# WHY CRUELTY CRIMES FOR WILDLIFE?

## What Manner of Crime is Animal Cruelty?

- Malum In Se
  - Modern cruelty law is about animals on their own merits
    - See Oregon Trilogy: *Fessenden*; *Nix*; *Newcomb*
- Vindicates The Animal Victim's Interests
  - ...Interest in not being subject to cruelty at human hands

## Else, Failure to Address Categorical Harms

- Non-Cruelty Wildlife Crimes Do Not Capture All Relevant Conduct





# A BRIEF ASIDE ON CRUELTY CRIMES

## General Scope of Conduct

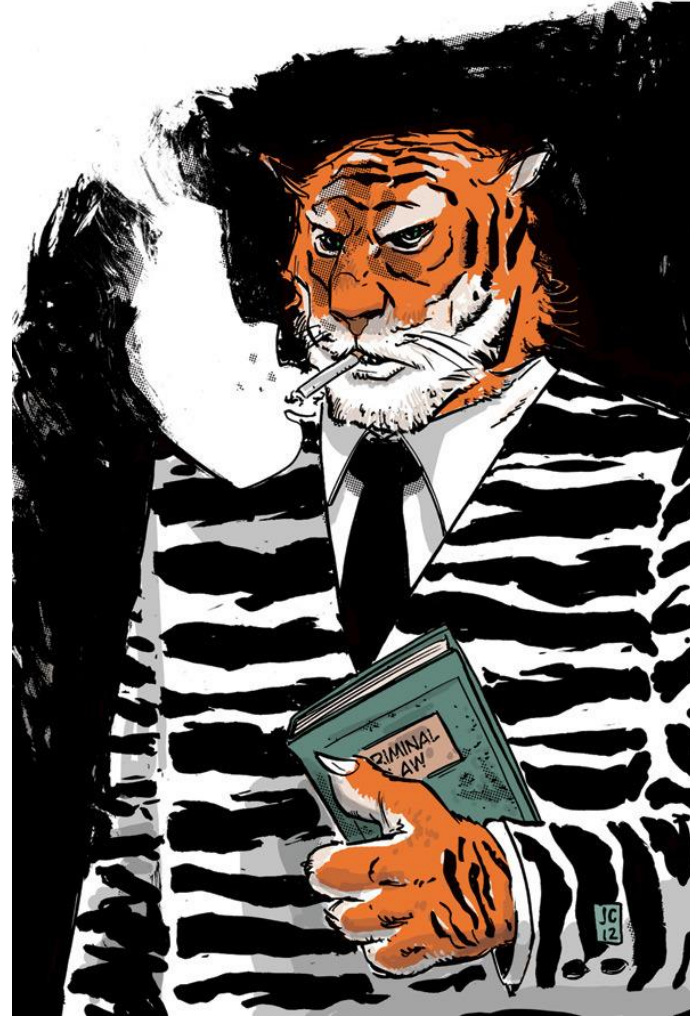
- Neglect
- Abuse
- Sexual Exploitation
- Animal Fighting

## Jurisdiction

- State
- Federal
- Tribal

## Common Relevant Exemptions

- Animal Husbandry
- Lawful Hunting
- Pests & Vermin
- Protection of Self / Others / Property
- Necessary / Justified Conduct
- Euthanasia



# APPLYING CRUELTY LAW TO WILDLIFE

## Generally

- No Generic 'But The Animal Was Wild' Defense
  - But! Potential complications re: pests / vermin

## Acts of Omission: Neglect

- Sufficient Control Over Animal?
  - Implicates range of actors from individuals to commercial enterprise

## Acts of Commission: Abuse

- Applicable Exemption?

## Sexual Exploitation

- Unlikely to Be Serious Legal Hurdles

## Animal Fighting

- Not All Animals Are Covered
- Disambiguating from Hunting





# CRUELTY LAW & HUNTING

## Legality of Hunting

- Generally, Is
  - In accord with licenses, season, bag limits, etc.

## But Can Hunting Be Criminal Cruelty?

- Also, Yes
  - Lawful hunting  $\neq$  any hunting method
  - Exemption may only apply to lawful hunts

## Why Apply Cruelty Law to Unlawful Hunting?

- Certain Hunting Requirements Meant to Minimize Suffering
- Goes to Why Lawful Hunting is Not Cruelty
  - i.e. not because the animal's experience is harmless, but because society has deemed certain harms acceptable under specific circumstances.



# SELECTED CASE STUDIES

- The Wrong Victim? Coos Bay Trapping
- Pest Control? Gosling Beatings
- Cruel Poaching? The Kill 'Em All Boyz
- How To Assess Wildlife Pain? Rose Tu
- Is It Fighting? Hog-Dog Rodeos





# Thank You! (and Questions)



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