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Panel: *The Importance of Being Property: Animals, Sovereignty, Science*

"Mice, Monkeys, Smoke and Mirrors: Tracing the Legitimation of Animal Use in Canadian Universities"[1]

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In January 2011, a year after the 2010 Vancouver Winter Olympics, the BC-SPCA dug up bodies of 43 dogs from a mass grave near Whistler. Robert Fawcett of Howling Dog Tours "admitted to slaughtering the sled dogs and burying them in a pit on his property, claiming he had no other option when the sled dog industry collapsed following the Olympics". Indeed, the slaughter was discovered because Fawcett himself had filed a WorkSafeBC claim for post-traumatic stress. Presiding Judge Steven Merrick found the killing a "horrific criminal offence", though he concurred with the Crown prosecutor's recommendation to impose no jail time, noting that "Fawcett continues to live in fear for his life. The judge said Fawcett was blamed for the sins of an entire industry" and was subject to "international demonization". In British Columbia and around the world, public outcry had emerged over the killing of the sled dogs. Ultimately Fawcett was convicted for the "inhumane deaths" of nine dogs deemed to have "suffered unnecessarily". That is, what was illegal was not the killing but rather the manner of killing (http://www.cbc.ca/news/canada/british-columbia/story/2012/11/23/bc-spca-sled-dog-slaughter.html, accessed 5 May 2013). Disappointed with this sentencing, the BC-SPCA subsequently pressed for legislative change. Reacting to public outcry, the BC government formed the Sled Dog Task Force which recommended "new funding for animal cruelty investigations and introducing the toughest animal cruelty laws anywhere in Canada," as well as specific guidelines for the sled dog industry. According to the premier, "British Columbians have said clearly that cruel or inhumane treatment of sled dogs or any other animal is simply not acceptable". Agriculture Minister Don McRae added that "We are acting on the report's recommendations because we take animal protection very seriously in this province." ("Premier announced Canada's toughest animal cruelty laws," News Release 2011PREM0030-000340, 5 April 2011).

In early 2012, the BC SPCA undertook another investigation, this time at the University of British Columbia and into the deaths of four macaque monkeys. The monkeys were killed after their brains were injected with neurotoxins. This injection had reportedly produced a reaction within the monkeys that research project participants had not expected, even though four of the eleven monkeys thus injected had this same reaction. The

[1] Warm thanks to my colleagues Gerald Baier and Kathryn Harrison for insight. This paper is inspired fundamentally by ongoing discussion with my colleague Elisabeth Ormandy of the Animal Welfare Program, UBC.

head of BC SPCA's cruelty investigations noted that it is not usual for them to "investigate complaints regarding research animals" but that the investigation would proceed in a normal fashion (Vancouver Sun 6 March 2012). The BC SPCA lacks resources for a team dedicated to animals used in research. Its position statement is that it

> opposes the use of live animals for the testing of cosmetics, household cleaning products, cigarettes and alcoholic beverages, and seeks to reduce and ultimately eliminate the use of animals in biomedical and other scientific research testing and experimentation. The Society further opposes the surrender of animals by animal control agencies for research.
> (http://www.spca.bc.ca/assets/documents/welfare/position-statements/animals-in-research-and.pdf, accessed 14 May 2013)

However, the BC SPCA "can only legally enforce provisions outlined in animal cruelty legislation, such as the BC Prevention of Cruelty to Animals Act and the Animal Cruelty sections of the Criminal Code of Canada. Accordingly, we do not have the legal authority to enforce [our] Position Statements, but instead use them to educate and influence animal guardians and policy makers" (http://www.spca.bc.ca/welfare/position-statements/positions-research-and-education.html#.UZK0FuAQgQJ, accessed 14 May 2013). Meanwhile, the use of animal lives in research at UBC is situated in an oversight regime that codifies as legitimate in a thus rationalized field of governance articulated levels of invasion, harm and suffering. This codification ranges from activities "which cause little or no discomfort or stress" to "procedures which cause severe pain near, at, or above the pain tolerance threshold of unanesthetized conscious animals". "Investigators and teachers who consider it essential to use vertebrates or invertebrates in their research, teaching or testing in the laboratory or in the field" are advised to "take cognizance of" the oversight regime's "documentation in assigning a category. Protocols must be submitted to an appropriate review committee for all studies" (http://www.ccac.ca/en_/standards/policies/policy-categories_of_invasiveness, accessed 16 May 2013). No charges of cruelty were laid at UBC; there was no widespread public outcry nor a response from political leaders. The BC SPCA investigation had been undertaken following complaints by community activist group STOP-UBC. This small community organization had formed in 2010 and began publicly asking the UBC administration to disclose information regarding its use of animals in research and teaching, and simultaneously issued the political call to end such use of animal life at the university.

I am curious about the zeitgeist that produces, on one hand, impassioned public outrage and provincial legislative action over the killing of sled dogs and, on the other hand, general public and political unresponsiveness to the macaque monkeys killed at UBC as well as, more widely, to the systematized and regularized harm to animal lives in research at UBC. Year in and out, millions of nonhuman animal lives and deaths are entailed in the practice of Canadian universities. Nonhuman animals are variously bred, captured, socially isolated, physically restricted, mutated, manipulated and killed by and for scholars's projects under a governance regime of national funding agencies and an oversight agency. How did this contemporary regime of practice come to be? What is this contemporary regime of practice institutionally speaking?

The grassroots political action by STOP-UBC helped manifest at UBC an express though small-scale political conflict over how UBC uses animals, how many it uses and why so many, the legitimacy of the varied forms of breeding, manipulation and killing, and the institutional oversight of this breeding, manipulation and killing. In this paper I approach this small-scale political conflict informed by Jim Tully's new public philosophy. This critical approach to public life emphasizes the need to disrupt and work to disentangle ourselves from prevailing hegemonic worldviews and modes of acting so that we may better open our imaginations to alternative ways of thinking and acting and a capacity, thereby, to assess and enact civic freedom. This approach starts by responding to practices of governance that are questioned by some subject to those practices and thus rendered a site of practical contest and negotiation. The aim is to suggest how this particular, historical set of practices of governance and the problems that it produces may be shifted, that is, to invite new conditions of possibility. These conditions are revealed in part through the redescription of the prevailing form of governance in a manner that transforms practical and self-understanding of those embedded in the field of governance. Specifically, Tully proposes, the scholar first undertakes a critical survey of practices and languages that organize the present moment in which struggle and conflict have emerged. The survey seeks to clarify what conditions – ways of thinking, ways of acting, notions of subjectivity – constitute the current practices and all that they throw up into the world. Second, the scholar traces genealogically or historically the formation of these practices and languages to de-naturalize them as contingent and thus mobilize the contemporary imagination.

In this paper, I undertake one piece of such a project. However, in this case I am responding to practices of governance that are questioned by a handful of citizens including myself, but on behalf of profoundly subaltern populations themselves wholly lacking in political standing and voice. To clarify the practices of governance that organize the contemporary moment and what is being contested by some citizens, and to destabilize the currently settled popular imagination – to contribute to a possible shift in our zeitgeist -- I investigate the Canadian Council on Animal Care, the agency in Canada that oversees *voluntary* compliance by institutions that use nonhuman animals in research with certain guidelines. Specifically I will clarify genealogically how and why this body came into existence, how it now operates as an institution, and will attempt to clarify what it in reality does and achieves. This work of tracing aims to elucidate how the CCAC, as part of a field of governance for human and nonhuman animals, produces an ambience of transparency, rationality and legitimacy. Note that while many institutions in Canada use nonhuman animals in research and *may* volunteer to be subject to the oversight of the CCAC, and while non-university research facilities very much demand attention in relation to their use of animals and the question of whether they voluntarily participate in CCAC's programs, this paper focuses on Canadian universities and their voluntary participation in this standing system of oversight. Over all, the spirit of this paper is something like that described by Isabelle Stengers in "Cosmopolitical Proposal". Encouraging slowness, Stengers refers to Dostoyevsky's idiot, worked up by Gilles Deleuze as "the one who always slows the others down, who resists the consensual way in which the situation is presented and in which emergencies mobilize thought or action" (Stengers, 994). My aim is to redescribe and thus illuminate in fresh and critical terms an agency that helps organize a field of governance. The paper is intended for those who are familiar with and work regularly under the agency's auspices, for those who seek to politicize and publicize the problem of the use of

animal lives at the university, and for those who are invested in a critical Canadian politics but lack familiarity with the use and with the regulation of the use of animal lives at the university.

While a handful of activists and scholars have begun to raise questions at UBC about its use of nonhuman animals in research, the fact that 200 000 animals are thus used each year at UBC alone – a fact not publicly known or knowable until STOP-UBC publicly pressed the UBC administration to be more transparent (still very little information is publicly available about these 200 000 animals per year) -- has to date elicited very little public reaction, response or discussion. There seems to be a widespread confidence that not only the use of animals, but the use of animals *as they are presently used* is "necessary" (a word used again and again in the discourse) to human interests, that those interests are consistently of absolute import such that they legitimate the large-scale production and intervention into and ending of animal lives that presently occurs at universities, and that all of this practice has been already, in the past, wholly and adequately examined and weighed in a democratic society to the effect of yielding current practice. That is, there seems to be a widespread sense, including among scientist animal-users, that disturbing and ethically questionable research practices from the past produced lessons that have taught us well; that present institutional practice is rational and ethical and thus produces legitimacy; that human Canadian interests are consistently served by the practice in a straightforward and obviously defensible way; and that animals are properly safeguarded and that Canadian humans need not ask whether animals' interests are being served in a straightforward and obviously defensible way. Why is this the prevailing view? And how well do these standing assumptions hold up to scrutiny?

Gayatri Spivak has described practice as "an irreducible theoretical moment" as "no practice takes place without presupposing itself as an example of some more or less powerful theory" (*The Post-Colonial Critic: Interviews, Strategies, Dialogues*, ed. by Sarah Harasym, New York: Routledge, 1990, 2). Bruce Braun takes up Spivak's insight to argue that institutionalized practices do not occur merely as a result of "administrative fiat but were made possible by a series of other discursive practices that made legible to power a space of administration, and that in turn invited and legitimated the actions of state administrators" (Braun 45). As Braun puts it, "'legibility' is not something in nature awaiting discovery by the disinterested observer; it is achieved through historically situated representational practices" which yield a common-sense view that then undergirds and supports administrative practices that reproduce this common sense, foreclosing space for competing claims and worldviews (Braun 46). In other words, there is a before to the idea for the CCAC which includes not only Britain's nineteenth-century practices of vivisection and the anti-vivisectionist movement – projected onto North America through the construction of Canada as colonial state. The before also includes both the large sweep of Western political thought and the more immediate drives of twentieth-century state building.[2]

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[2] Rod Preece and Lorna Chamberlain, *Animal Welfare and Human Values* (Wilfred Laurier Press, 1995); Rod Preece, *Brute Souls, Happy Beasts, and Evolution: The Historical Status of Animals* (Vancouver: University of British Columbia Press 2006); Nuno Henrique Franco, "Animal Experiments in Biomedical Research: A Historical Perspective," *Animals* 2013:3 (238-273).

In this paper, I trace a relatively immediate genealogy of present day understandings of the legitimacy of the standing university practice, and of ongoing institutional reproduction of legitimation of these practices while questioning both whether the standing institutions provide the practical oversight and checks that they claim to provide, and whether the practices themselves have in fact been legitimated in a fully meaningful sense. Ultimately my tracing of the production of legitimacy of the research use of animal lives in Canadian universities leads me to three arguments. *First,* the present is not discrete from the past. Critics of colonialism argue that the contemporary "postcolonial" period is not a transcendence and resolution of the colonial past; likewise I suggest that the present regime for the use of animal lives in universities is an effect of the past practice of vivisection rather than its transcendence or resolution: the past is not "simply left behind" (Braun 65). *Second,* I argue that primarily, the CCAC as a structure situated in relation to the larger structures that support it does not serve the interests of the animals and, rather, legitimates a wide range of invasions of and harms to animals as it protects researchers from criminal prosecution and societal interrogation. The very premise of the CCAC assumes, as do its funders, *a standing decision by some unnamed yet appropriate public, and the fundamental ethical defensibility of that decision,* to use animals in research enterprises in a nearly unchecked manner. The CCAC and its system in turn bureaucratically affirms and rationalizes the historical integration of nonhuman animals into research through a public oversight regime that produces a veneer of legitimacy even as it is itself funded by the very federal granting agencies that fund animal-using research. Let me put this another way. As Giorgio Agamben argues, prevailing Western conceptions of politics mean that the activities of a polity entail defining what is political and what is not political, while simultaneously integrating life deemed not political into the polis where it is nevertheless governed *as bare life,* as life unqualified for political standing (Agamben). *Third,* I therefore argue that the claim that the standing institutional practices and voluntary participation in an oversight regime provides robust securing of animal "welfare" is utterly unsustainable and, as an institutionalized system of checks and oversight supposedly undergirded by a democratic society, is in fact an organized and closed world of smoke-and-mirrors.

I. Ideological Point of Departure, Genealogy and Structure of the CCAC

In 1917, in the context of the First World War and as a component of twentieth-century state building, the Canadian government formed the National Research Council to advise the Canadian government on scientific and industrial research. Through this period, industry and universities lobbied the government to facilitate the expansion of university research in Canada. In the wake of the Second World War, with the growth of universities as centres of research, the National Research Council's medical research funding activities were re-housed in the new Medical Research Council of Canada (replaced in 2000 by the Canadian Institutes of Health Research [CIHR], an arm's-length government agency that reports to the Minister of Health and is thus accountable to parliament, http://www.cihr-irsc/gc/ca/e/37792.html, accessed 9 May 2013). In 1957 the Canadian Society of Physiology published a document that was then elaborated by A.H. Neufeld, M.D., Ph.D. in 1963 – *Guiding Principles on the Care of Laboratory Animals* -- for the Canadian Federation of Biological Societies. That same year, in 1963, Canada's Medical Research Council requested that the National Research Council establish a committee "to study the situation

with regard to the humane use and care of experimental animals." Taking up the request, the NRC added, "and, where necessary, make recommendations *for improvement in:* (i) the procurement and production of experimental animals; (ii) the facilities and care of experimental animals in research institutions; and (iii) the control over experiments involving animals" (http://www.ccac.ca/en_/about/f.a.q., accessed 9 May 2013, emphasis added). Thus struck, this committee recommended a "voluntary control program exercised by scientists in each institution, subject to peer review and committed to implementing the guiding principles of an independent advisory body" (http://www.ccac.ca/en_/about/history_funding, accessed 9 May 2013). In 1968 this independent advisory body, the Canadian Council on Animal Care (CCAC), was formed as recommended: as a voluntary program exercised locally within institutions and in which scientists would be subject to peer review in relation to guiding principles articulated by the program. In 1982 the CCAC was incorporated as an autonomous and independent non-profit body.

The founding of the CCAC entails the crystallization of what I will call a tacit constitutional moment. The term "constitutional moment" is democratic theorist Bruce Ackerman's; it refers to periods in which "basic rules of political practice are rewritten, whether explicitly or implicitly, thus fundamentally altering the relations between citizens and the state." Sheila Jasanoff picks up this notion from Ackerman and observes that science and technology scholars "have added an important further dimension: namely, that constitutional moments may encompass the relationship between experts, who underwrite almost all contemporary state action, and citizens, who are collectively subject to the decisions of states (Jasanoff 2011: get Jasanoff 1990, 2003 on this point). I argue that the founding of the CCAC entails the organizational, rationalized, bureaucratic formalization of the integration of living nonhuman animals as objects into research in Canada. Notably, this formalization occurs within the particular publics of research science and its funding regime, not among the broader array of Canadian publics and the larger domain of democratic citizenship. In other words, a narrow public with particular interests was empowered – by elites from the same narrow public -- to secure a constitutional moment for the very ordering of life within the Canadian polity. This ordering carries profound ethical and political and life implications for the animals themselves subjected to subjectification, and is of concern and of potential concern to many humans outside the authorized narrow public. That is, the constitutional moment was secured through the founding of legitimating structures in the wake of a historical convention within that narrow public: the *a priori* and fundamental question of the ethics and politics of this historical convention, and of the highly contestable nature of the convention, was not considered in the authorizing of the founding. The constitutional moment thus further specifies the location within the polity of a sea of vulnerable lives already politically and juridically positioned as subaltern, bare or unqualified life, by the colonial, European historical polity; that is, the constitutional moment further calcifies and legitimates the subjection of these vulnerable lives and legitimates their subjection within the Canadian polity. This solidification serves all sorts of human interests, including the protection of researchers from prosecution in their injuring of animals. The popular undergirding justification for this constitution of the polity – its prior theoretical moment, following Spivak -- is that the systematic and widespread use of nonhuman animals in research does or promises to provide forms of benefit, primarily to humans, that outweigh the profound

cost to the millions of animals whose lives are implicated in this practice. However, the constitutional moment entailed no comprehensive analysis of these costs and benefits to even attempt to demonstrate the truth of this justificatory claim; the sides of the ledger were never brought to bear upon one another, nor are they now, now that the CCAC as legitimating structures is in place.

The CCAC and its system of oversight is far removed from Parliament – indeed, it describes itself as autonomous and independent -- and is ungrounded in legislation. The CCAC is funded "primarily by the Canadian Institutes of Health Research (CIHR) and the Natural Sciences and Engineering Research Council of Canada (NSERC) [both of which are federally funded and the former of which reports to the Minister of Health and the latter of which reports to the Minister of Industry], with additional contributions from federal science-base departments and agencies and private institutions participating in its programs". The agency describes itself as quasi-regulatory, as "the national peer review agency responsible for setting and maintaining standards for the ethical use and care of animals used in science", and its oversight system leans on voluntary participation. Given that most of its funding comes from CIHR and NSERC, it is effectually a servant of those funding agencies and "the performance of the CCAC is reviewed every three years upon grant renewal by external expert panels chosen by CIHR and NSERC." Internally, the CCAC's governance structure features "a Council of representatives from 22 national organizations which are permanent member organizations and up to three limited term member organizations" (http://www.ccac.ca/en_/about/mandate; http://www.ccac.ca/en_/about; http://www.ccac.ca/en_/about/history_funding; accessed 9 May 2013). The claimed "keystone of the Canadian system of oversight", however, is the Animal Care Committee (ACC) that operates as a tentacle of the CCAC at the level of each research institution. ACC membership in each institution "will vary but should include: scientists and/or teachers with experience in animal use; institutional member who does not use animals; experienced veterinarian(s); community representative(s); technical staff representative (manager); student representative (where students are present); ACC coordinator; others as needed (e.g. person(s) responsible for health and safety/biosafety, biostatisticians, ethicists, public relations liaisons) (http://www.ccac.ca/en_/assessment/acc, accessed 9 May 2013).

Generally speaking, the justification for the public and autonomous authority of independent administrative agencies turns on the need for expertise and/or insulation from partisan interference. In this case, what exactly is the subject matter that is considered to fall naturally under the purview of which sector of experts? In the case of the CCAC, those considered expert in the fundamental political organization of life itself in the polity are the small public of research scientists; those considered expert in the delegation of some life to a politically subaltern realm of systematic mutation and killing is the very public that practices systematic mutation and killing. That is, the profound politics of this constitutional moment was separated from the larger Canadian public and from critical contestation among and across publics over basic questions of power over and subjection of vulnerable lives with their own subjective experience.

Furthermore, the CCAC is not a formal legislated administrative agency. In Canada's parliamentary democracy, relations between government and citizens are governed by administrative law. Because legislatures cannot legislate for all dimensions of the complex modern state, many such functions are delegated to administrative agencies through

delegating legislation. In the face of delegation to administrative agencies, administrative law aims "to ensure that the activities of government are authorized by Parliament or by provincial legislatures, and that laws are implemented and administered in a fair and reasonable manner." Administrative authorities must act in accordance with the pertinent delegating legislation, with the Canadian Charter of Rights and Freedoms, and with "natural justice" principles of common law that is concerned "to ensure that every person whose interests are at risk is entitled to participate in the process before a decision is taken affecting their interests" and that decisions made are "impartial and not biased". Administrative agency decisions are subject to appeal by citizens (those directly affected or possibly representing a broader public interest) either by way of the delegating legislation which provides rights of appeal or by way of the powers of superior courts of law to review inferior administrative bodies, and agencies are generally susceptible to review in the courts regarding whether they have overstepped their specified powers or failed to follow proper procedure in decision making that should be informed by the "right to be heard" (http://www.thecanadianencyclopedia.com/articles/administrative-law).

The CCAC is not such an administrative agency. It is not created by parliamentary legislation; it is not checked by administrative law and court powers; its activities are not framed by a need to ensure that all persons whose interests are at risk are entitled to participate in decision making (and even if they were, the law excludes animals from "personhood"); its decisions are not subject to appeal by citizens nor are they enforceable by any law. (The informal, unlegislated nature of the structure of the CCAC is consistent with, for instance, a tradition of self-regulatory or voluntary agencies in Canadian environmental policy. The state of the environment and the degree of protection enacted for the environment in Canada is perhaps instructive here.) The CCAC is, rather, a "national peer review agency". As such, it is surprising and problematic that the CCAC website nevertheless claims that "the purpose of the CCAC is to act in the interests of the people of Canada" (http://www.ccac.ca/en_/about/mandate, accessed 9 May 2013), even that it is "*accountable* to the general public" (http://www.ccac.ca/en_/about; accessed 9 May 2013, emphasis added), and that it is somehow "*responsible*" for "setting and maintaining standards for the ethical use and care of animals used in science (research, teaching and testing) throughout Canada" (emphasis added).

Instead of the state itself directly organizing this field of governance, then, the CCAC operates at notable arm's length from government which is both a conventional and without question a desirable arrangement for scientific research bodies.[3] This arm's length

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[3] One only need reflect on the Harper government's disposition toward research bodies invested in studying climate change to concur. Presently, the Harper administration is working to "convert our [Canadian] performance in higher education research and development" in a manner more directly in tune with the demands of industry and commerce; critics are citing this as a "war on science", and have been tracking federal government budgetary cuts to CIHR and NSERC and new budgetary mandates to target certain research (http://fullcomment.nationalpost.com/2013/05/07/john-ivison-national-research-council-revamp-fuels-david-suzukis-claims-of-a-conservative-war-on-science/; http://www.cbc.ca/news/politics/story/2013/05/07/technology-nrc-business.htmlsee; cite other).

arrangement however does not necessarily mean arm's length from particular interests and powers: the structural location of the CCAC puts assessment and evaluation powers of the use of nonhuman animals in research not in the hands of a democratic body composed of multiple publics, or in the hands of a body of trained ethicists, for instance, but in the hands of "peer" scientists. While peer review is a commonplace arrangement for scholarly research, research that uses and destroys the lives of others clearly demands something else. However, the peer review structure system of CCAC *a priori* fails to acknowledge this extremely peculiar circumstance. Instead, the peer review structure system of CCAC *a priori* politically assumes nonhuman animals as subaltern, as harm-able with social isolation and pain and suffering, as killable, as subject to the governance of researchers whose own interests and habits – even if unconscious – may very well be largely at odds with the interests of nonhuman animals as living, vulnerable beings with their own experiences.[4]

The CCAC website suggests that, since being founded by this interested and narrow public, it *now* operates on the basis of broader public authority within its standing organizational mandate:

> a key element of the CCAC system of oversight of the care and use of animals in science is public involvement in all of its activities, including: establishing ethical standards through guidelines development; ethical decision-making at the level of each institutional animal care committee; providing a community perspective on each CCAC assessment panel; providing a public perspective on the CCAC council. This integrated approach is essential to provide an external perspective for all discussions and decisions on animal care and use in science. Community participation ensures that those who conduct animal-based experiments are in tune with their obligations to animals, as well as to society.
> (http://www.ccac.ca/en_/about/involvement, accessed 9 May 2013)

First, as for "public involvement" in the development of guidelines, the CCAC website is in fact clear that these are "peer-based guidelines": "Constituents of the CCAC are invited to submit suggestions of areas in need of guidelines to the Guidelines Program. . . . For each new guidelines document to be developed, a subcommittee of experts on the topic to be covered is established" who "work together" to "produce a CCAC guidelines document that is based on sound scientific evidence and expert opinion, and has received extensive peer review" (http://www.ccac.ca/en_/standards/guidelines/development, accessed 9 May 2013). There is no reference on the website to "public involvement"; the "widespread review" stage of drafted guidelines merely entails the second draft of proposed new guidelines being "posted on CCAC website 60 days" (http://www.ccac.ca/en_standards/guidelines/development/process_chart, accessed 9

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[4] To be completed: In Britain, the R-SPCA includes a subdivision that specializes in protecting and research on animals used in research; the National Centre for the three R's that is funded by the Medical Research Council (the equivalent of the CIHR); and the Fund for Replacement of Animals in Medical Experiments and the Dr. Hadwen Trust …. Canada has no parallel independent bodies that advocate for laboratory animals; the CCAC is a policy-making body that is funded by the funders of medical and scientific research that uses animals.

May 2013). Second, regarding "public involvement" at the level of each institution's animal care committee (ACC), please see the section below on ACCs. Third, regarding "public involvement" on each CCAC assessment panel: one CCAC assessment panel visits each institution once every three years and is "composed of at least one scientist and a veterinarian, selected for their experience in animal experimentation and care relevant to the institution visited. Each panel also includes a community representative, selected from a list of individuals nominated by the Canadian Federation of Humane Societies . . . . A CCAC assessment director is present at every assessment visit as an ex officio member" (http://www.ccac.ca/en_/assessment/a_panels, accessed 9 May 2013). One random community representative every three years does not "public involvement" make.

Fourth, as for the cited "public perspective on the CCAC council", the multi-agency participation in the CCAC Council is seemingly high relative to conventional practices in other quasi-regulatory agencies in Canada: twenty-two agencies hold seats on the Council. However, this multi-agency structure does not trouble the business-as-usual workings of the CCAC because of the political and philosophical affinity among most of these member organizations. On the Council there appears to be an absence of the kind of debate that one would find among a representative cross-section of Canadian citizens emanating from multiple publics, because the Council membership entails organizations whose philosophical starting point generally assumes the political inclusion/exclusion and subjection of nonhuman animals. That is, if a "citizens' assembly" drawn in a representative manner from the Canadian public were convened as the council for the CCAC, or if Council membership featured a robust swath of critical publics from the larger Canadian public, it would undoubtedly manifest debate and reflection and difficulty that differs from what happens on the CCAC Council as it stands. The twenty-two member organizations represented on CCAC Council are: Agriculture and Agri-Food Canada; Association of Canadian Faculties of Dentistry; Association of Faculties of Medicine of Canada; Association of Universities and Colleges of Canada; Canada's Research-Based Pharmaceutical Companies; Canadian Association for Laboratory Animal Medicine; Canadian Association for Laboratory Animal Science; Canadian Bioethics Society; Canadian Cancer Society Research Institute; Canadian Council of Departments of Psychology; Canadian Faculties of Agriculture and Veterinary Medicine; Canadian Federation of Humane Societies; Canadian Institutes of Health Research (CIHR); Canadian Society of Zoologists; Canadian Veterinary Medical Association; Department of National Defence; Environment Canada; Fisheries and Oceans Canada; Health Canada; Heart and Stroke Foundation of Canada; National Research Council of Canada; Natural Sciences and Engineering Research Council (NSERC) (http://www.ccac.ca/en_/about/structure/members, accessed 9 May 2013).

In sum, the formalization and codification of the CCAC oversight system effectively re-organizes the Canadian polity to dissipate critical public inquiry and debate: it pre-empts and drains out from the larger public what could be critical contestation and debate, settling the general public by removing from its view and purview the question of the use of animal lives in research, and issuing the assurance that Canada has oversight and that universities comply. In this it may even pathologize or render seemingly irrational political critique. The CCAC is a way to contain and control and pre-empt voices from the many publics of the larger Canadian citizenry. (So some citizens, like those in STOP-UBC, seek other means to speak.) [will add stuff on: Rhetorical modes of speech/public articulation

(eg Young 1987, 72; 2000, 64-5). "visual media, signs and banners, street demonstrations, guerilla theatre, and use of symbols" – due to marginalization/ contribution to meaning (Emily Beausoleil, 92).]

II. Non-Assessment of Scientific Merit of Research and the CCAC's Legitimation Function

a. TOTAL ABSENCE OF SYSTEMATIC REVIEW

"*A month in the laboratory can often save an hour in the library.*"
-- attributed to Frank H. Westheimer (Avey slides)[5]

Scientific research around the globe produces enormous reams of information, year in and year out. Given the vast amount of new articles published every year in tens of thousands of science journals, it is impossible for individual scientists and peer reviewers of proposed research programs to be wholly familiar with other research, and the potential for duplication of standing research is thus a stark reality.[6] Further, outcomes of primary studies may be widely cited following their publication, yet primary study outcomes are often subsequently contradicted in other studies. As such, to base research decisions on singular primary studies is very potentially to build a train of research studies on flawed premises. Consider these realities from the standpoint of nonhuman animals who are used as material for such research programs.

Systematic review is one weapon against these realities – realities that entail the breeding and mutation and killing of millions of vulnerable animals with their own subjective experience. Systematic review of scientific research involves synthesizing standing research to provide a means to survey globally standing bodies of scientific work and thus situate proposed new studies in those standing bodies. Systematic review of scientific research may also entail interpretation and evaluation of the meaning of new results within the global context of standing research (Tetroe 2007; Tricco et al 2011; Cochrane Collaboration Open Learning Material 2002, in Avey slides). That is, systematic review that is produced by critical (not merely descriptive and thus trusting) scholarship evaluates the quality of primary scientific studies. The quality of primary scientific studies varies enormously thanks in part to widespread shortfall in methodological rigour. For instance, in one cross-sectional analysis of 271 biomedical studies that used nonhuman animals, only 59% state the objective or hypothesis of the study and the number of animals used; only 12% use randomization and only 9% of those studies that use randomization report the method; 86% of these studies did not use blinding in animal selection and outcome assessment; and only 70% describe the statistical methods used and include

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[5] Marc T. Avey, power point slides from presentation, "Systematic Reviews," delivered at UBC 27 November 2012.

[6] Two million articles are published annually in 20 000 journals (Mulrow 1994, from Avey slides); "physicians ... need to read about 6000 articles a day" to remain abreast of ongoing research (Lundberg 1992, from Avey slides); SCOPUS 2012 counts 47 million records – with 26 million of those entailing references that go back only as far as 1996 -- and 4.9 million conference proceedings (from Avey slides).

measures of variability or error (Kilkenny et al 2009, in Avey slides). Meanwhile, standing literature reviews of primary studies tend to look only at methods and conclusions and thus fail to suss out problematic inference drawing (Montori, Jaeschke, Schunemann, Bhandari, Brozek, Devereaux, Guyatt, BMJ, in Avey slides). Furthermore, studies show widespread bias in scientific studies and reporting, including confirmation bias informed by researchers' pre-existing beliefs (Hergovich et al 2010, in Avey slides). In 48 randomized trials funded by the CIHR, outcome reporting bias has been shown to be dramatically high: in these trials that yielded 68 publications and 1402 outcomes, primary outcomes vary between the protocols initially described and what was then actually published in 40% of the trials (Chan, Krleza-Jeric, Schmid, Altman, in Avey slides). Moreover, not only is there manifest bias and risk of bias in individual studies but across studies as well: the culture of science in the contemporary world is such that positive results are more likely to be published, more quickly, in English, multiple times and in higher impact journals that are more widely cited, and much of the review is done of only English studies, while negative results tend to be published more in non-English journals (Cochrane Handbook for Systematic Reviews of Interventions 2008, Avey slides). This over-reporting of positive results relative to negative results in most accessed venues exaggerates the reliability of positive studies and skews data, collectively, over all: the effect is an impression that everything seems to work on animals in the lab! (Avey slides). Studies also show significant and rising levels of fraud and suspected fraud and plagiarism in scientific studies (Fang eg al 2012, in Avey slides). Synthesis of research does not assume that research has been undertaken in a manner that is consistent with the scientific protocols, and synthesis of research findings may help improve to some degree these conditions that involve systematic errors, random errors, flawed method. Again, consider these realities from the standpoint of living nonhuman animals used as material in such esearch.

One of the murky assumptions that produce a generalized willingness to accept widespread use of animal individuals in scientific research is that studies on nonhuman animals in general translate effectively to knowledge about how to serve homo sapiens. In fact, studies on nonhuman animals often fail to translate properly as knowledge about homo sapiens; indeed, studies on particular species of nonhuman animals often fail to translate as knowledge of other nonhuman animals (see Bracken 2009; Avey slides). For instance, it turns out that Accutane causes birth defects in rabbits, in monkeys, in homo sapiens, but not in mice and not in rats; Thalidomide is not teratogenic in many nonhuman animals but is in homo sapiens; Coricosteroids are widely teratogenic in animals but not in homo sapiens; TGN 1412 caused life-threatening effects in all six human volunteers but not in nonhuman primates (Bracken 2009; in Avey slides).

My point is that highly problematic prevailing practices in science studies and results reporting *dramatically increase the number of animal lives* subjected to breeding, acute enclosure, social isolation, invasion, pain and killing. Moreover, the *Tri-Council Policy Statement 2: Ethical Conduct for Research Involving Humans* requires systematic review for clinical trials that involve homo sapiens, but does not require systematic review for prior studies that involve non-homo sapien animals. This is bad news for humans: clinical trials may be based on just one primary study on nonhuman animals that may very well be flawed in the ways I have described above. My present concern is that none of the CIHR, NSERC or the CCAC require research programs in Canada that will use nonhuman animal

lives to be justified in relation to systematic review of standing research.[7] This of course also means that CIHR and NSERC, as the main funding agencies of research that uses animals, themselves *wholly lack systematic data bases on which to draw to assess the proposed research programs that it later funds.* That is, CIHR and NSERC have no instruments through which to assess, in light of already standing research, whether proposed research that uses animal lives should be undertaken and in the manner proposed. In turn, the CCAC – its ACCs – oversee the use of the animals, but do not assess *whether* the animals should be used in the first place, given the enormous standing bodies research already out there.

b. CANADA'S FUNDING AGENCIES: DRIVING ANIMAL USE *AND* OVERSEEING CCAC

The very agencies that predominantly fund and thus enable and drive research that uses animals lives in Canada – CIHR and NSERC – are the very agencies that fund and largely control the CCAC through conditions attached to budgets, and through periodic review of CCAC. To then describe the CCAC as "autonomous", as the CCAC officially characterizes itself, is suspect. More deeply, the oversight of the CCAC provided by CIHR and NSERC does not entail a review by critical publics but rather keeps the putative oversight within the parameters of the logic of widespread use of animals and within the parameters of the small and interested community that uses animal lives. This structure affirms that the CCAC's mandate to serve animal welfare is nestled within a larger enterprise dedicated to the legitimation of the standing extensive use of animal lives in research.[8] That is, the CCAC grants legitimacy to what the CIHR and NSERC are funding while being directed in its activities by CIHR and NSERC. [More later.]

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[7] The Netherlands Parliament has adopted a motion to make systematic reviews the standard for animal studies as they are "in regular science" for human studies. A related motion on data storage that prevents unneeded duplication of animals studies was also adopted.

[8] This excess closeness and closed circuit is reminiscent of the fact that in the 1930s the NRC was supporting national laboratories, an arrangement that produced concerns about a "single agency both performing and supporting research" (http://www.cihr-irsc/gc/ca/e/37792.html, accessed 9 May 2013). In 1968, the Senate Special Committee on Science Policy examined the state of research and development in Canada, including "federal assistance to R&D activities in the physical, life and human sciences." The committee's 1973 report argued that "relieving NRC of the responsibility for providing grants to universities would remove a potential for conflict of interest. The report states, 'An agency is put in an unenviable position when it must decide whether a university group should be given grants to pursue projects that its own staff consider their prerogative.' . . . [T]his concern was shared by other groups that had studied the organization of R&D in Canada over the years" (http://www.nserc-crsng.gc.ca/NSERC-CRSNG/History-Historique/chronicle-chronique_eng.asp, accessed 9 May 2013). Bill C-26 led in 1978 to the NRC surrendering its role in university research funding of the natural sciences to the Natural Sciences and Engineering Research Council of Canada – NSERC, a government agency that reports to the Minister of Industry and thus is accountable to Parliament.

c. UNIVERSITY ACCs: POLICING THE EDGES AFTER THE FACT

The CCAC website says that "the keystone of the Canadian system of oversight of the care and use of animals in science is the local institutional animal care committee (ACC) set up by each participating institution according to the CCAC policy statement on: terms of reference for animal care committees" (http://www.ccac.ca/en_/about/structure, accessed 9 May 2013). These terms indicate that

> Institutional ACCs are responsible for overseeing all aspects of animal care and use and for working with animal users, animal care personnel and the institutional administration. ACCs undertake animal use protocol review, approval and follow-up . . . . Other responsibilities include working with the administration to ensure that appropriate facilities are being used, and are well maintained and managed; veterinary and animal care services are in place; continuing education and training programs are in place; occupational health and safety and crisis management programs are in place. … The ACC reports to the senior institutional administrator responsible for animal care and use (e.g. VP Research, President, CEO). (http://www.ccac.ca/en_/assessment/acc, accessed 9 May 2013)[9]

These terms do not entail assessment of the scientific merit of programs of research, let alone of the ethics in question. That is, at the level of the CIHR and NSERC as funding agencies that assess proposed programs of research, there are no data bases or registries that enable assigned peer reviewers to assess the legitimacy of the use of animal lives proposed in the proposed research programs. CIHR and NSERC peer reviewers do not lean upon systematic review because CIHR and NSERC do not require systematic review of research that uses animals lives, let alone *critical* systematic review that would evaluate and judge the quality and defensibility of research that uses animals and of how animals are in fact used. That is, at the level of the funding agency, there is no systematic assessment of why and how animals will be used, and submitted research proposals that seek funding themselves need not elaborate about this use. In other words, scientists seeking funds from CIHR and NSERC need not in detail explicate their use of animals, need not in detail justify their use of animals, and peer reviewers are unarmed with means with which to judge the proposed use of animals.

In turn, once research is funded by CIHR and NSERC, the program's use of animals is merely managed by the local ACC. Local ACCs never turn back funded research programs that use of animals: the research is already approved and it will go ahead. Indeed, ACCs at institutions are expressly told by the CCAC to not undertake assessment of the merit of funded research: that is not their mandate. In sum, *the dedication of animal lives to particular research projects is never critically assessed.* Moreover, ACCs oversee "care" for the already subjected animals only if those animals are listed in the research projects:

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[9] "CCAC assessment panels carry out visits to institutions participating in the CCAC programs based on CCAC guidelines, policy statements and associated documents. When conducting a visit, the panel assesses the following items: structure and resources of the animal care and use program; composition, functioning and effectiveness of the ACC; appropriateness of animal care and use practices, procedures and facilities" (http://www.ccac.ca/en_/about/structure#panels, accessed 16 May 2013).

animals otherwise bred at the university are not reported to the governance and oversight regime and thus fall wholly outside its purview. Following these terms, universities are able to state to the publics of Canada that they are "in compliance" with the standing governance regime. The egregious baseline shortfalls of this governance regime operate directly in relation to living vulnerable beings with subjective experiences of their lives.

With respect to the "care" overseen by the ACCs, the CCAC has codified as acceptable modes of action five categories of invasion into animals. Category A involves experiments on most invertebrates or live isolates; category B is experiments "which cause little or no discomfort or stress"; category C is experiments "which cause minor stress or pain of short duration"; category D is experiments "which cause moderate to severe distress or discomfort" and "Procedures used in Category D studies should not cause prolonged or severe clinical distress"; and category E is "procedures which cause severe pain near, at, or above the pain tolerance threshold of unanesthetized conscious animals". "Investigators and teachers who consider it essential to use vertebrates or invertebrates in their research, teaching or testing in the laboratory or in the field" – that is, the investigators and teachers themselves each make this judgment – "must adhere to humane principles, and take cognizance of CCAC's Ethics of Animal Investigation and other CCAC documentation in assigning a category. Protocols must be submitted to an appropriate review committee for all studies and courses which involve . . . Categories B through E" (http://www.ccac.ca/en_/standards/policies/policy-categories_of_invasiveness, accessed 16 May 2013). The ACC does not in any way challenge such procedures but rather oversees the exercise of these five categories in the terms rendered by the CCAC.

I will be interviewing folks who have sat on UBC's ACC.

III. Reduce, Replace, Refine?

The phrase "the three R's" popularly refers to a child's education in the needed fundamentals of reading, writing and arithmetic. The environmental movement has picked up on this common sense phrase to inspire a popular embrace of the activities of reducing, reusing and recycling. In North America the largest commitment seems to be recycling because that interferes least with standing habits of production and consumption. The world of animal-use science has also come to trade in the common sense idea of "three R's". In 1959, the Universities Federation for Animal Welfare commissioned a study to examine the state of humane techniques in the use of animal lives in research. The report, *The Principles of Humane Experimental Techniques,* motivated by "the humanest possible treatment of experimental animals" which was taken as "a prerequisite for a successful animal experiment", proposed the principles of replacement, reduction and refinement as fundamental to humane experimental techniques (http://www.animalethics.org.au/three-rs, accessed 16 May 2013). This notion of the three R's – which rides the vehicle of the popular and common sense notion of the three R's of children's fundamental education – has gained worldwide currency in animal-use research circles. It suggests the basic value of replacing animals with other research means, with reducing the number of animals used, and with refining techniques to, as the CCAC website says, "minimize pain and distress", that is, the causing of pain and distress that are taken as a given part of science (http://www.ccac.ca/en_/threer).

Whereas the university utterance "we are in compliance" and the CCAC as a structure may assure Canadian citizens that a rational and robust oversight system born of a rigorous system of government historically organized by critical deliberation across a network of publics, the CCAC's Three R's Program exists not as an effect of such robust, rational and systematic checks, balances, deliberation and oversight, but merely because of the initiative of one individual employee at the CCAC. Only recently did the CCAC thus establish a "Three Rs Program" which "aims to increase the visibility of the Three Rs in Canada with our promotion activities and resources. We also carry out projects that support Three Rs implementation, and generate Three Rs-related publications" (http://www.ccac.ca/en_/threer). Note that this program is completely untied to receipt of funding and to universities being deemed "in compliance" with CCAC terms: "[I]nformation provided on the CCAC Three Rs Microsite is intended to support the implementation of the guidelines, but is not used as a basis for recommendations made in CCAC assessment report" (http://www.ccac.ca/en_/standards/guidelines, accessed 16 May 2013). In practice, unsurprisingly, evidence suggests that the numbers of animals subjected to university research is increasing (there is no trend to replace and reduce), that scientists are so untrammeled in their proposals to use animals rather than alternative techniques and materials that the use of animals is culturally largely assumed (there is no trend to replace). As for refinement … (will add later).

IV. CCAC Budget and the Future of CCAC's Legitimation Function

This year, the CIHR and NSERC have both cut CCAC's budget and issued commands about how the CCAC must spend its money. CIHR, which funds the greatest volume of animal-use research in Canada, and which is the largest funder of CCAC, … (will finish).

V. Conclusion

In its early years, another individual employee -- and administrative assistant of the CCAC – took the initiative to create an archive at the CCAC. The archive is, however, closed not only to the public but even to members of CCAC Council, and is considered confidential though it is not clear to whom, and on whose authority it has been rendered confidential and closed. To enter the archive it has been suggested that I seek permission. I will be seeking permission from the new executive director of CCAC to enter the archive.

The CCAC provides what we might describe as "a steady drip of technical requirements and bureaucratic categories" (Pachirat 239) that rationalize a practice that itself rests on an assumed history of critical deliberation. While the popular claim is that the CCAC protects the welfare of animals, in reality the CCAC makes legible to power ever new scores of animal lives, and legitimates this subjection. Against the backdrop of this paper's critique of the legitimation function of the CCAC is the fact that participation in CCAC programs and guidelines by animal-using research facilities is *voluntary and in no way legally required.* Given the present historical commitment to the use of animal lives in research, and given the present institutionally codified and calcified use of animal lives in research, the BC SPCA

> considers an independently funded and legislated central agency essential to perform the following functions: Prohibiting experiments which are: duplication of previous experiments; frivolous or unnecessary; unacceptable because of pain, suffering or distress caused to the animals. Imposing conditions on the conduct of experiments, including ongoing ethical reviews. Ensuring that animals used in experiments are: kept in such a way that their physical and behavioral needs are met; animals specifically bred for experimental purposes to reduce the number needed for statistical accuracy; given adequate anesthesia and analgesia. … The Society urges government, universities, industry and other research institutions to make greater efforts to use alternative techniques that do not involve live animals . . .” (http://www.spca.bc.ca/assets/documents/welfare/position-statements/animals-in-research-and.pdf).

This recommendation from the BC SPCA – for an independently funded and legislated central agency thus empowered to enforce prohibitions and require conditions – is not at all realized by the CCAC and its legitimating regime. Yet even such a legislated and independently funded agency would facilitate and legitimate the use of animal lives in research, codifying protection of researchers and ensuring legally that animals remain subjectified by the law and are subaltern within the polity and very possibly subjects of moderate to enormous suffering (see Taimie Bryant, 2010; Vaughan Black 2011; Timothy Pachirat 2011; Francione and Garner 2010, etc).