

ARTICLES

YOU DON'T OWN ME: FERAL DOGS AND THE QUESTION OF OWNERSHIP

By
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Feral dogs occupy an ambiguous position, challenging standard categories of domestication, wildness, and property ownership. This ambiguity, in turn, complicates the legal status of feral dogs. Feral dogs' property status is particularly critical, as whether a feral dog is owned by someone, or no one at all, hold implications not only for civil and criminal liability in incidents involving feral dogs, but also the legal ability of animal rescue organizations to intervene in the lives of feral dogs. Part II of this Article summarizes the application of property law to animals, particularly highlighting the role played by an animal's status as wild or domestic; Part III explores the factors distinguishing feral dogs from other canines, determining that feral dogs should properly be situated as domestic animals; Part IV discusses the legal landscape relevant to feral dogs, focusing particularly on ownership and liability; and Part V examines the ways in which the property status of feral dogs may impact an animal rescue organization's ability to care for those animals.

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I. INTRODUCTION

[T]he chances of the famous refugee are improved just as a dog with a name has a better chance to survive than a stray dog who is just a dog in general.

—Hannah Arendt, *The Origins of Totalitarianism*¹

Detroit's economic woes are well known and often misreported. As the largest American municipality to declare bankruptcy,² Detroit has become the poster child for blight and abandonment. In January 2011, one of the founders of the Detroit Dog Rescue posted a YouTube video indicating there were 50,000 dogs roaming the streets of Detroit.³ This story made headlines in other news outlets⁴ and was reported by Bloomberg,⁵ the Today Show,⁶ *Rolling Stone*,⁷ and the Associated Press.⁸ A survey conducted by the World Animal Awareness Society's American Strays Project later estimated this number to be fewer than

¹ HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 287 (new ed. 1973).

² Monica Davey & Mary Williams Walsh, *Billions in Debt, Detroit Tumbles into Insolvency*, N.Y. TIMES, <http://www.nytimes.com/2013/07/19/us/detroit-files-for-bankruptcy.html?smid=pl-share> (July 18, 2013) (accessed Nov. 22, 2014) [<http://perma.cc/EGQ3-HW8C>].

³ Hush Carlise, *Detroit Dog Rescue*, YOUTUBE, http://www.youtube.com/watch?v=d-bxTO_Q-5k (Jan. 31, 2011) (accessed Nov. 22, 2014) [<http://perma.cc/X8BK-4ZY7>].

⁴ Mark Memmott, *Detroit's Stray Dog Epidemic: 50,000 or More Roam the City*, NAT'L PUBLIC RADIO, <http://www.npr.org/blogs/thetwo-way/2013/08/21/214151836/detroits-stray-dog-epidemic-50-000-or-more-roam-the-city> (Aug. 21, 2013) (accessed Nov. 22, 2014) [<http://perma.cc/L5CP-REAE>].

⁵ Chris Christoff, *Abandoned Dogs Roam Detroit in Packs as Humans Dwindle*, BLOOMBERG NEWS, <http://www.bloomberg.com/news/2013-08-21/abandoned-dogs-roam-detroit-in-packs-as-humans-dwindle.html> (Aug. 21, 2013) (accessed Nov. 22, 2014) [<http://perma.cc/Ry3W-S8U8>].

⁶ *Stray Dogs in Detroit Focus of YouTube Video*, TODAY, <http://www.today.com/video/today/41853098#41853098> (Mar. 1, 2011) (accessed Nov. 22, 2014) [<http://perma.cc/VV3B-AHZH>].

⁷ Mark Binelli, *City of Strays: Detroit's Epidemic of 50,000 Abandoned Dogs*, ROLLING STONE, Mar. 29, 2012, at 50 (available at <http://www.rollingstone.com/culture/news/city-of-strays-detroits-epidemic-of-50-000-wild-dogs-20120320>) (accessed Nov. 22, 2014) [<http://perma.cc/3A3D-WBEC>].

⁸ Associated Press, *Rapper Taking Bite out of Stray Dog Problem*, YOUTUBE, <http://www.youtube.com/watch?v=-IWWCx2QEgU&feature=share&list=PL2B729395022944CD> (Mar. 9, 2012) (accessed Nov. 22, 2014) [<http://perma.cc/RS7W-9324>].

3,000 dogs.⁹ In any case, it is undisputed that there are a large number of feral¹⁰ dogs roaming the city streets.¹¹

The feral dog problem is not limited to Detroit.¹² In the United States (U.S.), feral dogs are not just a problem in urban cities, but in

⁹ World Animal Awareness Soc’y, *American Strays Project, Preliminary Data Release of Survey Results from American Strays Volunteer Canine Survey of Loose Dogs in Detroit* 1 (Jan. 20, 2014) (available at http://www.wa2s.org/uploads/5/8/8/9/5889479/american_strays_project_preliminary_data_for_detroit_012014.pdf (accessed Nov. 22, 2014) [<http://perma.cc/F353-XXMD>]). See also Christina Hall, *Survey: Detroit’s Stray Dog Problem Not as Bad as Rescue Claims*, DETROIT FREE PRESS, <http://www.freep.com/article/20140120/NEWS01/301200082/American-Strays-Project-dogs-roaming-Detroit-streets> (Jan. 20, 2014) (accessed Nov. 22, 2014) (summarizing the survey’s preliminary results) [<http://perma.cc/M3RB-GZX7>].

¹⁰ For simplicity, this Article uses ‘feral’ when discussing all free-roaming domestic dogs, as the ownership status of a stray dog depends on whether he was lost, mislaid, or abandoned, and is not easily determined at first glance. See *infra* Part III (discussing classification of feral dogs). Further, membership in feral dog packs is fluid, and dependent on lost, mislaid, or abandoned dogs, who in turn may become feral. See Wendy van Kerkhove, *A Fresh Look at the Wolf-Pack Theory of Companion-Animal Dog Social Behavior*, 7 J. APPLIED ANIMAL WELFARE SCI. 279, 281 (2004) (“The primary method for feral dogs’ maintaining their numbers is by the recruitment of stray companion-animal dogs. Thus, the natural pack behavior of dogs appears to be very loose, changing, and unstructured, as opposed to [wolves’] tight, constant, and highly structured [packs].”). Finally, a number of the laws discussed in this Article use the term ‘feral’ to refer to any free-roaming dog, including ferals and strays. See *infra* Part IV (discussing laws regulating feral dogs as property). As such, when this Article refers to feral dogs, the term encompasses both domestic dogs who are unsocialized to humans, having returned to a wild state, and domestic dogs who have wandered away from—or been abandoned by—their owners, and can be forfeited if not claimed. See BLACK’S LAW DICTIONARY 102 (9th ed. 2009) (Defining a feral animal as “a domestic animal that has returned to a wild state,” usually “unsocialized to people”). Notably, *Black’s Law Dictionary* does not provide a definition of ‘stray animal.’ *Stray*, OXFORD ENGLISH DICTIONARY ONLINE, <http://www.oed.com/view/Entry/191377?rskey=bCTSTc&result=1#eid> (accessed Nov. 5, 2014) (Defining stray animals, who can—of course—be lost, mislaid, or abandoned).

¹¹ See Andy Henion & Laura Reese, *Detroit’s Stray Pets Overwhelm Rescue Workers*, MSU TODAY, <http://msutoday.msu.edu/news/2014/detroits-stray-pets-overwhelm-rescue-workers/> (Feb. 3, 2014) (accessed Nov. 22, 2014) (“While there have been other estimates . . . the important point is there are far too many stray animals to care for in the current system.”) [<http://perma.cc/J7KE-9N6P>]; Jeff Wattrick, *The Town That Cried Dog: Why the 50,000 Stray Dogs Stat Makes No Sense*, DEADLINE DETROIT, http://www.deadlinedetroit.com/articles/6136/the_town_that_cried_dog_why_the_50_000_stray_dogs_stat_makes_no_sense#.U5iDjNizLRd (Aug. 23, 2013) (accessed Nov. 22, 2014) (arguing the 50,000 stray dog figure does not comport with observations of life in Detroit, but noting “[e]veryone agrees Detroit has a dog problem”) [<http://perma.cc/S2BS-Q7WE>].

¹² See Maryann Mott, *U.S. Facing Feral Dog Crisis*, NAT’L GEOGRAPHIC NEWS, http://news.nationalgeographic.com/news/2003/08/0821_030821_straydogs.html (Aug. 21, 2003) (accessed Nov. 22, 2014) (“Low income, high-crime neighborhoods in cities like St. Louis, Los Angeles, New York, Santa Fe, Pittsburgh, and Cleveland, are being overrun by tens of thousands of unwanted dogs.”) [<http://perma.cc/F5HZ-4QNA>]. Mott also notes “the current world population of domestic dogs may be as high as 500 million, of which a substantial, although unknown, proportion is free-roaming[.]” *Id.*; see e.g., Steve Krafft, *Dogs Gone Wild: Packs of Chihuahuas Roam Maryvale Streets*, MYFOXPHOENIX.COM, <http://www.myfoxphoenix.com/story/24719916/2014/02/13/dogs-gone-wild-packs-of-chihuahuas-roam-maryvale-streets> (Feb. 2, 2013) (accessed Nov. 22, 2014) (discussing

rural communities as well; feral dogs in the rural western states are encroaching on people and wildlife.¹³ Some typically rural Native American reservations have feral dog problems.¹⁴ These communities

the stray dog problem in West Phoenix, Arizona) [<http://perma.cc/A7K9-3JYC>]; *Stray Dog Problem Plagues City Residents*, KMOV.COM, <http://www.kmov.com/news/local/Stray-dog-problem-plagues-city-residents-131303674.html> (Oct. 6, 2011) (accessed Nov. 22, 2014) (describing the stray dog problem in St. Louis) [<http://perma.cc/KK4A-D8YZ>]. Free-roaming dogs are a global problem. See Margaret R. Slater et al., *Free-Roaming Dogs and Cats in Central Italy: Public Perceptions of the Problem*, 84 PREVENTIVE VETERINARY MED. 27, 28 (2008) (“Free-roaming dogs and cats are a common problem in many countries.” Slater et al. focus here on Italy, but also discuss free-roaming dog dynamics in Canada, Caribbean islands, and the Mexico-U.S. border region near El Paso, TX.); Margaret R. Slater, *The Role of Veterinary Epidemiology in The Study of Free-Roaming Dogs and Cats*, 48 PREVENTIVE VETERINARY MED. 273, 274 (“Free-roaming dogs and cats cause major public-health problems and animal-welfare concerns in many parts of the world.”); P. Dalla Villa et al., *Free-Roaming Dog Control among OIE-Member Countries*, 97 PREVENTIVE VETERINARY MED. 58, 62 (2010) (“Free-roaming dogs are a global problem involving countries of all degrees of economic development, but especially poor countries.”).

¹³ See Troy Anderson, *Rural West Going to the Dogs*, HIGH COUNTRY NEWS, May 26, 2008 (available at <https://www.hcn.org/issues/371/17716> (accessed Nov. 22, 2014)) (“The story is similar across much of the West, as swelling ranks of rogue canines increasingly harass wildlife, livestock, even people.” Anderson describes the canines who pose these threats as including both dogs who have been abandoned and dogs who are allowed to roam.) [<http://perma.cc/25HN-WRLP>].

¹⁴ See e.g., Jeri Clausing, *Navajo Nation’s Dogs Roam Unchecked; Dangerous for People, Livestock*, HUFFINGTON POST DENVER, http://www.huffingtonpost.com/2011/08/16/navajo-nation-reservation-dog_n_927976.html (updated Oct. 16, 2011) (accessed Nov. 22, 2014) (“On the vast Navajo Nation . . . [it is estimated that] there are four to five dogs for each of the more than 89,000 households—or as many as 445,000 dogs, most of which roam unchecked, killing livestock and biting people with alarming regularity.”) [<http://perma.cc/NGX9-DV88>]; *Putting a Leash on the ‘Rez Dog’ Problem*, INDIAN COUNTRY TODAY MEDIA NETWORK, <http://indiancountrytodaymedianetwork.com/2011/01/13/putting-leash-rez-dog-problem-11350> (Jan. 13, 2011) (accessed Nov. 2, 2014) (providing examples of health and safety concerns relating to feral dogs on the Navajo Reservation, the Nambé Pueblo outside of Santa Fe, New Mexico, and the Pine Ridge Indian Reservation in South Dakota); *Too Many Animals Still Roam the Navajo Reservation*, AM. INDIAN REP., <http://www.americanindianreport.com/wordpress/2011/02/too-many-animals-still-roam-the-navajo-reservation/> (Feb. 25, 2011) (accessed Nov. 22, 2014) (“Tens of thousands of cats and dogs without and with homes roam the largely rural 26,000 square-mile [Navajo] reservation which extends into three states.”) [<http://perma.cc/E9BC-CKC8>]. Free-roaming dogs on U.S. reservations even have a collective name: rez dogs. See e.g., Victoria Fregoso, *Animal Advocates Question the Status of ‘Rez Dogs’*, 3KRTV.COM, <http://www.krtv.com/news/animal-advocates-question-the-status-of-rez-dogs/> (Mar. 4, 2013) (accessed Nov. 22, 2014) (explaining the free running dogs on reservations are known as “rez dogs”) [<http://perma.cc/5YKF-MB2R>]. These issues are not limited to tribal lands within the U.S.—some rural First Nations communities in Canada see similar issues. See e.g., Jen Gerson, *Volunteers Struggle to Reduce Wild Dog Population Plaguing Native Reserves*, NAT’L POST, <http://news.nationalpost.com/2013/02/02/volunteers-struggle-to-reduce-wild-dog-population-plaguing-native-reserves/> (Feb. 2, 2013) (accessed Nov. 22, 2014) (“[S]emi-feral dog populations have long been a problem in First Nations’ communities.”) [<http://perma.cc/3YWQ-XWVG>]; Jesse Winter, *Stray Dogs Attack Henderson Corner 4-Year-Old*, YUKON NEWS, <http://www.yukon-news.com/news/stray-dogs-attack-henderson-corner-4-year-old> (May 22, 2013) (accessed Nov. 22, 2014) (detailing a feral dog attack in a Yukon community)

do not have the bylaws, licensing requirements, veterinary services, or infrastructure to deal with feral dog populations.¹⁵ In an attempt to control the feral dog population in communities ranging from urban centers to rural reservations, culls have been proposed—and in some cases actually conducted.¹⁶ For example, in December 2011, the town of Harrisburg, Pennsylvania lacked funds to shelter feral dogs, and in response a Harrisburg Police Department memo forbade officers from taking dogs to the local shelter.¹⁷ The memo directed officers to instead shoot dogs who were sick, injured, suffering, or aggressive.¹⁸ In

[<http://perma.cc/7M3Q-NVWT>]; see also Michelle Cliffe, *Challenging Assumptions about Dogs and First Nations*, INT'L FUND FOR ANIMAL WELFARE, <http://www.ifaw.org/united-states/news/challenging-assumptions-about-dogs-and-first-nations> (Apr. 18, 2013) (accessed Nov. 22, 2014) (discussing First Nation feral dog dynamics in the context of the changing cultural position of dogs, specifically the decline of traditional positioning of dogs as valued workers) [<http://perma.cc/ZNU4-4SR5>].

¹⁵ Gerson, *supra* note 14. See e.g., *Putting a Leash on the 'Rez Dog' Problem*, *supra* note 14 (noting that there is not “a single veterinarian on the two-million acre Pine Ridge Indian Reservation”).

¹⁶ Here, culling refers to killing feral dogs in the field, distinct from the process of dogs being placed in a shelter and potentially later euthanized. See e.g., Khalil Anthony Johnson, Jr., *The Chinle Dog Shoots: Governance and Grass-Roots Politics in Postwar Navajo Country*, 83 PAC. HIST. REV. 92, 92–93 (2014) (describing the April 8, 1956 “dog shoot” in the Chinle community on the Navajo Reservation); *Rescue Groups Call for Ban on First Nation Dog Culls*, CBC NEWS, <http://www.cbc.ca/news/canada/manitoba/rescue-groups-call-for-ban-on-first-nation-dog-culls-1.1326064> (updated Apr. 1, 2013) (accessed Nov. 22, 2014) (discussing a Manitoba rescue group calling for a ban on dog culls) [<http://perma.cc/P5CB-4NTW>]; see generally Gerson, *supra* note 14 (noting “it’s not uncommon for . . . remote reserves to conduct culls”). Culling feral dogs is not new in the U.S. In the mid-nineteenth century, to prevent the spread of disease, men and boys often clubbed wandering dogs in city streets in exchange for bounty payments. KATHERINE C. GRIER, *PETS IN AMERICA: A HISTORY* 151 (2006).

¹⁷ Memorandum on Animal Complaints from Harrisburg Police Capt. Annette Books (Dec. 5, 2011) (available at http://media.pennlive.com/midstate_impact/photo/10409029-large.jpg (accessed Nov. 22, 2014)) [<http://perma.cc/8F8P-Y6S4>]. See also Mark Shade, *Harrisburg May Rethink Having Cops Kill Stray Dogs*, REUTERS, <http://www.reuters.com/article/2012/01/05/us-harrisburg-dogs-idUSTRE80404T20120105> (Jan. 4, 2012) (accessed Nov. 22, 2014) (describing the memo’s genesis in “Harrisburg lack[ing] the money to pay an animal shelter to take in strays. . .”) [<http://perma.cc/WKA4-3K5D>].

¹⁸ Officers were directed to destroy such dogs “in as safe a manner as possible.” When responding to complaints of feral dogs not ill, injured, suffering, or aggressive, the memo directed officers to adopt the dog themselves, place the dog with the complaining citizen, or release the dog elsewhere. Memorandum on Animal Complaints, *supra* note 17. See also Donald Gilliland, *Memo Tells Harrisburg Police to Kill, Adopt, or Dump Abandoned or Lost Dogs*, PENNLIVE.COM, http://www.pennlive.com/midstate/index.ssf/2012/01/memo_tells_harrisburg_police_t.html (updated Jan. 4, 2012) (accessed Nov. 22, 2014) (indicating that officers understood this policy to mean they should shoot aggressive, ill, wounded, or suffering dogs) [<http://perma.cc/4L5Q-C3VV>]. Faced with public outcry and notice from the Pennsylvania Governor’s Dog Law Advisory Board that the policy violated state law, Harrisburg renewed its contract to take in feral dogs with a local shelter. See Amy Worden, *They Shoot Dogs, Don’t They? In Harrisburg That’s Called Animal Control*, PHILLY.COM, <http://www.philly.com/philly/blogs/pets/They-shoot-dogs-dont-they-In-Harrisburg-thats-called-animal-control.html> (Jan. 2, 2012) (accessed Nov. 22, 2014) (describing “outrage,” the opinion from the Governor’s Dog Law Advisory Board that the policy was illegal, and the mayor’s statement that “the situa-

response to this widespread problem, nonprofit organizations have stepped in to provide veterinary care or place adoptable dogs in communities with adequate resources and infrastructure.¹⁹

Feral dogs cause millions of dollars in damage in the U.S., and can be a threat to human health and safety.²⁰ Dogs carry transmissible diseases such as rabies, parvovirus, and canine distemper virus, which can impact both human and wildlife populations.²¹ Fewer than 20% of dogs living on U.S. tribal lands are vaccinated against rabies, and most

tion had been resolved”) [<http://perma.cc/SB6U-D6CA>]; Paul Barker, *Must Love Dogs: Harrisburg’s Dog Laws Are among the Most Progressive in Pennsylvania. Can The City Enforce Them?*, THEBURG, <https://theburgnews.com/in-the-burg/love-dogs-harrisburgs-dog-laws-progressive-pennsylvania-city-enforce> (Dec. 31, 2013) (accessed Nov. 22, 2014) (noting “embarrassing news coverage of [the 2011 Harrisburg] stray dog policy,” and that by February 2012 the city had renewed its contract with a local shelter) [<http://perma.cc/4CME-2QS5>].

¹⁹ See generally Desert Animal Companions, *News and Updates*, <http://www.desertanimalcompanions.org> (updated May 18, 2014) (accessed Nov. 22, 2014) (listing the various rescue groups working to help animals on the Navajo Nation) [<http://perma.cc/6XHJ-MGUH>]; *Services: Pet Promise*, RESCUE OPERATION FOR ANIMALS OF THE RESERVATION (ROAR), http://www.nrcprograms.org/site/PageServer?pagename=roar_progs_promise (accessed Nov. 22, 2014) (a spay and neuter fund to help control the pet population on Native American reservations) [<http://perma.cc/5LKM-43HN>]; REZ DOG RESCUE, <http://rezdogrescue.weebly.com> (accessed Nov. 22, 2014) (a “non-profit Pet Rescue Organization that focuses its rescue missions predominantly within the borders of the Yakama Nation Indian Reservation”) [<http://perma.cc/Z733-WDRN>]; *WSPA Calls for Long-Term Solutions for Dogs in First Nations Communities*, WORLD ANIMAL PROT. CANADA, http://www.worldanimalprotection.ca/latestnews/2010/wspa_calls_for_long_term_solutions_for_dogs_in_first_nations_communities.aspx (accessed Nov. 22, 2014) (advocating for the development of a national strategy to address animal welfare in First Nation communities in light of a child being “attacked by a pack of roaming dogs”) [<http://perma.cc/FZ5A-FM6L>].

²⁰ See David L. Bergman et al., *Dogs Gone Wild: Feral Dog Damage in the United States*, in PROCEEDINGS OF THE 13TH WILDLIFE DAMAGE MGMT. CONF. 177–179 (2009) (available at http://www.aphis.usda.gov/wildlife_damage/nwrc/publications/09pubs/breck092.pdf (accessed Nov. 22, 2014)) (discussing the estimated monetary losses caused by feral dogs from damage to crops and livestock as well as concerns about dog bites and transmission of diseases) [<http://perma.cc/W2DD-5UE2>]; see generally Jeffrey S. Green & Philip S. Gipson, *Feral Dogs*, in PREVENTION AND CONTROL OF WILDLIFE DAMAGE C-79, C-81 (Scott E. Hygnstrom et al. eds., 1994) (available at <http://digitalcommons.unl.edu/icwdmhandbook/35> (accessed Nov. 22, 2014)) (discussing feral dogs’ potential to damage crops, attack animals, and injure humans) [<http://perma.cc/9F3E-E3V9>].

²¹ Julie K. Young et al., *Is Wildlife Going to the Dogs? Impacts of Feral and Free-Roaming Dogs on Wildlife Populations*, 61 *BIOSCI.* 125, 125–126 (2011) (available at <http://bioscience.oxfordjournals.org/content/61/2/125.full> (accessed Nov. 5, 2014)) [<http://perma.cc/92WU-TXS5>]. See Dalla Villa et al., *supra* note 12, at 58 (finding that “rabies and other zoonoses . . . find important reservoirs in uncontrolled free-roaming dog (FRD) populations” in OIE countries (OIE, formerly the Office International des Epizootics, is now the World Organization for Animal Health)); see also Joeline Hughes & David W. Macdonald, *A Review of the Interactions between Free-Roaming Domestic Dogs and Wildlife*, 157 *BIOLOGICAL CONSERVATION* 341, 348 (2013) (comprehensive review of domestic dogs studies, demonstrating “they can cause a variety of species conservation problems . . . primarily caused by predation . . . and disease transmission”).

feral dogs are not vaccinated at all.²² Dogs attack livestock, causing millions of dollars in losses for ranchers;²³ prey on wildlife, including endangered species;²⁴ and attack humans, causing severe injury or death, although fatalities are rare.²⁵ A 1973 study conducted in Baltimore discovered that free-ranging dogs provided numerous benefits to rats, with rats eating dog feces, dogs providing easily accessible food for rats by rummaging through garbage, and dogs chasing away cats that were stalking rats.²⁶ Furthermore, dog feces and urine on urban streets cause hazards for pedestrians and encourage the breeding of flies, creating a public health issue.²⁷ Feral dogs can even impact the genetics of wildlife such as wolves and coyotes through inbreeding.²⁸ Additionally, feral dogs themselves suffer from “high mortality, malnutrition, disease, parasitism, starvation, and abuse.”²⁹

The issue of feral dogs in rural and urban communities raises questions about property rights to feral animals. Establishing who has ownership of these animals would help clarify the rights of caretakers and rescue groups with respect to adoption and veterinary care of feral dogs. This Article focuses on U.S. property law in relation to feral dogs.

²² Bergman et al., *supra* note 20, at 180.

²³ See USDA, NAT'L AGRIC. STATISTICS SERV., CATTLE DEATH LOSS (May 12, 2011) (available at <http://usda.mannlib.cornell.edu/usda/current/CattDeath/CattDeath-05-12-2011.pdf> (accessed Nov. 22, 2014)) (finding that dogs killed cattle and calves worth over \$10 million dollars in 2010) [<http://perma.cc/JA69-FVBU>].

²⁴ See Hughes & Macdonald, *supra* note 21, at 345 (Meta-study finding that where dogs were reported to be interacting with wild species, 33% of those species are globally threatened. Of the sixty-nine studies subject to meta-analyses, all but seven indicated these interactions have negative impacts on the non-dogs involved.).

²⁵ See Ricky L. Langley, *Human Fatalities Resulting from Dog Attacks in the United States, 1979-2005*, 20 WILDERNESS & ENVTL. MED. 19 (2009) (analyzing human injuries and fatalities resulting from dog bites); Gary J. Patronek et al., *Co-Occurrence of Potentially Preventable Factors in 256 Dog Bite-Related Fatalities in the United States (2000-2009)*, 243 J. AM. VETERINARY MED. ASS'N 1726 (Dec. 15, 2013) (finding that “[f]atal dog bites were extremely rare throughout the 10-year period of study”); see e.g., Donald Jaramillo, *Child Dies from Wild Dogs' Attack*, CIBOLA BEACON, http://www.cibolabeacon.com/news/child-dies-from-wild-dogs-attack/article_4fad7c6e-53c2-11e2-8aaf-0019bb2963f4.html (Jan. 1, 2013) (accessed Nov. 22, 2014) (describing an attack and the death of an eight-year-old boy on the Ramah Navajo Indian Reservation) [<http://perma.cc/82JQ-4ZJK>]; Sarah Schulte, *Stray Dogs Attack Woman, Pet in Jackson Park Highlands*, ABC 7 CHICAGO, <http://abc7chicago.com/archive/9401323/> (Jan. 20, 2014) (accessed Nov. 22, 2014) (describing an attack on a Chicago woman and her pet dog) [<http://perma.cc/KL6A-SKQ3>]; *Houston Woman in Critical Condition after Pack of 15 Dogs Attack*, WFAA.COM, <http://www.wfaa.com/story/news/local/texas-news/2014/08/19/14072822/> (July 24, 2013) (accessed Nov. 22, 2014) (describing an attack that left a Houston woman in critical condition) [<http://perma.cc/QNU7-83YG>].

²⁶ ALAN M. BECK, THE ECOLOGY OF STRAY DOGS: A STUDY OF FREE-RANGING URBAN ANIMALS 51–53 (1973) (available at http://docs.lib.purdue.edu/cgi/viewcontent.cgi?article=1004&context=press_ebooks (accessed Nov. 22, 2014)) [<http://perma.cc/8XZX-ME5Y>].

²⁷ *Id.* at 55–56.

²⁸ Bergman et al., *supra* note 20, at 180; Hughes & Macdonald, *supra* note 21, at 347–48.

²⁹ Hughes & Macdonald, *supra* note 21, at 342.

Part II provides context with a discussion of property law in the U.S. as it relates to animals in general.³⁰ Part III discusses the term ‘feral dog’ and the nature of the animal, which has implications for his treatment within the law. Part IV discusses property law in relation to feral dogs, with an analysis of the implications of property ownership for these animals, such as criminal and civil liability. Part V analyzes whether rescue groups that take and adopt out feral dogs can do so legally under property law in the U.S.

II. PROPERTY LAW APPLIED TO ANIMALS

A. *Wild Animals*

Traditionally, common law classified animals as either “wild” or “domestic.”³¹ Under the doctrine of *ferae naturae*, humans could capture wild animals to obtain ownership over them.³² But if the wild animal escaped the control of the human, that person no longer had a property right in the animal.³³ Simply owning land on which *ferae naturae* wild animals were found was not enough to confer a property right in them.³⁴ However, wild animals with *animus revertendi*—the “intention of returning”—would be considered property.³⁵ These are wild animals that are captured but roam at large, such as a tamed deer that wanders away to graze but later returns to its ‘tamer.’³⁶

Today, under both police power and public trust doctrines, wild animals are generally recognized to be under the control of state governments.³⁷ Police power grants the state the power “to enforce laws for the health, welfare, morals, and safety of its citizens.”³⁸ The public

³⁰ Other authors offer a more detailed discussion of property law with regard to animals than is necessary here. Part II gives a general overview of the law of property relating to wild and domestic animals. *See generally* JOHN H. INGHAM, *THE LAW OF ANIMALS: A TREATISE ON PROPERTY IN ANIMALS WILD AND DOMESTIC AND THE RIGHTS AND RESPONSIBILITIES ARISING THEREFROM* (1900) (discussing the distinction between wild and domestic animals as subjects of property); David Favre, *Living Property: A New Status for Animals in the Legal System*, 93 MARQ. L. REV. 1021, 1026–27 (2010) (describing animals as personal property and proposing a new status for animals within the legal system); Eric W. Nielsen, *Is the Law of Acquisition of Property by Find Going to the Dogs?* 15 T.M. COOLEY L. REV. 479, 481 (1998) (analyzing the law of acquisition by find of property as it relates to companion animals).

³¹ JAMES F. WILSON, *LAW AND ETHICS OF THE VETERINARY PROFESSION* 74 (1988); Rebecca J. Huss, *Valuing Man’s and Woman’s Best Friend: The Moral and Legal Status of Companion Animals*, 86 MARQ. L. REV. 47, 68–69 (2002).

³² BLACK’S LAW DICTIONARY 1448 (9th ed. 2009) (wild animals belong to the person who captures them); Nielsen, *supra* note 30, at 481.

³³ *Nicholson v. Smith*, 986 S.W.2d 54, 60 (Tex. App. 1999) (no individual property rights exist in wild, undomesticated animals); Huss, *supra* note 31, at 69.

³⁴ *Nicholson*, 986 S.W.2d at 60.

³⁵ BLACK’S LAW DICTIONARY 104 (9th ed. 2009); Nielsen, *supra* note 30, at 482.

³⁶ Nielsen, *supra* note 30, at 482.

³⁷ DAVID FAVRE & PETER L. BORCHELT, *ANIMAL LAW AND DOG BEHAVIOR* 36 (1999). *See generally* *Hughes v. Oklahoma*, 441 U.S. 322, 328–36 (1979) (analyzing state wildlife regulations under the Constitution’s Commerce Clause).

³⁸ BLACK’S LAW DICTIONARY 1541 (9th ed. 2009).

trust concept revolves around rights of access, where the state (trustee) conserves the corpus resource (the wild animals) for the beneficiaries (present and future residents of the state).³⁹ These concepts are different than ownership, since they do not include actual possession.⁴⁰ But they do grant states some authority over wildlife, such as the ability to control the method of capture, require permits, and impose reporting requirements on individuals.⁴¹

However, the power of the states has its limits. There are some situations in which wild animals are controlled by federal laws and regulations.⁴² For instance, the Endangered Species Act (ESA) is administered by two federal agencies,⁴³ the U.S. Fish and Wildlife Service (part of the Interior Department) and the National Marine Fisheries Service (part of the National Oceanic and Atmospheric Administration).⁴⁴ The federal government's interest in protecting wildlife derives from its commerce power, which allows it to enact and enforce the ESA.⁴⁵ Further, where there is federal land within a state, the Property Clause of the Constitution grants the federal government power over the land and the wildlife within it.⁴⁶

Tribal laws and treaties may also affect wild animals. Native American nations in the U.S. are considered "domestic dependent nations" that are "legally free to exercise inherent jurisdiction over internal affairs, subject to an overriding of federal power and duty of protection."⁴⁷ Native American nations have their own tribal courts,

³⁹ FAVRE & BORCHELT, *supra* note 37, at 42.

⁴⁰ *Id.*

⁴¹ *Id.* at 39.

⁴² Kevin R. Kemper, *Environmental Information Policy and Secrets about Jaguars: Why Trusting Arizona Tribes Is the Best Strategy for Jaguar Protection*, 4 ARIZ. J. ENVTL. L. & POL'Y 187, 201 (2014).

⁴³ Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544 (2012).

⁴⁴ 50 C.F.R. § 402.01(b) (2013) ("The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibilities for administering the [Endangered Species] Act.")

⁴⁵ Bradford C. Mank, *Protecting Intrastate Threatened Species: Does the Endangered Species Act Encroach on Traditional State Authority and Exceed the Outer Limits of the Commerce Clause?*, 36 GA. L. REV. 723, 729 (2002). Cf. Kevin Simpson, *The Proper Meaning of "Proper": Why the Regulation of Intrastate, Non-Commercial Species under the Endangered Species Act Is an Invalid Exercise of the Commerce Clause*, 91 WASH. U. L. REV. 169, 169–70 (2013) (acknowledging the ESA's present scope, but arguing congressional Commerce Clause power should not extend to regulating purely intrastate, non-commercial species).

⁴⁶ See *Wyoming v. U.S.*, 279 F.3d 1214, 1226–27 (10th Cir. 2002) (noting that "[t]he Property Clause . . . empowers Congress to exercise jurisdiction over federal land within a [s]tate if Congress so chooses"); see also U.S. CONST. art. IV, § 3, cl. 2 ("The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . .").

⁴⁷ *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831). See also Patrick Macklem, *Distributing Sovereignty: Indian Nations and Equality of Peoples*, 45 STAN. L. REV. 1311, 1317–18 (1993) (describing "domestic dependent nation" status as leaving Native American nations "free to exercise inherent jurisdiction over internal affairs, subject to an overriding federal power and duty of protection").

constitutions, statutory law, and case law.⁴⁸ Treaties between Native American nations and the U.S. federal government can reserve for the Native American nations the exclusive right to hunt and fish on their land.⁴⁹ U.S. courts have also confirmed tribal rights to manage wildlife on their own reservations, preempting state hunting and fishing laws.⁵⁰ Some Native American nations address the ownership of wild animals in their laws. For instance, the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah specifically creates ownership in the Tribe for all wildlife living on the reservation.⁵¹

However, Native American rights and federal legislation can conflict. For example, in *U.S. v. Billie*, a member of the Seminole Tribe of Florida shot and killed a panther on the tribe's reservation.⁵² The U.S. government claimed that he did this in violation of the ESA, while Billie claimed the ESA did not apply on the Seminole reservation.⁵³ The court determined that the ESA did apply because, along with evidence within the Act's legislative history, conservation measures were necessary to protect endangered wildlife despite interests of the Native American nations.⁵⁴

It follows that wild animals are not 'owned' so much as they are 'controlled' by legislation and legal constructs. Whether these concepts apply to feral dogs depends on whether one considers feral dogs 'wild' or 'domestic' animals.

B. Domestic Animals

Unlike wild animals, which traditionally were classified under common law according to their relationship to humans, domestic animals were classified according to their utility. As the common law evolved, domestic animals were either 'useful' or 'base.'⁵⁵ 'Useful' animals such as livestock were regarded as property, while animals of a 'base nature' such as dogs and cats were not.⁵⁶ In addition to lacking

⁴⁸ See Macklem, *supra* note 47, at 1318–19 (discussing Native American nations creating constitutions, setting up tribal courts, and exercising taxation powers); see also JUSTIN B. RICHLAND & SARAH DEER, INTRODUCTION TO TRIBAL LEGAL STUDIES 14–15 (2d ed. 2010) (describing Native American law as encompassing constitutional law, statutory law, and case law).

⁴⁹ See *e.g.*, *U.S. v. Dion*, 476 U.S. 734, 738 (1986) ("As a general rule, Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them, unless such rights were clearly relinquished by treaty or have been modified by Congress.").

⁵⁰ See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 344 (1983) (concluding that the application of New Mexico's hunting and fishing laws to the Mescalero Apache Tribe's reservation is pre-empted by tribal law).

⁵¹ UTE CODE tit. 8, § 8-1-3(1) (1988) (available at <http://www.narf.org/nill/Codes/uteuocode/utebodyt8.htm> (accessed Nov. 22, 2014)) [<http://perma.cc/YF62-ATUY>].

⁵² *U.S. v. Billie*, 667 F. Supp. 1485, 1487 (S.D. Fla. 1987).

⁵³ *Id.*

⁵⁴ *Id.* at 1490–91. Similarly, the Supreme Court in *Dion* held that the Eagle Protection Act abrogated Native American treaty rights to hunt eagles. *Dion*, 476 U.S. at 740, 745.

⁵⁵ Favre, *supra* note 30, at 1026.

⁵⁶ *Id.*

utility “as beasts of burden, for draft . . . [or] food,” the sheer diversity of dog breeds—and the range of uses to which different breeds can be put—discouraged courts from finding an “intrinsic value . . . common to all dogs as such, and independent of the particular breed of individual.”⁵⁷ Though dogs remained nonproperty until the early twentieth century, the judicial trend since the 1930s has been to treat dogs as domestic animals, and as property.⁵⁸ Today it is well known that the U.S. legal system considers dogs to be personal property, though debates about whether companion animals should carry the same property classification as inanimate objects persist.⁵⁹ Further, some courts are beginning to recognize pets as a “special variety of personal property” that has value in excess of other forms of personal property.⁶⁰

State and local governments have the authority through their police power to regulate domestic animals.⁶¹ For example, Kalamazoo County, Michigan deputizes animal control officers as peace officers and gives them the authority to enforce the county’s Animal Control Enforcement Ordinance.⁶² Some state and local governments also regulate ‘exotic pets,’ though these laws vary greatly by jurisdiction.⁶³ If

⁵⁷ *Sentell v. New Orleans & Carrollton R. Co.*, 166 U.S. 698, 701 (1897).

⁵⁸ *FAVRE & BORCHELT*, *supra* note 37, at 10–11. Some jurisdictions did not clearly recognize dogs as property until the mid or late 1900s. *See Favre, supra* note 30, at 1026–27 (noting that Connecticut and Virginia lacked statutes clearly designating dogs as personal property until 1948 and 1984, respectively); *see also* VA. CODE ANN. § 3.2-6585 (2008) (“All dogs and cats shall be deemed personal property and may be the subject of larceny and malicious or unlawful trespass.”); CONN. GEN. STAT. ANN. § 22-350 (2013) (“All dogs are deemed to be personal property.”).

⁵⁹ *Huss, supra* note 31, at 68–69. *See generally Favre, supra* note 30 (arguing that animals should be given a new property status in the legal system).

⁶⁰ *McDougall v. Lamm*, 48 A.3d 312, 324–25 (N.J. 2012) (“[In *Hyland v. Borrás*] the Appellate Division recognized that pets are a special variety of personal property.”). *See e.g., Hyland v. Borrás*, 719 A.2d 662, 664 (N.J. Super. App. Div. 1998) (“[A] household pet is not like other fungible or disposable property, intended solely to be used and replaced after it has outlived its usefulness.”); *Corso v. Crawford Dog & Cat Hosp., Inc.*, 415 N.Y.S.2d 182, 183 (N.Y. Civ. Ct. 1979) (“[A] pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property.”).

⁶¹ *See* Rebecca F. Wisch, *State and Municipal Regulation of Dogs*, ANIMAL LEGAL & HIST. CTR., <http://www.animallaw.info/articles/dduslocaldog.htm> (2003) (accessed Nov. 22, 2014) (“Dogs are subject to state police powers because of their status as property. . . . Thus, states may regulate this form of property to protect the health and safety of its people.”) [<http://perma.cc/TY37-RP8F>].

⁶² Kalamazoo County, Mich., Animal Control Enforcement Ordinance (June 20, 2000) (available at http://www.kalcounty.com/ac/pdf_files/kalcoanimalordinances.pdf (accessed Nov. 22, 2014)) [<http://perma.cc/A2A3-7EPA>].

⁶³ *See* Matthew G. Liebman, *Detailed Discussion of Exotic Pet Laws*, ANIMAL LEGAL & HIST. CTR., <http://www.animallaw.info/articles/ddusexoticpets.htm> (2004) (accessed Nov. 22, 2014) (“While there is no uniformity in laws regulating the possession of exotic pets, three central variables recur among and between different jurisdictions’ laws: (1) the degree of regulation, (2) the animals covered by the law, and (3) the punishment for violation.” Liebman defines “exotic pets” as “captive wildlife.”) [<http://perma.cc/E843-U5F3>]; *see generally Summary of State Laws Relating to Private Possession of Exotic Animals*, BORN FREE USA, http://www.bornfreeusa.org/b4a2_exotic_animals_summary.php (accessed Nov. 22, 2014) (Born Free summarizes state laws regulating private own-

one considers feral dogs ‘domestic’ animals, then they are tangible personal property according to modern legal thinking, and tangible personal property can become separated from its owner.

C. *The Law of Acquisition*

The common law seeks to reunite property with owners.⁶⁴ Courts determine a property finder’s rights based on factors such as the location of the property and the owner’s intentions.⁶⁵ For instance, personal property can be lost, mislaid, or abandoned depending on whether the owner intends to give up title, or knows of its location.⁶⁶

‘Lost’ property is “unintentionally, involuntarily, and casually separated from its owner.”⁶⁷ The owner of lost property does not intend to give up title, and is unaware of where the property is, regardless of whether it is in a public or private location.⁶⁸ A lost dog, then, is a dog whose owner intends to keep title and does not know the location of the dog. However, if a dog is lost and the finder makes a good-faith effort to determine the owner of the dog, a court may award title to the finder if the true owner does not claim the dog within a reasonable period of time.⁶⁹

‘Mislaid’ property is intentionally placed somewhere by the owner and forgotten.⁷⁰ Again, the owner of the property does not intend to give up title, and will likely return to claim the property. Though it is improbable that a dog could be mislaid, it is certainly possible. For instance, an owner could take a dog to a groomer and forget which groomer has the dog. This does not say much for the owner, but is a possible, though not probable, scenario.

A property owner’s title does not cease if property is lost or mislaid.⁷¹ With ‘abandoned’ property, however, a property owner “intentionally and voluntarily relinquishes any claim to an ownership interest.”⁷² Abandoned property thus requires two elements: the intent to abandon and an act or acts indicating the intent to voluntarily

ership of exotic animals, noting regulation exists on a spectrum between a “ban on private ownership of exotic animals”—e.g., Hawaii—and no special regulation—e.g., Idaho. Born Free USA generally considers “non-domesticated felines, wolves, bears, reptiles, [and] non-human primates” to be “exotic animals.” [http://perma.cc/J7NS-GXY9].

⁶⁴ Nielsen, *supra* note 30, at 483.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 484.

⁶⁸ *Id.* at 485.

⁶⁹ See *Morgan v. Kroupa*, 702 A.2d 630, 634 (Vt. 1997) (“[T]he public interest in encouraging finders to care for and shelter lost pets necessarily qualifies the owner’s right to possession. Where, as here, the finder of a lost domestic animal diligently attempts to locate its owner and provides care, shelter and companionship to the animal for over a year, a trial court does not abuse its discretion in awarding possession to the finder.”).

⁷⁰ Nielsen, *supra* note 30, at 485.

⁷¹ *Id.* at 483.

⁷² *Id.* at 486.

relinquish title.⁷³ A dog left in a foreclosed home after the tenant has vacated it is abandoned property. Courts generally grant ownership of abandoned property to the finder.⁷⁴ However, courts are cautious in doing so since this completely divests the property owner of her rights.⁷⁵

A dog, as tangible personal property, could be lost, mislaid, or abandoned. The onus rests on the finder to determine which category applies.⁷⁶ Confusion about ownership ensues when a domesticated species such as a dog either lives as a wild animal or has been abandoned by its owner.

III. WHAT IS A 'FERAL' DOG?

Feral dogs fit somewhere between wild and domestic animals.⁷⁷ Classified by sub-species (*Canis lupus familiaris*), feral dogs are domestic animals. Classified by behavior (having *ferae naturae*), feral dogs act like wild animals. Does a domestic animal that “returns to a wild state,” as in the *Black's* definition, then cease to be a domestic animal?⁷⁸ *Black's* also makes a distinction between a ‘domestic’ animal (“[a]n animal that is customarily devoted to the service of humankind at the time and in the place where it is helped”) and a ‘domesticated’ animal (“[a] feral animal that has been tamed” or “[a]n animal that has customarily lived peaceably with people, such as farm animals and pets”).⁷⁹ However, ‘wild’ animals, “as a matter of common knowledge,

⁷³ *State v. Oregon Short Line R. Co.*, 617 F. Supp. 213, 217 (D. Idaho 1985) (citing JOHN E. CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY 345–46 (2d ed. 1975)).

⁷⁴ Jennifer S. Moorman, *Finders Weepers, Losers Weepers?: Benjamin v. Linder Aviation, Inc.*, 82 IOWA L. REV. 717, 721–22 (1997) (citing *Ritz v. Selma United Methodist Church*, 467 N.W.2d 266, 269 (Iowa 1991) (“The finder who reduces abandoned property to possession acquires absolute title as against the former owner.”)).

⁷⁵ *Id.* at 722.

⁷⁶ *Id.* at 735 (“The common-law system requires finders to classify their find as one of several types of personal property to determine whether the statute applies to them.”).

⁷⁷ Though it is beyond the scope of this Article, wolf-dog hybrids are also uncertainly situated between wild and domestic status. See *Tipton v. Town of Tabor*, 567 N.W.2d 351, 352–63 (S.D. 1997) (Two wolf-dog hybrids owned by a Tabor resident mauled a child who strayed within reach of their pen. The girl’s parents sued the town, claiming licensing the hybrids and allowing them to remain in town was negligent. The court considered the wild/domestic distinction drawn by *Restatement (Second) of Torts*, § 506 (1977), which keys off whether a given animal is “by custom devoted to the service of mankind at the time and in the place where it is kept.” *Id.* at 362. The court also looked to state law, which defined domestic animals as those who “through long association with man, [have] been bred to a degree which has resulted in genetic changes affecting . . . attributes of the species to an extent that makes it unique and different from wild individuals of its kind.” *Id.* at 362 (citing S.D. CODIFIED LAWS § 40-1-1(5) (1991)). Despite this, the court was unable to determine whether the hybrids were wild or domestic, stating “[p]erhaps all that can be said is that the results of breeding wild with domesticated dogs is unpredictable.” *Id.*)

⁷⁸ BLACK’S LAW DICTIONARY 102 (9th ed. 2009).

⁷⁹ *Id.*

are naturally untamable, unpredictable, dangerous, or mischievous.”⁸⁰ If, according to *Black’s*, a wild animal is untameable, but a feral animal is a domestic animal who could be tamed, then feral animals could continue to be domestic even if they act like wild animals.

Where legal definitions confound, one must turn to other disciplines. Researchers have classified dogs on the basis of behavioral traits,⁸¹ environment,⁸² origin,⁸³ range,⁸⁴ and level of human dependency.⁸⁵ However, researchers in other disciplines encounter the same questions of language and behavior when describing feral dogs. For instance, in a 1980 study of feral dogs’ interactions with white-tailed deer, researchers considered dogs “living in a completely wild and free state with no direct food or shelter intentionally supplied by man” to be feral dogs eligible for study.⁸⁶ Other researchers consider dogs without evidence of human socialization to be feral, distinguishing them from abandoned dogs.⁸⁷ Yet other researchers describe feralization as “the domestication process in reverse.”⁸⁸ It is easy to confuse feral dogs

⁸⁰ *Id.*

⁸¹ See M. Douglas Scott & Keith Causey, *Ecology of Feral Dogs in Alabama*, 37 J. WILDLIFE MGMT. 253, 254 (1973) (differentiating “tame [and] feral . . . dogs” on the basis of behavior while caged: tame dogs “displayed friendly behavior,” while feral dogs were “highly aggressive”).

⁸² M. Keith Causey & Carl A. Cude, *Feral Dog and White-Tailed Deer Interactions in Alabama*, 44 J. WILDLIFE MGMT. 481, 481 (1980) (considering dogs “living in a completely wild and free state with no direct food or shelter intentionally supplied by man” to be feral).

⁸³ Thomas J. Daniels & Marc Beckoff, *Spatial and Temporal Resource Use by Feral and Abandoned Dogs*, 81 ETHOLOGY 300, 300–01 (1989) [hereinafter Daniels & Beckoff, *Spatial and Temporal Resource Use*]. In another study, Daniels and Beckoff separated free-ranging dogs into three categories: urban, rural, and feral. Thomas J. Daniels & Marc Beckoff, *Population and Social Biology of Free-Ranging Dogs, Canis familiaris*, 70 J. MAMMALOGY 754, 754–55 (1989) [hereinafter Daniels & Beckoff, *Population and Social Biology*].

⁸⁴ See BECK, *supra* note 26, at 1–2 (unrestricted access to urban public property); Michael Berman & Ian Dunbar, *The Social Behaviour of Free-Ranging Suburban Dogs*, 10 APPLIED ANIMAL ETHOLOGY 5, 15 (1983) (urban or rural free-ranging); Matthew E. Gompper, *The Dog-Human-Wildlife Interface: Assessing the Scope of the Problem*, in FREE-RANGING DOGS & WILDLIFE CONSERVATION 29 (Matthew E. Gompper ed., 2014) (urban or rural free-ranging).

⁸⁵ See WORLD HEALTH ORG., REPORT OF WHO CONSULTATION ON DOG ECOLOGY STUDIES RELATED TO RABIES CONTROL 8 (1998) (available at <http://apps.who.int/iris/handle/10665/58695> (accessed Nov. 22, 2014)) (distinguishing between “full dependency,” “semi-dependency,” and “no dependency”) [<http://perma.cc/P9BM-AD4Y>]; Causey & Cude, *supra* note 82, at 481 (feral dogs live “completely wild and free,” without receiving intentional benefits from humans); Sini E. M. Reponen et al., *Genetic and Morphometric Evidence on a Galápagos Island Exposes Founder Effects and Diversification in the First-Known (Truly) Feral Western Dog Population*, 23 MOLECULAR ECOLOGY 269, 270 (2014) (treating “self-sustaining and independent of humans” as the key factor distinguishing feral dogs from other free-ranging dogs).

⁸⁶ Causey & Caud, *supra* note 82, at 481.

⁸⁷ Daniels & Beckoff, *Spatial and Temporal Resource Use*, *supra* note 83, at 300; Daniels & Beckoff, *Population and Social Biology*, *supra* note 83, at 754–55.

⁸⁸ Edward O. Price, *Behavioral Development in Animals Undergoing Domestication*, 65 APPLIED ANIMAL BEHAVIOUR SCI. 245, 262 (1999).

with other free-ranging dogs that may be owned or lost. These diverse definitions of feral dog create difficulties for researchers attempting to compare results from different studies.⁸⁹ Further complicating matters, dogs may shift between the stray and feral categories throughout their lives.⁹⁰

Studies are beginning to clarify the nature of feral dogs and can perhaps shed light on how to classify them appropriately. One study postulates that truly wild dogs are rare, and that most so-called 'feral' dogs continue to be domestic animals that live on the fringes of human society and act wild rather than becoming de-domesticated—i.e., self-sustaining and human-independent.⁹¹ For example, modern dogs do not readily live wild, isolated from humans; rather, feral dogs usually depend on humans for survival.⁹² Packs of free-ranging dogs rely on human food sources, either by scavenging for garbage, or perhaps hunting small mammals present near human garbage.⁹³ Some researchers postulate that in comparison to wolves, dogs suffer a comparative disadvantage in hunting large hoofed prey, as their jaws and muscles are smaller.⁹⁴ For example, although many dogs are avid chasers that are capable of catching and killing white-tailed deer, these incidents are rare.⁹⁵ Additionally, feral dogs recruit domesticated stray dogs to maintain pack size, since puppies born to feral dogs have a high mortality rate, and there is little to no reproduction from feral dogs born in the wild.⁹⁶ Worldwide, only the Australian dingo and perhaps a now-eradicated population of dogs on a Galápagos Island have achieved long-term independence from humans.⁹⁷ Thus, feral dogs' dependence on humans and other tamer dogs restricts the geographic impact of feral dog populations, meaning that feral dogs and

⁸⁹ Luigi Boitani & Paolo Ciucci, *Comparative and Social Ecology of Feral Dogs and Wolves*, 7 *ETHOLOGY ECOLOGY & EVOLUTION* 49, 52 (1995).

⁹⁰ *Id.*

⁹¹ Reponen et al., *supra* note 85, at 280.

⁹² *Id.* at 270.

⁹³ *Id.* at 279; BECK, *supra* note 26, at 51–52; Dalla Villa et al., *supra* note 12, at 5.

⁹⁴ Reponen et al., *supra* note 85, at 279. *But see* USDA, NAT'L AGRIC. STATISTICS SERV., *supra* note 23 (claiming dogs killed more than 21,000 cattle and calves in 2010).

⁹⁵ Benjamin E. Lenth & Richard L. Knight, *The Effects of Dogs on Wildlife Communities*, 28 *NAT. AREAS J.* 218, 218 (2008). *See* Causey & Cude, *supra* note 82, at 483 (concluding that feral dogs “are hardly more than a nuisance to adult white-tailed deer”).

⁹⁶ Reponen et al., *supra* note 85, at 279.

⁹⁷ *Id.* at 270. *See* Arman Ardalan et al., *Narrow Genetic Basis for the Australian Dingo Confirmed through Analysis of Paternal Ancestry*, 140 *GENETICA* 65, 67 (2012) (available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3386486/> (accessed Nov. 22, 2014)) (describing dingos as being the “product of more than 3,000 years of feral life” and a small ancient founding population, which causes them to be “primarily wild” but capable of “semi-domestic relationship[s]” with humans, with an ability to comprehend “human gestures . . . between [that of] wolves and dogs”) [<http://perma.cc/C2TZ-5HGR>]; *see also* Gompper, *supra* note 84, at 10 (“On the other extreme are feral populations of dogs with a history of independence from humans. . . . [S]uch as the feral dogs of the Galapagos Islands whose origin dates to the mid 1800s, or have a timeline measurable in millennia, as in the Australian dingo.” (citation omitted)).

humans share an ecology.⁹⁸ Where there are humans, there will be feral dogs and vice versa.

Further, feral dogs' 'wildness' is behavioral rather than genetic.⁹⁹ That is, feral dogs do not eventually become another kind of animal; they "will still be domestic animals which live free of human interference and characteristically behave negatively to humans."¹⁰⁰ This research suggests that because feral dogs depend on human-provided food sources and recruit strays, they continue to be domestic animals even when their behavior towards humans changes. In fact, it is their dependence on humans, or at least the effects of human society, that clarifies their status as 'non-wild': while feral dogs may actively avoid human contact, they are still members of *Canis lupus familiaris* (domestic dog), and depend on humans in ways their wild brethren do not.¹⁰¹

Research on feral dog populations suggests that feral dogs are domestic animals who act like wild ones. Therefore, the law should consider feral dogs accordingly, and apply the law of domestic animals to feral dogs. Though this sounds like clever wordplay, the distinction is more than semantic. Confusion as to the definition of feral dogs means that thousands of animals in the U.S. are without clear legal protection or ownership—or exemption from either. The ambiguous meaning of the term 'feral' leaves the definition in the hands of federal, state, and local governments. Yet, laws often do not address feral animals, and are inconsistent when they do.

⁹⁸ Reponen et al., *supra* note 85, at 270. *See generally* Luigi Boitani et al., *Behaviour and Social Ecology of Free-Ranging Dogs*, in *THE BEHAVIOURAL BIOLOGY OF DOGS* 147, 161 (Per Jensen ed., 2007) ("From this perspective, humans being part of feral dogs' ecology, we are responsible for their persistence as well as for maintaining the ecological conditions that allow for their survival.").

⁹⁹ *See* Jesse Bering, *Cur Cognition: Do Stray Dogs Have Qualitatively Different Kinds of Canine Minds?*, *SCI. AM.: BERING IN MIND BLOG*, <http://blogs.scientificamerican.com/bering-in-mind/2010/07/16/cur-cognition-do-stray-dogs-have-qualitatively-different-kinds-of-canine-minds/> (July 16, 2010) (accessed Nov. 22, 2014) (discussing how feral dogs—even multigenerational ferals—"may be mongrels . . . [some looking] more like dingos or coyotes than they [do] domestic dogs, but technically they're every bit as much members of *Canis lupus familiaris* as . . . [a] Lhasa Apso or Chocolate Lab. But perhaps genes alone do not a dog make . . . stray dogs reason about human social behavior . . . in a fundamentally different way from pet dogs") [<http://perma.cc/2FZ5-U8F8>].

¹⁰⁰ Thomas J. Daniels & Marc Beckoff, *Feralization: The Making of Wild Domestic Animals*, 19 *BEHAV. PROCESSES* 79, 91 (1989).

¹⁰¹ *See* Bering, *supra* note 99 (discussing performance on tests measuring ability to use "human-like social cognition" by responding to human hand gestures: "tame wolves fail to score above chance," "domestic [companion] dogs even outperform chimpanzees," and "stray [domestic dogs] performed above chance" in tests with more obvious human physical cues, such as pointing closely at an object); Reponen et al., *supra* note 85, at 270 (feral dogs depend on human-maintained conditions for survival).

IV. FERAL DOGS AS PROPERTY

A. *Federal and State Law*

No federal statutes directly address feral animals, except the Fish and Wildlife Conservation Act, which exempts “any domesticated species that has reverted to a feral existence” from its definition of “non-game fish and wildlife.”¹⁰² This wording implies that the U.S. government sees feral dogs as a domesticated species that survives as wild.

The confusion over whether feral dogs are considered ‘wild’ extends to state statutes as well. Some statutes specifically exclude feral cats and dogs from the definition of ‘wild’ or ‘wildlife.’ For example, Nebraska’s Game Law specifically excludes feral domestic dogs and cats from the definition of “[w]ild mammals.”¹⁰³ Some statutes consider feral dogs and cats ‘companion animals’ like pets. For example, Virginia’s Agriculture, Animal Care, and Food statute includes domestic or feral dogs and cats in the Comprehensive Animal Care chapter’s definition of “companion animal.”¹⁰⁴

Other statutes are less clear, but could still encompass feral dogs and cats by using the word “domestic” or “domesticated.” For instance, Utah’s Wildlife Resources Code excludes “an animal that is normally domesticated but has reverted to the wild” from its definition of “wildlife.”¹⁰⁵ Washington’s statutory definition of “wildlife” excludes “feral domestic mammals.”¹⁰⁶ The general provisions section of Alaska’s Fish and Game Code defines “game” as “any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state.”¹⁰⁷ This definition excludes “domestic birds and mammals,” where “domestic mammals” “include musk oxen, bison, and reindeer, if they are lawfully owned.”¹⁰⁸ The legislature’s use of the word “include” in the definition of “domestic mammals” implies that dogs and cats could be considered domestic mammals, but the wording is not clear. Further, Alaska’s Conservation and Protection of Fish and Games Chapter defines “game” as “any species of bird and mammal, including a feral mammal, but excluding domestic birds and mammals” without further definition of ‘domestic mammal.’¹⁰⁹

A few states do not mention domestic animals at all in their statutory definitions, creating even more confusion. California’s Fish and Game Code defines a “mammal” as “any wild or feral mammal or any part thereof, but not any wild, feral, or undomesticated burro.”¹¹⁰ It is

¹⁰² Fish and Wildlife Conservation Act of 1980, 16 U.S.C. § 2902(6) (2012).

¹⁰³ NEB. REV. STAT. § 37-246 (2008).

¹⁰⁴ VA. CODE ANN. § 3.2-6500 (2008).

¹⁰⁵ UTAH CODE ANN. § 23-13-2 (LexisNexis 2013).

¹⁰⁶ WASH. REV. CODE § 77.08.010(75) (2012).

¹⁰⁷ ALASKA STAT. § 16.05.940(10), (19) (2012).

¹⁰⁸ *Id.*

¹⁰⁹ ALASKA STAT. § 16.20.080(2) (2012).

¹¹⁰ CAL. FISH & GAME CODE § 54 (West 2013).

unclear whether the California legislature considers feral cats and dogs to be ‘wild’ or ‘domestic’ animals, and whether they are included in the definition of ‘mammal.’¹¹¹ The section of North Carolina’s Public Health Law dealing with rabies defines “feral” as “[a]n animal that is not socialized,” which could refer to a dog or cat.¹¹²

B. Native American Law

Native American laws also vary. Some specifically exclude feral domesticated animals from the definition of ‘wildlife.’ For instance, the Shorelines and Sensitive Areas Code of the Swinomish Indian Tribal Community specifically excludes “feral domestic mammals” in its definition of “wildlife.”¹¹³ On the other hand, the Gros Ventre and Assiniboine Tribes of Fort Belknap Code includes “feral dogs” in its classification of “furbearers” that can be hunted and trapped.¹¹⁴

The only clear aspect about the treatment of feral dogs and cats in state and Native American laws is that these laws vary as to whether feral cats and dogs are considered ‘wild.’ The distinction between wild and domestic animals is important because it helps determine who might own an animal, especially in the absence of statutes on point.

C. Ownership

Whether a state considers feral dogs ‘wild’ or not, most state governments have not addressed the issue of ownership of feral animals. Only eight state statutes specifically mention feral dogs.¹¹⁵ Of these,

¹¹¹ *But see* CAL. FOOD & AGRIC. CODE § 31752.5 (West 2001) (legislative finding that domestic cats “range from completely docile indoor pets to completely unsocialized outdoor cats,” and that “feral cats are cats with temperaments that are completely unsocialized,” who may nonetheless be cared for or owned by humans). While the legislative finding describes feral cats and domestic cats in similar terms, it does not clearly declare that feral cats are domestic.

¹¹² N.C. GEN. STAT. § 130A-184 (2013).

¹¹³ SWINOMISH TRIBAL CODE tit. 19, § 4.070(49) (2006) (available at http://www.swinomish-nsn.gov/media/4944/1904shorelines_sensitiveareas.pdf (accessed Nov. 22, 2014)) [<http://perma.cc/RGM4-43R4>].

¹¹⁴ FORT BELKNAP INDIAN COMMUNITY, FISH & WILDLIFE CONSERVATION CODE. tit. 10, § 10.04(B)(2) (2013) (available at http://www.narf.org/nill/Codes/fort_belknap/title10.pdf (accessed Nov. 22, 2014)) (“A regular season, to include a year-round season, for hunting furbearers shall only be established for the following species: Coyote, Fox, Skunk, Badger, Raccoon and Feral Dogs.”) [<http://perma.cc/W8VE-9HVF>].

¹¹⁵ NEB. REV. STAT. § 37-246 (2008); N.Y. PUB. HEALTH LAW § 2140(13) (McKinney 2012) (defining “feral animal” for the purposes of dealing with compulsory immunizations); The Third Class City Code, No. 52-22 § 2410 (Mar. 19, 2014) (to be codified at 53 PA. CONS. STAT. § 37410) (allowing municipalities to “prohibit and regulate the running at large of dogs, cats, other pets and feral animals”); S.C. CODE ANN. § 47-3-310 (1987) (addressing the removal of feral dogs from certain property and defining a feral dog as “a dog which has reverted to a wild state”); S.D. CODIFIED LAWS § 40-36-1 (2004) (authorizes cooperation with federal agencies “in the control and disposition of coyotes, feral dogs, fox, and other wild animals in this state that are injurious to livestock, poultry, game, land, and the public health”); TEX. PENAL CODE ANN. § 42.092(2) (2011) (protecting feral and stray cats and dogs against acts of cruelty); VA. CODE ANN. § 3.2-6500

only Delaware and Illinois provide for ownership in a feral dog. Delaware's statute states that a "person in possession or control of a cat, dog or other animal becomes the keeper of a stray domesticated animal, other than livestock, if the person feeds that animal for at least 3 consecutive days."¹¹⁶ In Illinois "owner" means "any person having a right of property in an animal, or who keeps or harbors an animal, or who has it in his care, or acts as its custodian, or who knowingly permits a dog to remain on any premises occupied by him or her."¹¹⁷ Conversely, Maine's Animal Welfare Act defines a "keeper" as "a person in possession or control of a dog or other animal" but specifically exempts stray dogs.¹¹⁸

Some municipal and county codes also consider feral animals. Fort Worth, Texas, for instance, creates ownership in

(2008) (including "domestic or feral dog" and "domestic or feral cat" in the definition of "companion animal"); W. VA. CODE § 19-20C-1 (2013) (mentioning feral dogs as part of a spay and neuter assistance program). By contrast, thirteen states and the District of Columbia have laws that mention feral cats. *See* CAL. FOOD & AGRIC. CODE § 31752.5(2) (defining "feral cats" as "cats with temperaments that are completely unsocialized"); CONN. GEN. STAT. § 22-339d (2010) (defining "feral cats" for the purpose of municipal control); D.C. CODE § 8-1802 (2001) (mentioning feral cats in the context of animal control); 510 ILL. COMP. STAT. ANN. 5/2.11b (2014) (defining "feral cat"); KY. REV. STAT. ANN. § 258.015 (LexisNexis 2013) (mentioning feral cats in the context of required rabies vaccinations); NEB. REV. STAT. § 37-246 (2008) (including feral cats in the definition of "wild mammals"); N.J. STAT. ANN. § 45:16-9.4a (West 2014) (mentioning feral cats as part of the definition of "volunteer veterinary services"); N.Y. ENVTL. CONSERV. LAW § 11-0103 (McKinney 2005) (defining "domesticated and feral cats"); R.I. GEN. LAWS § 4-22-2 (2013) (defining "feral cat" as "any wild, unsocialized or untamed cat"); TEX. PENAL CODE ANN. § 42.092 (2011) (defining "animal" to mean "a domesticated living creature, including any stray or feral cat or dog"); DEL. CODE ANN. tit. 16 § 3013F(g) (West 2014) (defining "feral cat" as "[a]n offspring of abandoned domestic cats who reverts to a semi-wild state and lives outside in family groups called colonies"); VT. STAT. ANN. tit. 20, § 3581a(d) (2003) (allowing a person to "use an approved vaccine to inoculate a feral feline that takes up residence in a building other than the person's home" without the use of licensed veterinary services); VA. CODE ANN. § 3.2-6500 (2008) (mentioning feral cats in the context of vaccinations). Three of these states—Connecticut, Rhode Island, and Illinois—create ownership in stray or feral cats. *See* CONN. GEN. STAT. § 22-339d (Connecticut's statute allowing for municipal control of feral cats defines a feral cat as "not owned," but defines a feral cat "keeper" as "any person or organization, harboring, regularly feeding or having in his or its possession any feral cat."); *see also* 510 ILL. COMP. STAT. ANN. 5/2.16 (West 2014) (Illinois specifically does not include "a feral cat caretaker participating in a trap, spay/neuter, return or release program" in the definition of "owner."); R.I. GEN. LAWS § 4-22-2 (2013) (Rhode Island defines "owner" as "any person who keeps, has permanent custody, owns, maintains, harbors, provides care or sustenance for, has control or charge of or responsibility for a cat or who permits a cat to habitually be or remain on or be lodged or fed within such person's property or premises.").

¹¹⁶ The portion of Delaware's code where this statute is found (Health and Safety, Animals Held in Shelters) focuses on addressing, among other concerns, growing numbers of free-roaming dogs. DEL. CODE ANN. tit. 16, §§ 3012–3013F.

¹¹⁷ 510 ILL. COMP. STAT. ANN. 5/2.16.

¹¹⁸ ME. REV. STAT. ANN. tit. 7, § 3907(16) (2002) ("[A] person becomes the keeper of a stray domesticated animal, other than a dog or livestock, if the person feeds that animal for at least 10 consecutive days.").

[a]ny person who owns, keeps, shelters, maintains, feeds, harbors or has temporary or permanent custody of a domestic or prohibited animal, or who knowingly permits a domestic or prohibited animal to remain on or about any premises occupied by that person over which that person has control. An animal shall be deemed to be owned by a person who harbored it, fed it or sheltered it for three (3) consecutive days or more.¹¹⁹

Albemarle County, Virginia defines “owner” as any person who “keeps or harbors an animal,” cares for an animal, or “acts as custodian of an animal.”¹²⁰ However, Broward County, Florida actually discourages citizens from taking in strays by making it a violation for individuals to harbor any stray animal unless the person notifies the proper authorities within twenty-four hours. Once notified, Animal Care may take the animal and place it in the shelter. Refusal to surrender the animal may result in an additional violation of this ordinance.¹²¹

Similarly, some Native American nations address ownership of dogs in their laws. The Ely Shoshone Tribe, for example, defines “owner” as “any person keeping, harboring or having charge or control of, or permitting any dog to habitually remain on or be lodged or fed within such person’s house, yard or premises.”¹²²

However, even when there is a statute referencing feral animals, courts may be reluctant to assign responsibility to feral animal caretakers. For instance, in *Baker v. Middleton*, the defendant provided food and water to four feral neighborhood cats who damaged the plaintiff’s home by destroying insulation and relieving themselves in the home’s crawl space.¹²³ In determining whether the defendant had breached a legal duty by feeding and watering the cats, the court examined both a city ordinance and county ordinance addressing animals.¹²⁴ The city ordinance required “[e]very person responsible for an animal located within the City [to] ensure that such animal . . . [d]oes not become a public nuisance”¹²⁵ However, the court found insufficient evidence that the defendant was such a “person responsible.”¹²⁶ The court then applied the county ordinance, which imposes a duty not to provide feral cats with food, water, or shelter.¹²⁷ The ordinance, however, offers an exception and an alternative duty: if the feral cats

¹¹⁹ FORT WORTH, TEX., CODE OF ORDINANCES ch. 6, art. 1, § 6-1 (1990).

¹²⁰ ALBEMARLE COUNTY, VA. COUNTY CODE ch. 4, art. I, § 4-100(27) (2014). Interestingly, this ordinance also includes “feral dog” in its definition of “companion animal,” protecting feral dogs from abuse. *Id.* § 4-100(17).

¹²¹ BROWARD COUNTY, FL. CODE OF ORDINANCES ch. 4, § 4-23 (2013).

¹²² ELY SHOSHONE TRIBE, ANIMAL CONTROL ORDINANCE ch. 85, § 85.04.010 (2009).

¹²³ *Baker v. Middleton*, No. 29D05-0605-SC-1055 (Ind. Sup. Ct. Mar. 2, 2007) (available at https://www.animallaw.info/sites/default/files/Baker_v._Middleton_Indiana.pdf (accessed Nov. 22, 2014)) [<http://perma.cc/4TNX-TTTP>].

¹²⁴ *Id.* at 2–3.

¹²⁵ *Id.* at 3; CARMEL, IND., CODE OF ORDINANCES ch. 6, art. 5, § 6-99 (1998).

¹²⁶ *Baker*, No. 29D05-0605-SC-1055, at 4.

¹²⁷ *Id.*; HAMILTON COUNTY, IND., CODE OF ORDINANCES tit. 15, art. 2.1 § 15.2.1-1-9(d) (2006).

are part of an approved trap-neuter-return (TNR) program, then the human who is their caretaker has a duty to ensure the cats are regularly fed.¹²⁸ Given that the four feral cats in question were part of a TNR program, the court found the defendant had not, therefore, acted negligently—despite providing the four cats with food and water.¹²⁹

Absent a statute or ordinance, the extent to which a person has cared for a dog may determine whether the person has exercised control over the animal. However, possession of feral dogs is not the same as possession of domesticated dogs. Feral dogs are often allowed to roam and have limited interaction with humans. In states and municipalities without statutory definitions of feral dog ownership, this decreased level of control could mean that a person does not ‘own’ a feral dog, even if they treat the dog in the same manner as someone in a state with an applicable statute. As in *Baker*, merely providing food and water to an animal may fail to impute a degree of responsibility falling short of ownership, much less ownership itself. Courts have not gone as far as assigning ownership to caretakers of feral animals in the absence of an applicable law.¹³⁰

D. Liability

1. Civil Liability

The distinction between wild and domestic animals is also significant because owners are subject to different requirements depending on whether the animal they care for is wild or domestic. Some states, for instance, require vaccination of domestic cats and dogs.¹³¹ Vaccination is not a requirement for ownership of wild and exotic animals—such as wolves, bears, monkeys, or elephants—in the states that per-

¹²⁸ *Baker*, No. 29D05-0605-SC-1055, at 4–5. The *Baker* court focused on the duty to ensure caretaken feral cats are fed regularly; the Hamilton County ordinance additionally requires a caretaken feral cat colony to be registered with the local humane society, and for the cats involved to be ear tipped in order to delineate their status as “spayed or neutered and vaccinated. . . .” HAMILTON COUNTY, IND., CODE OF ORDINANCES tit. 15, art. 2.1 § 15.2.1-1-9(d)(1–5).

¹²⁹ *Baker*, No. 29D05-0605-SC-1055, at 4.

¹³⁰ See David Fry, *Detailed Discussion of Feral Cat Legal Issues*, ANIMAL LEGAL & HIST. CTR., <http://www.animallaw.info/articles/ddusferalcat2010.htm> (2010) (accessed Nov. 22, 2014) (suggesting that even were a caretaker to exercise greater control than in *Baker*, courts will be reluctant to assign full ownership, because “[f]eral cats do not fit neatly within the common law categories of animal ownership”) [<http://perma.cc/TN8D-8SYT>].

¹³¹ See *e.g.*, N.Y. PUB. HEALTH LAW § 2141 (2004) (“Every dog, cat and domesticated ferret shall be actively immunized against rabies . . . [with] all initial vaccinations administered no later than four months after birth.”); MICH. COMP. LAWS § 287.351 (2012) (making it unlawful for an owner to harbor dogs and cats six months or older who have not been vaccinated against rabies); TEX. HEALTH & SAFETY CODE ANN. § 826.022 (2010) (making it unlawful for an owner to fail or refuse to have each dog and cat vaccinated against rabies).

mit ownership.¹³² On the other hand, many states require permits to own exotic animals.¹³³ Though most states and municipalities require licensing of domestic dogs, none require permits to own them.¹³⁴

Owners of animals are also liable for their animal's actions depending on whether the animal is domestic or wild, and depending on whether the animal is 'owned.' For example, by statute in Michigan, owners of domestic dogs are strictly liable if their dogs bite someone.¹³⁵ Similarly, at common law, a private individual who owns a wild animal is strictly liable for the harm caused by that animal.¹³⁶ But there is a special common law rule for wild animals with *animus revertendi*.¹³⁷ Since the owner of such an animal loses title upon the animal's escape, if the animal is indigenous to the area and causes harm, the owner is not responsible.¹³⁸ Further, courts reason that wild animals must be "reduced to possession" by the state in order for the state to be responsible for their actions.¹³⁹

For example, in *Arroyo v. State*, a mountain lion attacked a child hiking in a state park.¹⁴⁰ The court held that "wild animals are a natural part of the condition of unimproved public property," therefore the state was not liable for the child's injuries.¹⁴¹ A recent case applied *Arroyo* to feral dogs. In *Galusha v. Pennington*, two 'feral' dogs attacked a man in a park.¹⁴² The court declined to assign responsibility to the Park District, stating that "public entities are immune from lia-

¹³² See e.g., DEL. CODE ANN. tit. 3, § 7201 (2000) (requiring a permit for possession as well as ownership, but not requiring vaccinations); IND. CODE ANN. § 14-22-26-3 (2003) (requiring permits to possess wild animals with no vaccination requirement).

¹³³ See generally BORN FREE USA, *supra* note 63 (surveying various state laws pertaining to the ownership of exotic animals).

¹³⁴ See Wisch, *supra* note 61, at pt. V ("[N]early every state provides by statute for some collection of license fees and dog taxes by statute."). Some municipalities do require separate permits when larger numbers of dogs are housed in a single location. See e.g., ORANGE COUNTY, CAL., CODE OF ORDINANCES § 4-2-76 (2012) ("An animal permit must be obtained from the Director in order to keep or maintain at any residence or upon any other property four (4) or more dogs . . . Each such animal shall be individually licensed.").

¹³⁵ MICH. COMP. LAWS § 287.351 (2012).

¹³⁶ FAVRE & BORCHELT, *supra* note 37, at 157 (citing RESTATEMENT (SECOND) OF TORTS § 507 (1977)).

¹³⁷ See *supra* Part I.A (describing the common law doctrine of *animus revertendi*).

¹³⁸ FAVRE & BORCHELT, *supra* note 37, at 158 (citing RESTATEMENT (SECOND) OF TORTS §508 (1977)). However, the "owner" of a wild animal in a controlled situation such as a circus or zoo is generally liable for the actions of the animal, either in strict liability or negligence. *Id.*

¹³⁹ See e.g., *Butler v. City of Palos Verdes Estates*, 135 Cal. App. 4th 174, 185 (2005) ("[F]or the purposes of determining whether a creature is an instrumentality of the government, no meaningful distinction may be drawn between a 'wild' animal that cannot be domesticated and a 'feral' animal that has 'escaped from domestication and become wild' Neither may be considered an instrumentality of the state unless reduced to possession.").

¹⁴⁰ *Arroyo v. State*, 34 Cal. App. 4th 755, 759 (1995).

¹⁴¹ *Id.* at 762.

¹⁴² *Galusha v. Pennington*, 2d Civil No. B241421, 2013 WL 3853240, at *1 (Cal. Ct. App. July 24, 2013).

bility for injuries caused by natural conditions on public property,” clearly considering ‘feral’ dogs to be wild and part of the natural conditions of the park.¹⁴³

However, some courts seem to find defendants responsible for damages caused by feral animals if they owed an injured person a duty of care. This is independent of the issue of ownership, and independent of whether or not there are feral animal laws in that jurisdiction. For instance, in *Kyles v. Great Oaks Interests*, the court implied that feral cat caretakers may be liable for damages under a nuisance theory.¹⁴⁴ In *Kyles*, the plaintiffs lived next to an apartment complex in California where large numbers of feral cats fed on garbage from the apartment complex’s trash receptacles.¹⁴⁵ The cats would then enter plaintiffs’ yard to urinate and defecate.¹⁴⁶ California’s Food and Agriculture Code describes feral cats, and acknowledges that people may own them, but does not describe ownership.¹⁴⁷ The *Kyles* court never addressed the statute; rather, it analyzed the case according to established tort case law. The trial court granted the defendant’s motion for summary judgment of plaintiffs’ negligence per se, negligent infliction of emotional distress, and nuisance causes of action.¹⁴⁸ However, the appellate court rejected the trial court’s analysis of the plaintiffs’ nuisance claim, stating that the claim presented a triable issue of fact, which cannot be disposed of at summary judgment.¹⁴⁹ Notably, the court in *Kyles* did not take up the task of assigning ownership.

Similarly, in the *Baker* case described above, the court focused on the imposition of a duty separate from the issue of ownership or responsibility. While the *Baker* court framed their choice of county over city ordinance as governed by “standard rules of construction that more specific statutes govern over less specific ones,”¹⁵⁰ as well as the fact that the county ordinance applied to all areas of the county,¹⁵¹ they also made a point of differentiating the ordinances’ treatment of

¹⁴³ *Id.* at *3. The *Galusha* court relies upon *Arroyo v. State* for the proposition that wild animals are a natural condition on public property. *Arroyo*, 34 Cal. App. 4th at 631. The *Galusha* court also considered and rejected finding the Park District responsible under an alternative theory that the dogs were uncontrolled companion animals associated with two homeless people. *Galusha*, WL 3853240, at *3.

¹⁴⁴ See *Kyles v. Great Oaks Interests*, No. H028774, 2007 WL 495897, at *13 (Cal. Ct. App. Feb. 16, 2007) (“To the extent that Plaintiffs’ nuisance action is based on the claim that Defendants’ conduct caused a large number of cats to be attracted to the area and frequent Plaintiffs’ backyard, that claim survives summary adjudication.”).

¹⁴⁵ *Id.* at *1.

¹⁴⁶ *Id.* at *2.

¹⁴⁷ CAL. FOOD & AGRIC. CODE § 31752.5 (“Feral cats’ are cats with temperaments that are completely unsocialized, although frightened or injured tame pet cats may appear to be feral. Some people care for or own feral cats.”).

¹⁴⁸ *Kyles*, 2007 WL 495897, at *5.

¹⁴⁹ *Id.* at *13–14.

¹⁵⁰ *Baker*, No. 29D05-0605-SC-1055, at 3–4. The specificity the court refers to is the county ordinance explicitly focusing on feral cats, while the city ordinance applies generically to animals.

¹⁵¹ *Id.*

responsibility for animals. The duty imposed by the city ordinance is triggered by a person being responsible for “any animal located within the City”;¹⁵² thus, applying the city ordinance would be tantamount to assigning responsibility for feral animals to their caretakers. In contrast, the court introduces its analysis of the county ordinance by noting it is a statute by which “the issue of ‘responsibility’ for [feral cats], or whether a person is an ‘owner’ [of feral cats] is by-passed.”¹⁵³ Rather, the court describes the obligations imposed by the county ordinance as a legally imposed duty to not provide food, water, or shelter to feral cats, which—if a caretaker meets the ordinance’s requirements—“changes” in terms of its requirements, but remains a duty.¹⁵⁴ Therefore, here—even when there are applicable ordinances addressing responsibility—the court leans toward duty rather than ownership to establish liability.

2. *Criminal Liability*

Whether an animal is wild or domestic also affects criminal liability. While animal cruelty is now a felony in all fifty states,¹⁵⁵ state laws vary on which animals these laws protect.¹⁵⁶ For instance, Indiana’s animal cruelty statute specifically excludes feral animals from legal protection regarding abandonment and neglect.¹⁵⁷ Conversely, the Texas Penal Code specifically protects feral dogs and cats from cruelty.¹⁵⁸ Statutes imputing ownership to a person taking care of a feral

¹⁵² CARMEL, IND., CODE OF ORDINANCES ch. 6, art. 5, § 6-99 (1998).

¹⁵³ *Baker*, No. 29D05-0605-SC-1055, at 4.

¹⁵⁴ *Id.*

¹⁵⁵ Chris Berry, *All 50 States Now Have Felony Anti-Cruelty Provisions!*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/blog/50-states-now-have-felony-animal-cruelty-provisions> (Mar. 14, 2014) (accessed Nov. 22, 2014) (“On March 14, 2014, South Dakota became the final state to enact a felony provision for animal cruelty.”) [<http://perma.cc/7XGD-Q8NW>].

¹⁵⁶ No states exempt wildlife in their animal cruelty statutes, except for hunting purposes in accordance with state game laws. *See e.g.*, GA. CODE ANN. § 16-12-4(e) (West 2010) (providing exemptions for “agricultural, animal husbandry, butchering, food processing, marketing, scientific, research, medical, zoological, exhibition, competitive, hunting, trapping, fishing, wildlife management, or pest control practices or the authorized practice of veterinary medicine”); MICH. COMP. LAWS § 750.50 (2012) (providing exemptions for fishing, hunting, trapping, wildlife control, horse racing, operation of a zoological park or aquarium, pest or rodent control, farming, husbandry, and research); *see generally Animal Cruelty Laws State by State*, STRAYPETADVOCACY.ORG, <http://www.straypetadvocacy.org/PDF/AnimalCrueltyLaws.pdf> (accessed Nov. 22, 2014) (providing an overview of animal cruelty laws in each state) [<http://perma.cc/J5E9-NRMC>].

¹⁵⁷ IND. CODE ANN. § 35-46-3-7 (2003). Indiana’s animal cruelty statute does, however, protect some feral animals, including dogs, from torture, mutilation, or non-euthanasia killing. § 35-46-3-12 (2003).

¹⁵⁸ TEX. PENAL CODE ANN. § 42.092 (West 2011) (defining “animal” as “domesticated living creature, including any stray or feral cat or dog” and giving them protection under the Code). Specifically, the statute protects feral or stray cats from affirmative acts of cruelty such as torture, poisoning, or causing serious bodily injury; similarly, the statute protects those dogs and cats from cruelty via omission—such as neglect or abandonment—once the animal is in a person’s custody.

dog, or permitting a feral dog on her property, imply that such a person could be criminally liable for abandonment or neglect if she stops caring for him.¹⁵⁹ If the caretaker of a feral dog by statute becomes the dog's owner, then criminal animal cruelty statutes that create liability for intentionally neglecting an animal would apply.

Ultimately, ownership of feral dogs, and any criminal liability that results from ownership, depends on jurisdiction. Some states, local governments, and Native American nations address feral animals in their statutes, assigning ownership if certain criteria are met. However, most states and local governments have no such laws. One scholar suggests that, if there is no applicable statute or local law, courts are reluctant to assign 'ownership' to a feral animal caretaker.¹⁶⁰ In addition, no court declining to assign responsibility for feral animals to private individuals appears to have addressed the issue of ownership.

V. RESCUE ORGANIZATIONS AND FERAL DOGS

Feral dog ownership directly affects whether and how feral dogs can be legally rehomed or provided with veterinary care. This raises the question of whether dog rescue groups in the U.S. that take feral dogs for veterinary care and adoption have the legal right to do so.

Given that ownership of a feral dog depends on jurisdiction, if there was an applicable statute or local law, a caretaker could conceivably exercise her rights of ownership over a dog and demand his return from a rescue group. However, even with an applicable law, the facts and circumstances must support a claim of ownership. As in *Baker*, where the court did not find a woman providing food and water to feral cats to be a "person responsible" for them,¹⁶¹ a feral dog caretaker must conceivably meet some standard for responsibility. Hopefully this standard would be explicit in the law. One scholar calls this the "sliding scale" of feral animal ownership, as a person providing food, water, and medical care to a feral animal for several years would be more likely to be viewed as an owner than someone who feeds an animal once a day for six months.¹⁶² As mentioned in Part IV, few state statutes are specific in describing what constitutes ownership. Feeding an animal for a certain number of days, acting as custodian, permitting an animal to remain on a person's premises, harboring, providing care or sustenance, and having control are some of the ways states try to

¹⁵⁹ See e.g., Jeremy Masten, Comment, *Don't Feed the Animals: Queso's Law and How the Texas Legislature Abandoned Stray Animals, a Comment on H.B.2328 and the New Tex. Penal Code § 42.092*, 60 BAYLOR L. REV. 964, 988 (2008) (discussing how the Texas Penal Code revision meant to allow those who attack feral cats to be prosecuted, may have additionally criminalized abandonment of previously cared for feral cats).

¹⁶⁰ Fry, *supra* note 130, at pt. B.

¹⁶¹ *Baker*, No. 29D05-0605-SC-1055, at 4.

¹⁶² Fry, *supra* note 130, at pt. E.

describe feral animal ownership.¹⁶³ However, absent a law that explicitly imbues a caretaker with ownership, that person may have no property rights in the animal for which they are caring since courts are reluctant to create them.

If there were no private individual willing or able to assert property rights in a feral dog, and the government is not responsible (since, as research is revealing, feral dogs are domestic animals who act wild), then a rescue organization could assume ownership. That rescue group could then remove the dog from where he is living, procure veterinary services, and put him up for adoption.

On tribal land, this scenario plays out similarly. Generally, federal and tribal jurisdictions differ depending on the offender and victim. With a non-tribal offender and a tribal victim, the federal government has jurisdiction where it has not been conferred on the state by 18 U.S.C. § 1152 and where jurisdiction has been conferred by 18 U.S.C. § 1162.¹⁶⁴ Removal of a dog could be larceny if a Native American claimed ownership of the dog. However, as above, a court must find the Native American to be an owner of the animal. If no owner came forward, a non-tribal rescue group entering a reservation could remove feral dogs because, as above, the Native American nation would have no property rights in the dog.

This legal limbo for feral dogs has two advantages. First, this situation encourages individuals to take care of feral and abandoned dogs. If courts are reluctant to assign liability to feral animal caretakers, then people may be more likely to care for feral and abandoned animals because they would have less risk in taking care of an animal who could cause injury or damage. Another advantage is that rescue groups can legally assume ownership of feral and abandoned dogs, provide them with veterinary care, and perhaps find them new homes. By getting feral dogs off the streets, society decreases the likelihood that the dogs will be the cause or victim of harm and decreases the public health risk.

¹⁶³ See e.g., CONN. GEN. STAT. ANN. § 22-339d (West 1993) (defining “keeper” as “any person or organization, harboring, regularly feeding or having in his or its possession any feral cat”); DEL. CODE ANN. tit. 16 § 3013F(h) (defining “feral cat caretaker” as “[a] person or group of people who provide food and shelter to feral cats, and work or works to reduce colony numbers by working to spay and neuter the animals within their specific colony or colonies”); 510 ILL. COMP. STAT. 5/2.16 (2005) (defining “owner” as “any person having a right of property in an animal, or who keeps or harbors an animal, or who has it in his care, or acts as its custodian, or who knowingly permits a dog to remain on any premises occupied by him or her. “Owner” does not include a feral cat caretaker participating in a trap, spay/neuter, return or release program.”); R.I. GEN. LAWS ANN. § 4-22-2 (West 2013) (defining “owner” to mean “any person who keeps, has permanent custody, owns, maintains, harbors, provides care or sustenance for, has control or charge of or responsibility for a cat or who permits a cat to habitually be or remain on or be lodged or fed within such person’s property or premises”).

¹⁶⁴ U.S. DEP’T OF JUSTICE, UNITED STATES ATTORNEY’S MANUAL § 689 (1997) (available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00689.htm (accessed Nov. 22, 2014)) [<http://perma.cc/4E27-NX8K>].

However, there are also significant disadvantages to this legal ambiguity. The lack of a consistent definition of 'feral dog' causes much confusion, both in the legal world and for researchers in other disciplines. This definitional limbo and misunderstanding of feral dogs also pervades legislation. Many jurisdictions do not have laws that apply to feral dogs. Laws applicable to feral dogs, where these laws exist, vary by jurisdiction and create inconsistency regarding ownership and liability.

VI. CONCLUSION

Feral dogs do not easily fit into the common law property scheme—much like animals in general, who are not inanimate objects, but rather sentient beings who do not fit into the general system of property law. Given the problems associated with feral dogs affecting public health and wildlife, individuals and rescue groups should be encouraged to care for feral animals and rehome them when possible. The state of the law today does so indirectly. Clarity in the law regarding feral dogs would give cities like Detroit and rural areas such as Native American reservations the option to rehome and rehabilitate these dogs without any question as to the ownership or property status of the dog.