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REVIEW ESSAY

## Bracketing Braverman: Thinking and Acting for Wildlife Conservation after Nature

Geoffrey Wandesforde-Smith

I

When she decided to write *Zooland*,<sup>1</sup> a book about zoos, Irus Braverman hit on the disarmingly simple strategy of asking people who manage zoos what they thought they were doing. In her next book, *Wild Life*,<sup>2</sup> Braverman essentially followed the same method<sup>3</sup> and ultimately conducted more than 120 interviews. She spoke with conservation biologists and wildlife managers around the world, as well as other people who work with wildlife and with wildlife law and policy every day in government agencies, conservation NGOs, and zoos (after all, the best and most ambitious zoos have for some time now thought of themselves as vital agents in the global enterprise of saving wildlife).<sup>4</sup> What does the work of saving wildlife involve? How do the people doing the work think and talk about what they do? And if in some cases, the wildlife they save does not actually appear to be very wild, what appreciable differences are there any more between zoo life and wild life, between wilderness and captivity, and between nature and culture? Braverman was initially intrigued by these questions because of the way zoo people talked to her about the distinction between *in situ* and *ex situ* conservation, and she wanted to unpack the meaning of those terms for the benefit of herself and her readers. So her second book has a lot to say about the *in situ/ex situ* distinction, and about the blurring of that distinction. The chapters of the book are arranged in a way that turns a seemingly simple distinction into a complex and intriguing continuum of sites where conservation work is occurring.

From my point of view, however, and from the perspective of wildlife professionals who have lived for some time with the distinction between *in situ* and *ex situ* conservation, as well as with its imminent and perhaps inevitable and

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<sup>1</sup> IRUS BRAVERMAN, *ZOOLAND: THE INSTITUTION OF CAPTIVITY* (2012).

<sup>2</sup> IRUS BRAVERMAN, *WILD LIFE: THE INSTITUTION OF NATURE* (2015) [hereinafter *WILD LIFE*].

<sup>3</sup> Reflections on methodology can be found in Irus Braverman, *Who's Afraid of Methodology?: Advocating a Reflective Turn in Legal Geography*, in *THE EXPANDING SPACES OF LAW: A TIMELY LEGAL GEOGRAPHY* 120 (Irus Braverman et al. eds., 2014).

<sup>4</sup> The full list of those interviewed and of Braverman's participatory observations for the book appears in *WILD LIFE*, *supra* note 2, at 293–299.

desirable demise,<sup>5</sup> the value of Braverman's questions about conservation work goes far beyond the opportunity to revise textbook ideas about how such work can be classified according to where it occurs, either on site in nature or off site somewhere else. I am much more impressed with the pervasive but not widely appreciated or understood tension Braverman detects on the basis of her cross-sectional observations between what conservationists say they are doing to save wildlife on site in nature and what their work actually entails, both on site and off site, and in places in between.

Indeed, tension is not the right word to use in this context. What wildlife conservationists say they are doing and what they actually do, according to Braverman's data, are in many instances deeply conflicted, and a source of both intellectual and practical discomfort to many of those doing the work. Despite their expressed commitment to saving wildlife as part and parcel of a much larger project to save nature for posterity, many wildlife conservationists report a sense that, in Braverman's words, "long established definitions of nature have collapsed,"<sup>6</sup> and their sense of purpose has been eroded.

"Behind the attachment of many of my interviewees to traditional articulations of nature," she writes, "lie the practical implications of letting go of this nature"<sup>7</sup> because, if there is no nature to protect and no science capable of defining its properties and marking its boundaries, then wildlife conservation work will simply be serving the purposes of whoever is willing to pay the bills of people who just happen to like messing around with animals. It would then be, at heart, a distinctly mercenary enterprise, rather than a noble calling.

Instead of saving something real that might endure forever, roaming free in the wild as it has since the dawn of time, wildlife conservation would then be and is already creating, according to Braverman, "multiple and dynamic natures [proliferating] at a variety of sites around the world,"<sup>8</sup> offering people experiences of wildlife that can be packaged and marketed as being "as wild as possible"<sup>9</sup> but that are not by any means the wildest, and which may not even, in any obvious sense, be natural, and which are, therefore, disingenuous.

Braverman thinks this is what makes her work radical. It acknowledges that "there is not one nature but many," and it asserts therefore that "our definition of nature urgently needs rethinking."<sup>10</sup> The urgency is underlined because, as Braverman looks closely and carefully and critically at what now passes for the work of saving wildlife, she sees people making decisions about which animals should die, as well as which should live, and a surprising acceptance of making whichever

<sup>5</sup> Stuart Harrop, *Climate Change, Conservation and the Place for Wild Animal Welfare in International Law*, 23 J. ENVTL. L. 441, 450–462 (2011); Diana Pritchard, John Fa, Sarah Oldfield, & Stuart Harrop, *Bring the Captive Closer to the Wild: Redefining the Role of Ex Situ Conservation*, 46 ORYX 18–23 (2011).

<sup>6</sup> WILD LIFE, *supra* note 2, at 9. The clarion call was sounded in BILL MCKIBBEN, *THE END OF NATURE* (1989).

<sup>7</sup> WILD LIFE, *supra* note 2, at 11.

<sup>8</sup> *Id.* at 4. The sites include, for example, gene banks, zoo breeding centers, conservation farms, conservation hatcheries, protected areas, wildlife refuges, and national parks. *Id.* at 17–18.

<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 9.

animals end up surviving “highly dependent on human manipulation.”<sup>11</sup> There is, in other words, more than a little cognitive dissonance “lurking beneath the surface of the *in situ* and *ex situ* dichotomy,”<sup>12</sup> and it is therefore long past time, Braverman thinks, that we took a closer look at what wildlife conservationists are really doing, and whether it makes sense, and on what basis it might be justified.

But that is not the way we take the measure of her contribution.

Braverman brackets herself between those practitioners who think wildlife conservation as it has been traditionally understood and pursued is still a viable undertaking, on the one hand, and those who think, on the other hand, that its time has passed. “We need to consider more thoroughly,” she writes, “the ways in which [traditional conservation has become] entrenched in historical processes, administrative practices, and personal convictions [and we need to understand further] that neither wilderness nor captivity is easily defined or easy to see [these days], that neither is hell or paradise, and that contemporary challenges call for a rethinking of both.”<sup>13</sup> This situates Braverman nicely in a contemplative middle ground, and perhaps that is where she is most comfortable, making what is fundamentally a call for her readers to reconsider and reappraise the intellectual rationale for modern wildlife conservation.

It seems to me, however, that this positioning undervalues and underplays the legal and political implications of Braverman’s work, which are, quite bluntly, that there is something rotten at the core of contemporary environmental politics, of which the politics of fish and wildlife are and always have been an integral part. The revelation, for example, that conservation practitioners are making natures, rather than saving nature, is of interest to many more people than just those who do the work, who are, for the most part, the people who responded to Braverman’s disarmingly simple questions. Their imagining of the kind of world they are trying to make is certainly important, but it is not just important to them.

Braverman’s revelation is also important to all the other people whose imaginations have built the elaborate and expensive edifice that is modern environmental law and policy.<sup>14</sup> Moreover, if we bracket what Braverman is saying in this larger context, something that Braverman’s cross-sectional methodology does not make it easy to do, and if it turns out that in this larger context her revelation is unacceptable—if it shows us all, in effect, that the emperor we thought was modern environmentalism has no clothes—then we must also contemplate the possibility, even though Braverman herself does not do so and may not wish to, that as the news she is proclaiming spreads by contagion throughout the environmental movement and into the public at large, the entire edifice of modern environmentalism will come crashing to the ground, leaving in shreds much of the substantial corpus

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<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 16.

<sup>14</sup> RICHARD LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* (2004); JEDEDIAH PURDY, *AFTER NATURE: A POLITICS FOR THE ANTHROPOCENE* (2015); JAMES MORTON TURNER, *THE PROMISE OF WILDERNESS: AMERICAN ENVIRONMENTAL POLITICS SINCE 1964* (2012).

of modern wildlife law,<sup>15</sup> which, as Braverman convincingly reminds us, is deeply biased in favor of saving wildlife in natural places or *in situ*.<sup>16</sup>

So just how new and disconcerting, and to whom, is the news Braverman brings to us in her book about the increasing equation of “saving wildlife” with “making natures”?

## II

Recall that when President Benjamin Harrison created by proclamation in 1892 what was probably the first wildlife refuge in the United States on Afognak Island, now part of Kodiak National Wildlife Refuge, while Harrison’s order ostensibly made a “forest and fish culture reservation” of land from the public domain in the territory of Alaska for the protection of sea lions and sea otters, the real motivation was the need to sustain commercial harvests of marine mammals.<sup>17</sup> Harrison gets some credit for recognizing that harvests needed to be regulated and that presidential power might play a role. But his initiative was not followed up with any significant wildlife conservation program.

Later, President Theodore Roosevelt ordered more numerous and more extensive reservations of land ostensibly to save wildlife—52 bird and four big-game reserves between 1903 and 1909—but he saw conservation primarily as a personal moral imperative and a means of sustaining national prosperity, and, again, the detailed, on the ground follow-up needed actually to manage the reserves and to save wildlife in the mostly remote and ecologically arbitrary places Roosevelt designated was minimal and haphazard.<sup>18</sup>

Even in 1929, when Congress wrote into the Migratory Bird Conservation Act, a general policy for acquiring refuges that were to serve as “inviolable sanctuaries” for migratory birds, Congress provided no management mandates or sustained funding for refuge administration. And in subsequent years the inviolable sanctuary standard was steadily eroded, most notably in favor of the interests of hunters.<sup>19</sup> Refuges, in effect, were saving migratory birds so that hunters, who represented a very limited but politically influential cross-section of society, could then kill them for recreation and pleasure.<sup>20</sup>

By the same token, while saving wildlife was one of the purposes stimulating some minimal habitat protection for migratory waterfowl along the Pacific Flyway, beginning in the late 1920s, the chief attraction of California’s postage stamp sized wildlife

<sup>15</sup> The corpus is on brilliant display in DALE GOBLE & ERIC FREYFOGLE, *WILDLIFE LAW: CASES & MATERIALS* (2d ed. 2010).

<sup>16</sup> Perhaps the clearest demonstration comes in the chapter of the book dealing with the U.S. Endangered Species Act of 1973, as amended, and the subsequent evolution of endangered species protection, which Braverman tracks through selected episodes of administrative agency and court interpretation of the statute. See *WILD LIFE*, *supra* note 2, at 153–175.

<sup>17</sup> ROBERT FISCHMAN, *THE NATIONAL WILDLIFE REFUGES: COORDINATING A CONSERVATION SYSTEM THROUGH LAW* 34 (2003).

<sup>18</sup> *Id.* at 35.

<sup>19</sup> *Id.* at 39.

<sup>20</sup> ROBERT WILSON, *SEEKING REFUGE: BIRDS & LANDSCAPES OF THE PACIFIC FLYWAY* 79–90 (2010). The parallels here to the creation in the late nineteenth and early twentieth centuries of protected areas for wildlife in Africa are striking. See RACHELLE ADAM, *ELEPHANT TREATIES: THE COLONIAL LEGACY OF THE BIODIVERSITY CRISIS* 13–57 (2014).

refuges at the time was that they offered protection of farmers' fields *from* waterfowl, not that they offered protection *for* waterfowl.<sup>21</sup> Moreover, they offered protection that was, to recall Braverman's words, "highly dependent on human manipulation."<sup>22</sup> Garone describes, for example, the manipulations involved in creating what is now the Sacramento National Wildlife Refuge:

It was able to utilize manpower from the federal Civilian Conservation Corps (CCC), the New Deal program that provided vocational training for three million men during the Depression ... More than 150 CCC workers labored to turn the new [Sacramento] refuge into suitable habitat for migratory waterfowl. Initial projects included the remodeling of buildings, removal of cattle fences, construction of boundary fences, repair and construction of dikes and levees, clearing and cleaning of tule-choked channels, excavation of canals, construction of water control structures, planting of trees, and development of lakes and ponds. The new refuge had the potential to become a biologically diverse wetland ecosystem, but ... a great deal of restoration would be necessary .... [And] attempts to establish wetland diversity [were in tension with] the need to produce large quantities of a small number of waterfowl crop foods to inhibit depredation on the surrounding rice fields.<sup>23</sup>

It is not at all unusual, then, for wildlife conservationists to say that they are trying to save nature when the reality is that they are doing something that is appreciably different.

One of the things that limits what they can actually do at any given time is the reach and robustness of their theoretical knowledge of the nature they are trying to save. In the late nineteenth century, for example, the stupendous loss of wildlife in California as white settlement and agriculture expanded apace in the wake of the Gold Rush was theorized to be a natural consequence of—indeed, a necessary step in—the civilizing of the state and the advance of American progress.<sup>24</sup> Losing species forever was not, in this view of things, a cause for any regret.

Later, when populations of the most valuable fish and game species had been so badly depleted, by hunting and habitat transformation, that wildlife numbers reached historic lows, the theory was that populations simply needed to be replenished and rebuilt, much as one might repair an agricultural implement with parts garnered hither and yon. So wildlife conservation at this point was an entirely catholic enterprise, using whatever *ad hoc* techniques were at hand, and no thought was given to saving timeless nature as a seriously systematic scientific project:

During its first two decades [beginning in 1870, what eventually became] the [California Board of Fish and Game Commissioners] enjoyed widespread popularity. It pursued uncontroversial programs, such as *introducing* fish *species* from other regions, *constructing hatcheries* to rebuild diminished salmon runs, and educating the public about the value of *wild* species. [It] had an early success in 1879, when it imported striped bass from New Jersey and planted them in the Carquinez Strait. Within five years the species was appearing in San Francisco markets, and today it is one of the [Sacramento-San Joaquin Delta's] most

<sup>21</sup> PHILIP GARONE, *THE FALL & RISE OF THE WETLANDS OF CALIFORNIA'S GREAT CENTRAL VALLEY* 149 (2011).

<sup>22</sup> WILD LIFE, *supra* note 2, at 5.

<sup>23</sup> GARONE, *supra* note 21, at 153–154.

<sup>24</sup> PETER ALAGONA, *AFTER THE GRIZZLY: ENDANGERED SPECIES & THE POLITICS OF PLACE IN CALIFORNIA* 28 (2013) (noting the historical and scientific views that a naturalist, Charles Howard Shinn, published in *Grizzly and Pioneer*, 41(19) CENTURY 130–131 (November 1890–April 1891)).

important sport fish. By 1900 the commission had become a model for similar organizations around the country, and it could boast a “well-earned reputation for scientific achievement” and “great returns” despite only a “small annual expenditure [emphasis added].”<sup>25</sup>

The credit for imagining wildlife conservation as a very different and enduring scientific enterprise, one that had no higher calling than *in situ* conservation, to save species in something very close to their “original conditions,”<sup>26</sup> belongs to Joseph Grinnell, who became the founding director of the Museum of Vertebrate Zoology at the University of California at Berkeley in 1908. Asked why he was so intently focused, as he was, on preserving specimens of rare or recently eradicated species, Grinnell observed that the value of his specimens would be realized in the future, perhaps not for another hundred years.<sup>27</sup> But if Grinnell was focused on the future, why his emphasis, Alagona asks, on such an apparently static and ahistorical concept as original conditions? Grinnell clearly understood, after all, that “no single date in the past represented the original state of nature in California and that the early twentieth century was an arbitrary moment at which to create an archive of the state’s fauna.”<sup>28</sup>

The answer is that in Grinnell’s environmental imagination there would be no end to the economic and social developments transforming California and its fauna. His plan for the Museum of Vertebrate Zoology was that it would establish a baseline against which environmental change over time could be measured and evaluated:

[Grinnell wanted] a collection of specimens that would represent California’s diverse native fauna and enable researchers to answer basic biological questions about the evolutionary relationships between organisms and their environments .... “Many species of vertebrate animals are disappearing; some are gone already,” he wrote. “All that the investigator of the future will have ... will be the remains of these species preserved more or less faithfully, along with the data accompanying them, in the museums of the country.” Museum work was not only a part of a research methodology but also a form of conservation. The two were inextricably linked.<sup>29</sup>

By 1916 Grinnell and his students at Berkeley, along with their closely networked professional colleagues across the country, had developed a set of arguments about wildlife conservation that shaped law and policy around the world for the next hundred years. They are still, as Braverman’s data affirm, driving much, if not most, of the work wildlife conservationists do in various parts of the globe every day. “It combined economics with ethics, utilitarianism with aesthetics, and instrumentalism with a concept of intrinsic value. [It] argued that wildlife was important for science, education, recreation, tourism, agriculture, natural resources, and even ... ecological services.”<sup>30</sup> It was a complete package, one on which subsequent generations of

<sup>25</sup> ALAGONA, *supra* note 24, at 37. See also Daniel Bottom, *To Till the Water: A History of Ideas in Fisheries Conservation, in PACIFIC SALMON & THEIR ECOSYSTEMS* 569–597 (Deanna Stouder, Peter Bisson, & Robert Naiman eds. 1997).

<sup>26</sup> ALAGONA, *supra* note 24, at 51.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 49–50 (citing Joseph Grinnell, *The Methods and Uses of a Research Museum*, 77 *POPULAR SCI. MONTHLY* 163 (1910)).

<sup>30</sup> ALAGONA, *supra* note 24, at 57.

ecologists and wildlife conservationists elaborated but which they have not substantially modified.<sup>31</sup>

In later decades, the urge to conserve extended beyond the fish and game species that seemed to be most valuable and most in need of protection at the beginning of the twentieth century to encompass eventually *all* native species and ecosystems. And it focused increasingly on habitat conservation in what were at first called natural areas and later called protected areas, because of their frequent formal designation by governments on lands that governments owned or paid to acquire.<sup>32</sup> As federal interest in wildlife law and policy quickened<sup>33</sup> and attention turned to what conservation might achieve on the federal public lands, it was time to go beyond preserving “skins and bones in dusty museums” and get ecological researchers out into the field to study “unified assemblages” of animals interacting “under normal conditions in their primeval habitats and original associations.”<sup>34</sup>

But the ascendancy of the protected areas paradigm for conservation was not in the least preordained<sup>35</sup> or even in any sense a steadily progressive accomplishment. It proceeded by fits and starts. It enjoyed great successes, but it also suffered deep reverses.<sup>36</sup> It was marked throughout by frequent and sometimes bitter conflict over how nature should be understood, about where, when, how, by whom and at what cost to whom it should be saved, and what sort of politics would be needed to sustain support for environmental conservation generally and wildlife conservation in particular. This was most especially true after it became apparent that if *all* species and ecosystems were to be saved, then the conservation enterprise would have to move in a significant way to encompass private lands.<sup>37</sup>

It was, in short, a messy and uneven process that yielded messy and uneven results, and along the way, because compromises had to be made to get things done, the rhetorically pure attachment to saving nature as something “unitary, fixed and

<sup>31</sup> Grinnell and the people he worked with came to be known as the Berkeley Circle. Tracing their influence on ecology and conservation, Alagona notes that, in 1962, Interior Secretary Stuart Udall appointed A. Starker Leopold, the son of Aldo Leopold and a person who took Grinnell's place as the most influential wildlife conservationist in California, to be chair of an advisory board appointed to assess the status of wildlife conservation in the national parks. The resulting Leopold Report, which the National Park Service adopted as official policy, was a “foundational document of the post-war conservation movement,” and largely revived and repackaged the insights the Berkeley Circle had developed at the beginning of the century. *Id.* at 93–94.

<sup>32</sup> The origins of protected areas conservation, now vigorously sustained on a global basis by IUCN's World Commission on Protected Areas, are traced in *id.* at 71–92.

<sup>33</sup> An important aspect of the quickening of federal interest in the conservation of wildlife was the creation over time of funds of various sorts to acquire conservation habitat, which in many cases was then managed by state agencies. See GOBLE & FREYFOGLE, *supra* note 15, at 746–1029.

<sup>34</sup> ALAGONA, *supra* note 24, at 71 (quoting CHARLES ADAMS, *GUIDE TO THE STUDY OF ANIMAL ECOLOGY* 24–27 (1913), and referencing Victor Shelford, *The Preservation of Natural Biotic Communities*, 14 *ECOLOGY* 241 (1933)). Getting out into the field was not something, however, that people like Grinnell and his Berkeley Circle shied away from in their work. On the contrary, to make museum work useful for conservation, vigorous and sustained field work was essential. The proof of the pudding came in a project to mark MVZ's centenary, described in ALAGONA, *supra* note 24, at 51.

<sup>35</sup> Preordination would be a product of ethical extensionism, which Alagona critiques. *Id.* at 52.

<sup>36</sup> Some of the reverses came early, as when the construction of a reservoir was authorized in Yosemite National Park to supply San Francisco with water. See, e.g., RODERICK FRAZIER NASH, *WILDERNESS & THE AMERICAN MIND* 161–181 (5th ed. 2014).

<sup>37</sup> The whole messy business of how to conserve nature through some mix of public and private habitat conservation, how to draw less than ideal lines around governmentally designated protected areas, and how to pay for the resulting conservation is nicely captured in SUSAN SCHREFFER, *THE FIGHT TO SAVE THE REDWOODS: A HISTORY OF ENVIRONMENTAL REFORM, 1917–1978* (1983).

singular”<sup>38</sup> was often honored more in the breach than the observance.<sup>39</sup> It might be going too far to say that between 1916 and the present there were at least as many, if not more, *in situ*, *ex situ*, and *inter situ* natures created as Braverman detects in her contemporary cross-sectional survey of conservation practitioners. But it would be close to the truth.

So are recent questions about whether wildlife conservation “after nature” does have, or can have, any real meaning as profound and as disconcerting as Braverman and others<sup>40</sup> make them out to be? The idea that people have been remaking nature in substantial and perhaps irreversible ways, and often in the name of conservation, has been around, after all, since at least 1864.<sup>41</sup> And if, further, we have been living for the last century or so with outcomes to our organized conservation efforts that delighted because they were as wild as possible, but only very rarely the wildest conceivable, why, all of a sudden, do we need a radical rethinking of what we have been doing?<sup>42</sup> And, come to think of it, whatever happened to nature anyway?

### III

There are two main ways to think about the end of nature.

In the first case, the essential point of reference is the real world. Over the course of time, people have intentionally modified landscapes and more or less unintentionally modified climate to the point that there are now no more places or species left anywhere in the world that are, in the language of the 1964 Wilderness Act, “untrammelled by man.”<sup>43</sup> Purdy makes the point with some eloquence:

[T]he familiar divide between people and nature is no longer useful or accurate. Because we shape everything, from the upper atmosphere to the deep seas, there is no more nature

<sup>38</sup> WILD LIFE, *supra* note 2, at 11 (referencing CARRIE FRIESE, CLONING WILD LIFE: ZOOS, CAPTIVITY, AND THE FUTURE OF ENDANGERED ANIMALS 11 (2013)).

<sup>39</sup> One attempt to measure whether nature reserves of various sorts are actually saving nature concluded, for example, that the small area dedicated to nature reserves on more productive soils at lower elevations suggests that the existing network of nature reserves can make only a highly compromised claim to be protecting a representative sample of the nation’s biodiversity. See J. Michael Scott et al., *Nature Reserves: Do They Capture the Full Range of America’s Biological Diversity?*, 114 *ECOLOGICAL APPLICATIONS* 999, 1003 (2001). In some cases, saving nature gained vitality but lost some measure of authenticity by taking on new forms, as when it came to be seen as an exercise in environmental or ecological restoration heavily dependent on local political support. See Rachael Salcido, *The Success and Continued Challenges of the Yolo Bypass Wildlife Area: A Grassroots Restoration*, 39 *ECOLOGY L. Q.* 1085, 1120–1123 (2012).

<sup>40</sup> See, generally, e.g., William Cronon, *The Trouble with Wilderness; or, Getting Back to the Wrong Nature*, in *UNCOMMON GROUND: RETHINKING THE HUMAN PLACE IN NATURE* 69 (William Cronon ed. 1995); JAMIE LORIMER, *WILDLIFE IN THE ANTHROPOCENE: CONSERVATION AFTER NATURE* (2015); EMMA MARRIS, *RAMBUNCTIOUS GARDEN: SAVING NATURE IN A POST-WILD WORLD* (2011); PAUL WAPNER, *LIVING THROUGH THE END OF NATURE: THE FUTURE OF AMERICAN ENVIRONMENTALISM* (2010).

<sup>41</sup> GEORGE PERKINS MARSH, *MAN & NATURE: OR, PHYSICAL GEOGRAPHY AS MODIFIED BY HUMAN ACTION* (1864).

<sup>42</sup> Alternate responses would be to double down on saving whatever wild species and wild places arguably still exist and to re-wild in circumstances where there is some plausible prospect of restoring original conditions. See generally, e.g., *AFTER PRESERVATION: SAVING AMERICAN NATURE IN THE AGE OF HUMANS* (Ben Minteer & Steven Pyne eds. 2015); MARC BEKOFF, *REWILDING OUR HEARTS: BUILDING PATHWAYS OF COMPASSION AND COEXISTENCE* (2014); DAVE FOREMAN, *REWILDING NORTH AMERICA: A VISION FOR CONSERVATION IN THE 21ST CENTURY* (2004); CAROLINE FRASER, *REWILDING THE WORLD: DISPATCHES FROM THE CONSERVATION REVOLUTION* (2009); *KEEPING THE WILD: AGAINST THE DOMESTICATION OF EARTH* (George Wuerthner, Eileen Crist, & Tom Butler eds., 2014); *PROTECTING THE WILD: PARKS AND WILDERNESS, THE FOUNDATION FOR CONSERVATION* (George Wuerthner, Eileen Crist, & Tom Butler eds., 2015).

<sup>43</sup> The Wilderness Act, 16 U.S.C. § 1131(c).

that stands apart from human beings. There is no place or living thing that we haven't changed. Our mark is on the cycle of weather and seasons, the global map of bioregions, and the DNA that organizes matter into life. It makes no sense now to honor and preserve a nature that is defined by not being human, that is purest in wilderness, rain forests, and the ocean. Instead, in a world we can't help shaping, the question is what we will shape.<sup>44</sup>

As long as it was possible to imagine, then, that there were places and living things we had not shaped, and that could be legally protected from our shaping, perhaps in perpetuity, which was the Wilderness Act ideal, it made sense to imagine a world in which people found value in saving nature. It was better, we were saying in effect, to live in a society that tried to save wild things in something close to their original and natural condition, just as Grinnell and his Berkeley Circle tried to discover them in the field and preserve what was known about them in the Museum of Vertebrate Zoology, than in a world that saw no value in such work.

Moreover, if we created and enforced tough protected areas and species preservation laws embodying the original condition standard—something close to Grinnell's baseline—we would be discharging our conservation responsibility in a way that would endure. For sure, no one else would act to save nature if we did not, and the recent re-wilding movement<sup>45</sup> can be seen as an attempt to reaffirm and reinvigorate both the responsibility to act for conservation and the underlying standard by which actions can be judged.

In the second case, the essential point of reference is intellectual. Scholarly attempts to deconstruct the meaning of nature in the modern world have led some to conclude that it is little more than an ideological cover for the workings of power.<sup>46</sup>

Ursula Heise observes that “nature has disappeared behind or beneath layers of representation and simulation too thick to allow for any direct grasp of [it as something] real.”<sup>47</sup> Indeed, the emergence in much recent scholarship of the end of nature “trope”<sup>48</sup> marks the quintessential postmodern moment, the point at which it is no longer possible for responsible scholars to maintain, so the argument goes, that nature exists as something outside of human society.

As far as Bruno Latour is concerned, the idea of nature and of nature as a conservation ideal ought to be completely abandoned.<sup>49</sup> Despite the veneer of ground truth it has obtained from its long association with science, nature is a weak and uncertain guide about what to do in conservation, because it is and always has been a cultural construction. We can make it mean anything we want it to mean. So there is no legitimate basis on which to privilege saving nature as the goal of conservation law and policy over and above, say, some other worthy goal, such as “enhanc[ing]

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<sup>44</sup>PURDY, *supra* note 14, at 2–3.

<sup>45</sup>See *supra* note 42.

<sup>46</sup>WILD LIFE, *supra* note 2, at 43.

<sup>47</sup>*Id.* (citing Ursula Heise, *Martian Ecologies and the Future of Nature*, 57 *TWENTIETH-CENTURY LITERATURE* 447, 450–451 (2011)). See generally URSULA HEISE, *SENSE OF PLACE AND SENSE OF PLANET: THE ENVIRONMENTAL IMAGINATION OF THE GLOBAL* (2008).

<sup>48</sup>WILD LIFE, *supra* note 2, at 43.

<sup>49</sup>*Id.* at 11 (citing BRUNO LATOUR, *POLITICS OF NATURE: HOW TO BRING THE SCIENCES INTO DEMOCRACY* 9–52 (2004)).

those natural systems that benefit the widest number of people, especially the poor.”<sup>50</sup> Against this background, Braverman turns again to her data:

Despite their recognition that wilderness in its pure (namely, human-free) form does not exist, ...many ...conservationists I have interviewed are still unwilling to let go of the term “nature” as a placeholder for a stable principle upon which conservation decisions can be based. But while they cling to the ideal of the wild as the ultimate other, these same conservationists operate in a way that recognizes that nature is increasingly dependent on human management and that, for a growing number of cases, self-sustainability is not realistic in the foreseeable future.<sup>51</sup>

But if there is no stable principle on which conservation decisions can be based, where does this leave us?

Before Braverman leaves her readers she draws together the lessons she thinks she has learned from asking wildlife conservationists what they think they are doing.<sup>52</sup> She is encouraged that, despite their reluctance to let go of their idealized notions of nature and captivity, her respondents are talking to each other, and that they are engaged in what she calls “an open and transparent discussion of what humans are trying to conserve.”<sup>53</sup> It is happening, she says, “all over the globe, in myriad contexts and variants ... [no one] exactly like another ... [Each paving] a distinct path for conservation [and yielding] a dizzying array of wild life.”<sup>54</sup>

Again, the problem of wildlife conservation after nature is presented to us chiefly as an intellectual challenge. The difficulty Braverman sees is that, while conservationists are busy talking to each other and acting on the ground to make multiple natures, “mainstream conservation discourses lag far behind.”<sup>55</sup> The implication seems to be that, if the open and transparent discussion occurring among experts on the ground and the larger mainstream discourse catch up with each other, as if through some giant global conservation seminar, all will be well.

In substantive terms, however, there is no sense anywhere in Braverman’s book, as nearly as I can tell, that anything is wrong with the dizzying array of wildlife that is actually being produced by the current generation of conservation practitioners. She is intrigued, for example, by Lorimer’s notion that modern environmentalism, including wildlife conservation, can be understood as “a series of wild experiments that cannot make recourse to Nature.”<sup>56</sup> Although the experiments are the product of “intense, open, high quality debates” among “emergent collectives of experts,”<sup>57</sup> Braverman offers no sure way of judging their substantive worth. Certainly, nature

<sup>50</sup>*Id.* at 46 (citing Peter Kareiva, Michelle Marvier, & Robert Lalasz, *Conservation in the Anthropocene: Beyond Solitude and Fragility*, 2 *BREAKTHROUGH J.* 36 (2011), available at [http://thebreakthrough.org/images/main\\_image/Breakthrough\\_Journal\\_Issue\\_2.pdf](http://thebreakthrough.org/images/main_image/Breakthrough_Journal_Issue_2.pdf)).

<sup>51</sup>*Id.* at 47–48.

<sup>52</sup>WILD LIFE, *supra* note 2, at 224–232.

<sup>53</sup>*Id.* at 225.

<sup>54</sup>*Id.* at 226.

<sup>55</sup>*Id.*

<sup>56</sup>*Id.* at 44 (quoting Jamie Lorimer & Clemens Driessen, *Wild Experiments at the Oostvaardersplassen: Rethinking Environmentalism in the Anthropocene*, 39 *TRANS. INST. BRIT. GEOGRAPHERS* 169, 169 (2014)). *But see* LORIMER, *supra* note 40, at 9–11, 97–117 (repeating the phrase and substantially enlarging the discussion).

<sup>57</sup>WILD LIFE, *supra* note 2, at 44.

offers no stable principle as a standard of evaluation, since it is stipulated to be at an end.

So do wild experiments validate themselves just by being created? Are they all created equal? Are they all worthy of our support as a matter, say, of public policy? Should we—all of us who care about the future of the planet—mobilize in favor of a dizzying array of wild life that bears, in some cases, only a tenuous relationship to wildlife? All wild experiments are, by definition, unnatural, but are some so unnatural as to be unacceptable in the world after nature we are trying to make together?

We agree with Braverman that intense, open, high-quality debates about conservation among experts are a good thing. But they are not good enough, it seems to us, not in a democracy. The expert conservation imagined in the Progressive era proved politically problematic when matched over time against the expectations of elected representatives in Congress and a changing public mood.<sup>58</sup> When the environmental movement and, especially, the wilderness movement turned to a reliance on technical expertise rather than broad public support in the late 1980s and early 1990s it also lost its way politically. Congressional designations of wilderness essentially ground to a halt, and the politics of wilderness had to be rebuilt before designations resumed.<sup>59</sup> In the case of the wild experiments Braverman describes in her book, it simply is not clear what support they might gain in the public at large or among elected and appointed officials, whether it be in the United States or in other countries. It is not a question she asks, so we do not know whether she thinks it matters or not.

Braverman does observe that, in some very broad sense, wild experiments need to be acceptable to a variety of interested and affected parties. She writes, for example, that in order to “counteract animal fragmentation (such as the fragmentation of forest habitats in Brazil and Puerto Rico), humans must overcome their own fragmentation and . . . sit together around one table.”<sup>60</sup> She admonishes that a failure among humans to cooperate in saving species, such as the white rhino,<sup>61</sup> will cause species in decline to go extinct.<sup>62</sup> However, “human collaboration is not always enough for successful conservation,” she adds, and “more often than not, human and non-human species, as well as nonliving entities and technologies, must cooperate for a species to recover.”<sup>63</sup>

I confess to being perplexed by the notion that there can be cooperation between and among humans, nonhumans, nonliving entities, and technologies. I am similarly puzzled by the agency Braverman assigns to what she calls multispecies dynamics, which encompass the interrelations between humans and nonhumans, as when

<sup>58</sup>SAMUEL P. HAYS, *CONSERVATION & THE GOSPEL OF EFFICIENCY: THE PROGRESSIVE CONSERVATION MOVEMENT, 1890–1920* (1959).

<sup>59</sup>TURNER, *supra* note 14, at 380–394 (noting the reliance on natural resource economics, conservation biology, and policy expertise rather than grassroots constituencies); see generally Geoffrey Wandesforde-Smith, *Learning from Experience, Planning for the Future: Beyond the Parable (and Paradox?) of Environmentalists as Pin-Striped Pantheists*, 13 *ECOLOGY L. Q.* 715 (1986).

<sup>60</sup>WILD LIFE, *supra* note 2, at 231.

<sup>61</sup>*Id.* at 51–58.

<sup>62</sup>*Id.* at 231.

<sup>63</sup>*Id.*

“by dying out,” she writes, “individual nonhumans *enlist* humans to care and take action on their species’ behalf.”<sup>64</sup> Later, reviewing the intimate bonds between particular human and nonhuman animals that are described in various parts of her book, she observes that such “intimate multispecies bonds can ignite enough care and passion to pave a meaningful path for the conservation of entire species.”<sup>65</sup> But surely it is the human care and passion, and the actions people take as a consequence, that pave the path, and the nonhumans are not participants in the politics that make it happen?

Or maybe not. Early in her book, Braverman casts her lot with Foucault. “I join a growing scholarship,” she tells us, “that extends the scope of [what Foucault called] biopolitics to the realm of governing nonhuman animals . . . [a move that] not only appreciates the entanglements of human and nonhuman, but also recognizes their coproduction.”<sup>66</sup> By referring to species as “who” rather than “that,” her intent is to make a statement about the animal-as-subject rather than object, a statement that is “integral to the overall argument and project of this book and its repositioning of human-animal relations.”<sup>67</sup> She also quotes with apparent approval the observation that the human/animal distinction is “irrelevant” to calls to recognize and protect the sanctity of all life.<sup>68</sup>

What all this seems to add up to is a call for “inter-species egalitarianism and . . . a politics based in councils of all beings.”<sup>69</sup> It cannot literally be true, however, that animals-as-subjects have become actors in the determination of their own fates. People cannot know what nonhumans and nonliving entities want, and so cannot represent them or negotiate with them or in any way treat them as political equals. For the purposes of giving a place in our own minds to what we imagine might be nonhuman interests in wildlife conservation law and policy, it could be helpful to talk metaphorically about animals as if they were actors who could shape their own future. But it is, at best, reasoning by analogy, a fanciful notion, a mere projection, and one that, in the last analysis, I think Braverman could have set aside.

The stories Braverman tells about what wildlife conservationists think they are doing, and how puzzling some of their behavior is, and how conflicted they are about the unnaturalness of some of the natures they are creating are quite compelling even absent a layering of Foucauldian deconstruction. And I wish her telling of the stories had been both more straightforward and more resonant with the delightfully messy and human history of the wildlife conservation enterprise that was launched as the nineteenth century drew to a close.

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<sup>64</sup>*Id.* (emphasis added).

<sup>65</sup>*Id.* at 231–232.

<sup>66</sup>*Id.* at 33.

<sup>67</sup>*Id.* at 234 n.19.

<sup>68</sup>*Id.* at 237 n.48.

<sup>69</sup>PURDY, *supra* note 14, at 279.