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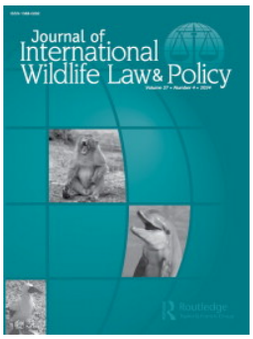

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ABSTRACT

Spatial justice recognises that spatial meanings contribute to the production of legal meanings and therefore play a role in shaping how the law delivers (in)justice. This article explores how wildlife can and should be treated as a beneficiary of spatial justice, that is, recognised as a co-producer of the real and legal meaning of property, and therefore included in any discussions regarding the management or use of property. We can enact such a change by reflecting on how the law encounters wildlife and challenging the anthropocentric and spatial presuppositions that inform these encounters. I demonstrate how phenomenology can fulfil this critical role. Building on Merleau-Ponty's phenomenological account of bodies and their own spatiality, this article develops a politics of spatial inhabitation that can articulate and recognise nonhumans as co-productive agents in the production, interpretation, and enforcement of property.

1. Introduction

The main focus of this article is the spatial turn and how we can deliver spatial justice to wild animals, birds, and plants that live on real property.[1] It asks if and how the law can treat wildlife as beneficiaries of spatial justice. It argues that the law must enact a nonhuman spatial turn in its encounter with wildlife to recognize, engage with, and incorporate nonhuman spatial meanings in the production, interpretation, and enforcement of property. Only then can the law begin to treat wildlife as beneficiaries of spatial justice.

First, I explain what a nonhuman spatial turn involves. I argue that the nonhuman turn currently limits itself to the idea that only humans contribute to spatial meanings and, therefore, only humans are beneficiaries

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[1]For the remainder of this article I refer to wild animals, birds and plants as 'wildlife' and real property as 'property'.

of spatial justice. Consequently, in order to deliver spatial justice to wildlife, the law needs to find a way to recognize wildlife as spatialising beings and articulate and incorporate their unique spatialisations in the conceptualisation of property. In short, the nonhuman turn must execute its own spatial turn.

Secondly, it will be shown that the way the law encounters wildlife often reduces them to passive entities. This is problematic if we are to recognize nonhumans as spatialising beings that co-produce property. Using the UK's legal encounters with wildlife as an example, I provide an account of how the ontological presuppositions of the law and scientific encounters collaborate as part of the law's overall encounter with wildlife. The purpose of this account is to reflect a broader coalition between lawyers and animal sciences that operates at the national and international levels of law. I argue that (1) the nonhuman spatial turn cannot ignore the mediating influence of scientific encounters, and (2) scientific encounters are a viable site to execute a nonhuman spatial turn that can then feed back into and inform the law's overall encounter with wildlife.

A turn to scientific encounters with wildlife leads me to Lestel's philosophical analysis and critique of traditional ethology. Lestel argues that traditional ethology severely limits its understanding of nonhumans because it tends to commit a double reduction: reducing nonhuman life to behaviour and behaviour to pure mechanism. Lestel attributes this double reduction to a general commitment to the 'realist-Cartesian paradigm': a set of presuppositions that informs scientific encounters with nonhumans. According to Lestel, in order to expand our consideration of nonhuman beings, we must suspend or challenge the realist-Cartesian paradigm. Lestel's solution is to turn to phenomenology, a trend that is already underway in the animal sciences in general. I outline key principles of the phenomenological method and demonstrate how they can serve in suspending the influence of the realist-Cartesian paradigm, allowing us to encounter wildlife as beings capable of producing their own spatial meanings.

I build on Lestel's turn to phenomenology by adding a spatial dimension to his critique. I demonstrate how spatial meaning, specifically objective space, plays an essential role in facilitating Lestel's double reduction. Consequently, overcoming the realist-Cartesian paradigm would not be complete if we did not also consider the role of spatial meaning. This leads me to consider Merleau-Ponty's phenomenological analysis of the body as a viable development of Lestel's position. Particular emphasis here is placed on Merleau-Ponty's distinction between understanding the body as an occupant of space and the body as inhabiting space. I claim that Merleau-Ponty's notion of bodily inhabitation can provide the law with a new way to understand and engage with wildlife. Where the law traditionally subscribes

to a politics of occupation that treats wildlife as passive occupants of a preconceived space, I argue that Merleau-Ponty's notion of bodily inhabitation introduces a new politics of inhabitation that rethinks both our own bodies and wildlife as 'subjects of space'[2] that actively produce and maintain both the real and legal dimensions of property.

I conclude by demonstrating how the politics of inhabitation can add much-needed nuance to the legal practice and knowledge within the context of netting trees. First, I explore how adopting a politics of inhabitation can help us rethink how the law encounters the phenomenon of netting trees. I draw on Braverman's account of immersive ethnography and its emphasis on the critical role of 'being-with' nonhumans to exemplify how a politics of inhabitation would work in practice. Secondly, I examine how the politics of inhabitation can help us reconsider the nature of property on which trees are netted. Property is reconceived not as an empty, homogeneous space for wildlife to occupy, but as a site of spatial co-habitation between humans and wildlife. This perspective is developed through a nonhuman spatial interpretation of pedestrianization. Specifically, I demonstrate how examining the practice of netting from the perspective of pedestrianization not only recognizes wildlife as recipients of spatial injustice, but also serves as a model for delivering spatial justice.

2. What Is a Nonhuman Spatial Turn?

2.1. The Spatial Turn and Objective Space

Since the 1990s, a growing interest in the intersection of spatial and legal meanings has accumulated into what is now known as a spatial turn in legal theory.[3] The spatial turn adopts what Soja describes as the 'spatial critical perspective'.[4] This perspective asserts two key points. First, the meaning of space plays an important role in the production, interpretation, and enforcement of legal meanings. Second, these spatial meanings are always interpretations of space, rather than objective accounts of what space actually is. The spatial turn situates itself within a broader philosophical context that rejects the notion that we have direct access to the

[2]M Merleau-Ponty, *Phenomenology of Perception* (C Smith tr, Routledge 2002) 292.

[3]N Blomley, *Law, Space, and the Geographies of Power* (Guilford Press 1994); B Wharf and S Arias (eds), *The Spatial Turn: Interdisciplinary Perspectives* (Routledge 2009); A Philippopoulos-Mihalopoulos, 'Law's Spatial Turn: Geography, Justice and a Certain Fear of Space' (2010) 7 *Law, Culture and the Humanities* 1; I Braverman, N Blomley, D Delaney and A Kedar (eds), *The Expanding Spaces of the Law*: *A Timely Legal* Geography (Stanford University Press 2014); Y Blank and I Rosen-Zvi, 'The Spatial Turn in Legal Theory' (2017) 10 *Hagar: Studies in Culture, Polity and Identity* 37.

[4]EW Soja, *The City and Spatial Justice* (Spatial Justice 2008) <https://www.jssj.org/wp-content/uploads/2012/12/JSSJ1-1en4.pdf>.

world as it truly exists.[5] This scepticism is exemplified by the ability to 'turn away from' the commitment to any specific spatial meanings, thereby opening up the possibility of enacting radical change. By integrating alternative spatial meanings into the law, we may be able to produce, interpret, and enforce the law differently.

The spatial critical perspective is especially critical of the classical interpretation of space known as objective space.[6] Objective space can be broadly defined as an absolute, homogeneous, and extended container that is separate from the things it contains. Despite the recognition of alternative accounts of space, objective space dominates the post-Enlightenment landscape.[7] The utility of objective space, the likely reason for its prevailing influence, is its ability to present the world in a clear and orderly fashion that is amenable to the goals of legal and scientific projects. A good example is how property title plans subscribe to an objective space to clearly delineate territorial boundaries. The spatial critical perspective does not dispute the utility of objective space; it challenges its assumed necessity. This is because the assumed necessity of objective space precludes the possibility of interpreting the law differently at the expense of alternative interpretations of space that could enrich our understanding of legal meanings.[8] The task of the spatial turn is to develop these alternative spatial meanings and incorporate them into existing legal discourse.

2.2. Spatial Justice and Property

However, the spatial turn does more than analyse and clarify spatial presuppositions. One important development of the spatial turn is the project of spatial justice.[9] Spatial justice recognises that spatial meanings contribute to legal meanings and legal meanings deliver (in)justice. One example is the way public spaces are regulated to limit or restrict the rights of individuals.[10] We attend to injustice by identifying the root cause. Spatial justice focuses on the link between spatial meaning and (un)just outcomes.

[5]For a detailed analysis of the modern concept of space and its role in legal and scientific practice, see E Casey, *The Fate of Place: A Philosophical History* Casey's *Fate of Place: A Philosophical History* (University California Press 1997).

[6]N Blomley, *Property, Law and Space* <https://ssrn.com/abstract=2381518>.

[7]D Bachmann-Medick, *Cultural Turns: New Orientation in the Study of Culture* (A Blauhut tr, De Gruyter 2016) 131–174.

[8]P Hubbard and R Kitchin (eds), *Key Thinkers on Space and Place* (Sage Publications 2024).

[9]EW Soja, *Seeking Spatial Justice* (University of Minnesota Press 2010); A Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere* (Routledge 2015).

[10]D Mitchell, The Right to the City: Social Justice and the Fight for Public Space (Guilford Press 2003).

As Philippopoulos-Mihalopolous notes, it is only after we identify the spatiality of the law that we can then look into the hierarchical differences and deal with them.[11]

One area of growing interest is the spatial dimension of property and how conceiving property in terms of objective space determines how and why we organise real spaces.[12] Any analysis of property will involve a spatial dimension. [13] Consider, for example, the three components of real property: the parcel of land,[14] the owner, and the rights and responsibilities over the land. All three rely on a form of enclosure informed by objective space. As Blomley notes, land is enclosed as property by first positing it in an objective, enclosable space.[15] Nedelsky argues that legal persons are enclosed insofar as their freedom and securities are understood in terms of bounded spheres.[16] Lastly, the exclusive status of proprietary rights and responsibilities depends on a similar positing of these relations in a space that allows for the strict separation of parts.

Identifying the spatial dimension of property allows us to explore how property is connected to spatial (in)justice. Blomley describes the imposition of objective space on property in violent terms, noting how enclosure enacts 'conscious cuts' in the processual networks of the land.[17] This imposition of objective space confines the land to a logic of exclusion and territorialisation that overrides or ignores pre-existing rights of use and access. It also concentrates power over the land into the hands of the owner. This combination of executing 'conscious cuts' and concentrating power has been shown to lead to various injustices involving the political organisation of space, locational discrimination, the restriction of civil rights, and inequitable access to resources.[18] When we identify that objective space can contribute to unjust outcomes, we can begin asking whether alternative spatial meanings can avoid or better address these issues.

[11]Philippopoulos-Mihalopoulos (n9) 33.

[12]For an in-depth analysis on the spatial dimension of property see P Babie, 'The Apatial: A Forgotten Dimension of Property' (2013) 50 *San Diego Law Review* 323.

[13]LS Underkuffer, *The Idea of Property: Its Meaning and Power* (Oxford University Press 2003).

[14]The term 'parcel of land' is here used colloquially to cover a much broader range of component such as the air and subsoil. For a more comprehensive outline of the expansive meaning of 'land', see C Bevan, *Land Law* (Oxford University Press 2024) 1–45.

[15]Nicholas Blomley, 'The Territorialization of Property in Land: Space, Power and Practice' (2019) 7 *Territory, Politics, Governance* 233.

[16]J Nedelsky, 'Law, Boundaries, and the Bounded Self' (1990) 30 *Representations* 162.

[17]N Blomley, 'Cuts, Flows, and the Geographies of Property Law' (2011) 7 *Law, Culture and the Humanities* 203.

[18]Soja (n4).

Keenan, for example, has explored how relational concepts of space can subvert the meaning of property from one defined primarily in terms of exclusion to one of relational belonging between parts and wholes.[19]

2.3. Neglecting the Nonhuman Perspective

The spatial turn has primarily concerned itself with human interests. This means it mainly engages with the possibility of human interpretations of space and treats humans as the exclusive beneficiaries of spatial justice. This general anthropocentric sentiment is already being challenged by the so-called nonhuman turn. The nonhuman turn, like the spatial turn, challenges assumed necessities. In the legal sphere, Braverman, for example, has called for a transition away from a more-like-human legality to a more-than-human legality.[20] More-like-human legalities understand nonhumans in terms of human meanings, while more-than-human legalities recognise that nonhumans can and should be understood on their own terms, rather than according to human meanings.

This 'more-like-human' legality is particularly true of the law's tendency to reduce wildlife to property.[21] As Burdon observes, property tends to embody a variety of anthropocentric assumptions that emphasise the priority of human rights over nonhumans.[22] This is reflected in the way the inception and continual development of wildlife law are largely founded on the anthropocentric notions of the economic value of wildlife.[23] A nonhuman turn challenges the reduction of nonhumans to their economic value.[24] As Braverman observes, instead of reducing nonhumans to human meanings, we should recognise that 'animality and humanity are deeply embedded in the construction of law.'[25] For Braverman, this means transitioning to a way of thinking that 'acknowledges the myriad relational ways of being in the world, their significance to law, and in turn, law's

[19]S Keenan, Subversive Property: Law and the Production of Spaces of Belonging (Routledge 2015).

[20]I Braverman, 'More-than-Human Legalities: Advocating an "Animal Turn"'in A Sarat and P Ewick (eds), *The Handbook of Law and Society* (Wiley-Blackwell 2015).

[21]For analysis on the intersection between wildlife law and property, see L Naughton-Treves and S Sanderson, 'Property, Politics and Wildlife Conservation' (1995) 23 *World Development* 1265.

[22]PD Burdon, *Earth Jurisprudence: Private Property and the Environment* (Routledge 2014) ch 2.

[23]M Bowman, Peter Davies, and Catherine Redgwell, 'The Philosophical Foundations of International Wildlife Law' in M Bowman, P Davies, and C Redgwell (eds), *Lyster's International Wildlife Law* (Cambridge University Press 2010) 61–90.

[24]M Barua, 'Lively Commodities and Encounter Value' (2016) 34 *Environment and Planning D: Society and Space* 725.

[25]Braverman (n20).

significance to these other modes of existence.'[26] Instead of treating the human as one *over* many, they are one *of* many. Or, as Haraway observes, environmental justice is not possible without a multi-species justice.[27]

So what can the nonhuman turn ask of the spatial turn? There is growing scholarship that explores how to enact a nonhuman turn in relation to property.[28] This has involved finding ways to articulate nonhumans as co-producers of property. Milburn, for example, subverts the Lockean labour theory—which suggests that property is the product of mixing one's labour with the land—to justify the nonhuman's own proprietary claim on property through their own labour.[29] Blomley retells the production of property as a process involving a whole range of 'iterative performances' that includes nonhumans as fellow performers.[30] A nonhuman performative critique of property therefore asks whether wildlife can and should be reimagined as part of this performance.

A nonhuman *spatial* turn builds on this sentiment. Like the nonhuman turn, it recognises that nonhumans can be seen as co-producers of property. It goes further on this point by asking how nonhuman spatialisations contribute to the spatial dimension of property. It asks that the spatial turn apply the same level of scepticism to its own anthropocentric assumptions as it does to the assumed necessity of objective space. A nonhuman spatial turn, therefore, explores the possibility of nonhuman spatiality and how it can add a more-than-human perspective to the spatial interpretation of property. If we examine how nonhumans spatialise property, we can enrich our analysis of the spatial meaning of property in a way that 'does justice' to the otherwise ignored contributions and demands of wildlife on property.

2.4. Potential Issue with a Nonhuman Turn

The next section applies a nonhuman spatial critical perspective to examine the presuppositions that inform how the law encounters wildlife. Before

[26]I Braverman, 'Law's Underdog a Call for More-than-Human Legalities' (2018) *Annual Review of Law and Social Science* 12.

[27]D Haraway, 'Staying with the Trouble for Multispecies Environmental Justice' (2018) 8 *Dialogues in Human Geography* 102.

[28]J Hadley, *Animal Property Rights: A Theory of Habitat Rights for Animals* (Lexington 2005); J Hadley, 'Nonhuman Animal Property: Reconciling Environmentalism and Animal Rights' (2005) 26 *Journal of Social Philosophy* 305; S Cooke, 'Animal Kingdoms: On Habitat Rights for Nonhuman Animals' (2017) 26 *Environmental Values* 53; M Barua, 'Nonhuman Labour, Encounter Value, Spectacular Accumulation: The Geographies of a Lively Commodity' (2017) 42 *Transactions of the Institute of British Geographers* 274.

[29]J Milburn, 'Nonhuman Animals as Property Holders: An Exploration of the Lockean Labour-Mixing Account' (2017) 26 *Environmental Values* 629.

[30]N Blomley, 'Performing Property: Making the World' (2013) 26 *Canadian Journal of Law and Jurisprudence* 23.

proceeding, there is an objection to the nonhuman turn that will also apply to a nonhuman spatial turn. I present this objection now with the intention of addressing it later as I develop my account of a nonhuman spatial turn.

The nonhuman turn is criticised for wanting to create a flat ontology that dissolves the distinction between humans and nonhumans. The idea of a flat ontology is a broad term with many possible interpretations.[31] In this context, it refers to eliminating the hierarchical differences between humans and nonhumans. The main critique of this interpretation emphasises the impracticality of eliminating the differences between beings. For example, Carolan has argued that flat ontologies serve as a universal medium that deprives the law of the 'analytical force' it needs to make meaningful distinctions.[32] In other words, the law derives the meaning of the relationships between beings from their substantial differences; if we deny those differences, we deprive the law of any way of understanding and, therefore, respecting their interrelations. But this misunderstands the true aim of the nonhuman turn. It does not seek to dissolve differences per se, but to rethink the way we make and regulate these distinctions. In other words, the nonhuman turn seeks to affirm the dynamic nature of the differences between humans and nonhumans and how these differences will change in response to the context in which they are applied. As I develop in this article, a key aspect of this shift is recognising that meaning is not imposed on the world but produced through the relationships between beings.

Instead of creating a fixed hierarchy of meaning where nonhumans are understood according to the human, we pluralise the source of 'meaning-making' by thinking beyond the anthropocentric model of a world conceived according to specific concepts. Levi Bryant puts it succinctly when he calls for 'an ontology capable of doing justice to these strange nonhuman actors, capable of respecting these strange strangers on their own terms'.[33] By pluralising the sources of meaning-making, the nonhuman turn aims to include all relevant nonhumans as stakeholders in decisions that directly affect them. However, the nonhuman turn does not indiscriminately acknowledge all perspectives as having equal claim as stakeholders. Doing so would reintroduce the belief in a predetermined meaning (in this case, an egalitarianism) to impose on the world. Rather, the answer

[31]L Bryant, *The Democracy of Objects* (Open Humanities Press 2011).

[32]MS Carolan, 'Society, Biology, and Ecology: Bringing Nature Back into Sociology's Disciplinary Narrative Through Critical Realism' (2005) 18 *Organization & Environment* 393.

[33]Bryant (n31) 248

to the question of who or what counts as a stakeholder is not decided from the outset, but discovered in and through the interaction between different beings.

An excellent example of this approach is Tickell's leading work on Interspecies Councils. Interspecies Councils are a novel approach to more-than-human governance. [34] The approach involves immersive roleplaying guided by facts to bridge the gap between rational discourse and emotions. Tickell's approach emphasises the exercise of moral imagination to incorporate nonhuman perspectives into decision-making processes, where 'rather than a discussion *about* nature, it becomes a discussion *from the point of view* of nature.'[35] As Dryzek and Tanasoca observe, moral imagination can enhance deliberations by including neglected interests through visual and experiential prompts that supplement traditional methods of discourse.[36] Interspecies Councils prioritise facilitating inter-species discourse over the hierarchisation of needs. The meaning of 'need' is discovered, not predetermined.

As I discuss in the next section, a nonhuman spatial turn can affect a similar change in practice by challenging the notion that spatial meaning is only ever imposed on property by humans. Instead of thinking of spatial meaning as something humans exclusively possess and impose on the world, I explore how spatial meaning is produced through the relations between bodies. With recourse to Merleau-Ponty's embodied phenomenology, I describe how the body can serve as a general site of action that produces meaning in and through its relation between bodies. This is further developed through Merleau-Ponty's analysis of classical and modern painters, examining how changes in our understanding of space affect modern painters' approach to the question of how the meaning of artwork is produced. Instead of imposing meaning, they allow meaning to emerge through the relation between the artwork and the observer. Modern painting, therefore, provides insights into how ethological accounts of nonhumans can enact a similar shift in our encounters with wildlife, rethinking the spatial dimension of property not according to a concept of space we impose on it, but in terms of the relations form between humans and nonhumans alike.

[34]T Colley, 'Government runs 'first ever interspecies council' to explore non-human policy perspectives' (*Ends Report* 14 February 2024) <www.endsreport.com/article/1861380/government-runs-first-ever-interspecies-council-explore-non-human-policy-perspectives>.

[35]P Tickell, 'The Interspecies Council' <https://www.moralimaginations.com/interspecies-council>.

[36]JS Dryzek and A Tanasoca, 'Democratizing Intergenerational, Interspecies, and Ecological Justice: The Role of Moral Imagination in Deliberation' in JS Dryzek and A Tanasoca, *Democratizing Global Justice: Deliberating Global Goals* (Cambridge University Press 2021) 166.

3. How Does the Law Encounter Nonhumans?

I have proposed that in order to deliver spatial justice to wildlife, that is, recognise them as beneficiaries of spatial justice, the law has to recognise wildlife as spatialising beings that contribute to the spatial dimension of property. Only then will they obtain the status of beneficiaries of spatial justice. But how do we enact a nonhuman spatial turn? We start by analysing and critiquing the anthropocentric and spatial presuppositions that underpin existing methods of encounter. We must ask: How does the law encounter wildlife? What presuppositions inform these methods of encounter? How do these presuppositions affirm or deny our understanding of wildlife as spatialising beings? Only after we have identified where the law has gone astray can we begin prescribing new ways of encountering nonhumans.

3.1. Two Types of Encounter

The law's overall encounter with wildlife can be divided into two separate but interconnected encounters. First, there are the ontological presuppositions that underpin the law.[37] Second, there are the scientific disciplines deployed by the law to supplement legal knowledge and practice,[38] such as ethology,[39] ecology,[40] and wildlife forensics'.[41] When I talk of 'ontological presuppositions', I specifically mean the presuppositions regarding who or what the law considers to be a legal person and who or what it considers to be property. As I elaborate below, distinguishing between who or what counts as a legal person or property is important because, among other things, it shapes the law's approach to the protection and management of wildlife, which includes the application of scientific disciplines to supplement legal practice and knowledge. However, in this picture, the sciences have found a way in and established themselves as more than mere handmaidens of the law but as fundamental additions to the law's overall encounter with wildlife.

[37]C Roversi, 'Ontology of Law' in M Sellers and S Kirste (eds), *Encyclopaedia of the Philosophy of Law and Social Philosophy* (Springer Dordrecht 2020).

[38]For a broad overview on how the sciences are deployed by the law, see: SS Diamond and RO Lempert (eds), *Science & the Legal System* (2018) 147 *Daedalus Journal of the American Academy of Arts & Sciences.*

[39]RH Yahner, *Wildlife Behaviour and Conservation* (Springer 2011); O Bergor-Tal and D Saltz (eds), *Conservation Behaviour: Applying Behavioural Ecology to Wildlife Conservation and Management* (Cambridge University Press 2016).

[40]For a detailed overview of the interdisciplinary relationships that have developed between law and ecology, see: A Philippopoulos-Mihalopoulos (ed), *Law and Ecology: New Environmental Foundations* (Routledge 2012).

[41]JE Huffman and JR Wallace (eds), *Wildlife Forensics: Methods and Application* (Wiley & Sons Ltd 2012).

For example, there is a growing recognition of the inter-disciplinary relationship between the law and the sciences.[42] As Kirk observes, this relationship is a developing phenomenon; law's gradual recognition of and dependence on scientific knowledge reflects science's increasing influence on modern life.[43] According to this view, the influence of science on law will only grow as the sciences further establish themselves as a cultural force. This is especially true for wildlife law at both the UK and international levels,[44] where the enforcement and passing of laws relating to the protection of wildlife have developed partly in response to and in collaboration with progress in our scientific understanding of the natural world and human impact on it.[45]

Consider, for example, the Wildlife and Countryside Act (WCA) 1981. Its focus on regulating *human* activity in relation to wildlife reflects an ontological presupposition that establishes a strict distinction between humans as legal persons and wildlife as qualified property.[46] By reducing wildlife to property, the law effectively sets an agenda that places the regulatory burden on legal persons with respect to activities in relation to wildlife. The law then employs the sciences to support this agenda through knowledge contributions and practical encounters 'in the field'. For example, the Joint Nature Conservation Committee, which includes scientific experts in biodiversity and conservation, is statutorily required to review and update Schedules 5 and 8 of the WCA 1981.[47] Regarding practical encounters, the investigation and interpretation of evidence related to wildlife crimes depend on fieldwork by experts in wildlife and ecological forensics, who are relied upon to gather evidence and provide expert testimony in the courts.[48] In both instances, the law depends on scientific expertise to achieve particular ends, yet confines these scientific encounters within a broader ontological context that assumes the property status of

[42]H Gibbons, 'The Relationship Between Law and Science' (1981) 22 *Idea: The Journal of Law and Technology* 159.

[43]PL Kirk, 'The Interrelationship of Law and Science' (1964) 13 *Buffalo Law Review* 393.

[44]For a detailed history of the early and modern developments of international wildlife law, see: M Bowman, P Davies and C Redgwell, 'The Historical Evolution of International Wildlife Law' in Bowman, Davies and Redgwell (n23) 3–23.

[45]K Sykes, 'The Appeal to Science and the Formation of Global Animal Law' (2016) 27 *European Journal of International Law* 497.

[46]See *Blades v Higgs* (1865) 11 HL Cas 621, where it was decided that ownership of the land was both a necessary and sufficient basis for demonstrating qualified rights over wild animals on that land.

[47]JNCC on behalf of on behalf of Natural England, Natural Resources Wales and NatureScot, Report on the Stakeholder Consultation during the 7th Quinquennial Review of Schedules 5 and 8 of the Wildlife And Countryside Act 1981 (JNCC 2022).

[48]Huffman and Wallace (n41).

wildlife. Ontological presuppositions hold a certain level of prescriptive authority over the sciences.

The property status of wildlife is significant to the nonhuman spatial turn for two reasons. First, as Burdon has argued, the reduction of nonhumans to property is rooted in an anthropocentric assumption that posits a fundamental distinction between humans and nonhumans.[49] Burdon describes property as an anthropocentric institution that propagates the narrative of nonhumans' inferiority and even justifies their instrumentalization to serve human ends.[50] Secondly, treating wildlife as passive things or property denies them the ability to produce their own spatial meanings and thinks of them in terms of an anthropocentric view of objective space. There are anthropocentric and spatial presuppositions built into the property status of nonhumans. If the nonhuman spatial turn seeks to reframe wildlife as beneficiaries of spatial justice, it must address the consequences of their property status.

This could lead one to conclude that the nonhuman spatial turn should focus on challenging the ontological presuppositions of the law. However, there are two reasons why the relationship between law and the sciences is not one where the law fully dictates the use and trajectory of the sciences. For one, the law depends on the production of scientific knowledge. As Biber notes, environmental law largely depends on the production of information by the environmental sciences.[51] Secondly, the law has become increasingly reliant on scientific expertise to contribute to legal decision-making. Feldman describes how the law, in some circumstances, internalises the sciences by subordinating them to legal norms, while in other circumstances, it externalises the sciences by deferring to scientific expertise in legal decision-making. [52] Similarly, Ruhl, while speculating on potential maxims to guide the co-evolution of environmental law and environmental science, argues that the so-called 'wall of virtue' that allegedly separates policy from science actually conceals a mutual inter-relationship. [53] On the one hand, the law imposes normative boundaries on scientific knowledge and practice. On the other hand, the law has deferred decision making to the authority of scientific experts. In short, the law

[49]Peter D. Burdon (n22).

[50]Ibid.

[51]E Biber, 'Which Science? Whose Science? How Scientific Disciplines Can Shape Environmental Law' (2012) 79 *University of Chicago Law Review* 471.

[52]R Feldman, *The Role of Science in Law* (Oxford University Press 2009) 1–36.

[53]J B Ruhl, 'Reconstructing the Wall of Virtue: Maxims for the Co-Evolution of Environmental Law and Environmental Science' (2007) 37 *Environmental Law* 1063.

does not exercise an absolute authority over the sciences, and therefore is not entirely responsible for the law's overall encounter with wildlife.

The nonhuman spatial turn is at a crossroads. While it acknowledges the prescriptive influence of the law's ontological presuppositions, it cannot ignore the ever-increasing and influential role of the sciences in the law's overall encounter. It can either focus on challenging the property status of wildlife or examine the underlying assumptions that shape scientific encounters with wildlife. While both courses of action are valid, one could argue that achieving meaningful change in how the law encounters and understands wildlife—treating them as beneficiaries of spatial justice—requires a coordinated effort on both fronts. We challenge the property status of nonhumans with extra-legal support. This is demonstrated by the fact that many arguments supporting the rights of nature movement, a new method of challenging the property status of nonhumans, depend on the contributions of cultural, philosophical, and even scientific understandings of nonhumans.[54] As Gilbert et al. note, the rights of nature approach is driven by knowledge emerging from outside traditional academic disciplines, necessitating greater interdisciplinary and transdisciplinary collaboration.[55] This article builds on this claim and explores how enacting a nonhuman spatial turn in scientific encounters can feed back into and influence the law's overall encounter with wildlife in ways that acknowledge them as beneficiaries of spatial justice.

One scientific discipline particularly relevant to the law's encounter with wildlife is animal studies[56] in general and ethology—the study of animal behaviour—in particular.[57] Ethological encounters play a crucial role in informing legal interventions related to wildlife conservation[58] and animal welfare.[59] A nonhuman spatial perspective should examine if and how ethological encounters with wildlife contribute to the law's overall encounter with wildlife. Specifically, a nonhuman spatial turn should examine how prevailing anthropocentric and spatial presuppositions underlying these encounters recognise or undermine wildlife as beneficiaries of spatial

[54]DR Boyd, *The Rights of Nature: A Legal Revolution That Could Save The World* (ECW Press 2017).

[55]J Gilbert et al, 'Understanding the Rights of Nature: Working Together Across and Beyond Disciplines' (2023) 51 *Human Ecology* 363.

[56]P Waldau, 'Second Wave Animal Law and the Arrival of Animal Studies' in D Cao and S White (eds) *Animal Law and Welfare—International Perspectives* (Springer 2016) 11–43.

[57]For a detailed summary of how applied ethology has shaped legal policy in relation to animal welfare and wildlife, see J Brown, Y Seddon and M Appleby (eds), *Animals and Us: 50 Years and More of Applied Ethology* (Wageningen Academic Publishers 2016).

[58]Bergor-Tal and Saltz (n39).

[59]H Würbel, 'Ethology Applied to Animal Ethics, Applied Animal Behaviour Science' (2009) 118 *Applied Animal Behaviour Science* 118.

justice. In the next section, I develop and expand on Lestel's critique of traditional ethology to (1) demonstrate how a commitment to objective space leads traditional ethology to reduce nonhumans to mere machines, and (2) explore how a shift towards phenomenology may serve the nonhuman spatial turn in rethinking wildlife as spatial co-producers of property and beneficiaries of spatial justice.

3.2. Lestel's Critique of Disciplinary Encounters With Nonhumans

Dominique Lestel provides a critique of traditional ethology and emphasises the importance of supplementing animal sciences with phenomenological tools.[60] Lestel's primary critique of traditional ethology focuses on its commitment to what he calls the 'realist-Cartesian paradigm.'[61] This paradigm involves a set of presuppositions that inform how science encounters the nonhuman. It presupposes two things: a fundamental description of the world and the legitimate ways of studying it.

Both presuppositions of the realist-Cartesian paradigm exhibit anthropocentric biases that are significant from a nonhuman spatial critical perspective. As Lestel notes, 'it supposes that there is a world which is separated from the subject, and that we can provide a genuine description of the animal by investigating the causal and mechanical procedures determining animal behaviour.'[62] In other words, the realist-Cartesian paradigm assumes (1) an absolute distinction between human subject and the rest of the world, and (2) the ability of human meanings and methods of knowing to fully account for the world. Humans are raised above or separate from the world and their meanings are imposed on the world. In the realist-Cartesian paradigm, the nature and behaviour of nonhumans are determined by genetic and environmental factors. Nonhuman behaviour becomes reducible to causal and mechanistic explanations. We understand them by observing their behaviour, and their behaviour is always explainable in terms of causal and mechanistic explanations.[63]

The realist-Cartesian paradigm is commonly critiqued for its mechanomorphic prejudice.[64] Mechanomorphism is the idea that animals

[60]For a detailed analysis of Lestel's Philosophical Ethology, see M Churlew, J Bussolini and B Buchanan (eds), *The Philosophical Ethology of Dominique Lestel* (Routledge 2018).

[61]D Lestel, 'What Capabilities for the Animal?' (2011) 4 *Biosemiotics* 83.

[62]Ibid 84.

[63]Ibid.

[64]E Crist, *Image of Animals: Anthropomorphism and Animals Mind* (Temple University Press 2000).

operate mechanically and can be fully explained in terms of the physical laws of nature.[65] When we reduce nonhuman behaviour to a mechanical process, we deny to them any kind of internal agency that may operate beyond the explanatory scope of mechanism. This is of interest to the nonhuman spatial turn because the denial of non-mechanistic interpretations of agency can allow for the notion that nonhumans are producers of spatial meaning. We must therefore demonstrate the limits of the mechanical explanation. Lestel achieves this by describing experiences of 'interactions and abilities unintelligible within the perceived parameters of ethology' to demonstrate the explanatory limits of mechanomorphism, thereby opening up a discussion about how ethology fails to do justice to nonhumans.[66] If we want to reinvigorate interest in these aspects of nonhuman life that escape mechanomorphism, we must first ask how mechanomorphism came to be and what presuppositions informed its inception. Only then can we reappraise the presuppositions that inform ethological encounters in order to posit the possibility of discovering and articulating the meaningful actions of nonhumans that we traditionally reserve for ourselves.

3.3. Lestel's Double Reduction

According to Lestel, the realist-Cartesian paradigm leads to mechanomorphism by performing a double reduction:

> The realist-Cartesian paradigm in ethology has significantly atrophied our zoological imagination in reducing animal life to behaviours (*reduction 1*) and behaviours to causal mechanisms (*reduction 2*). The first reduction presents animal life as a drab greyscale, draining it of its intersubjectivity, personality, meaning and exuberance. The second secures this monotony to a series of hidden instruments.[67]

Lestel considers the double reduction to be fundamental to the way animal scientists encounter nonhumans. This double reduction conditions them to 'only see in the animal a machine and not to detect in it the slightest of subjective life.'[68] An analysis of how the double reduction unfolds can provide insight into how we rethink our encounters with nonhumans to see them as more than mere machines.

[65]LR Caporael, 'Anthropomorphism and Mechanomorphism: Two Faces of the Human Machine' (1986) 2 *Computers in Human Behaviour* 215.

[66]D Lestel, J Bussolini, and M Chrulew, 'The Phenomenology of Animal Life' (2014) 5 *Environmental Humanities* 125.

[67]Ibid 128.

[68]D Lestel, *L'Animal est L'avenir* (Fayard 2010) 151.

Lestel explains this double reduction as beginning with an epistemology that posits a detached observer and a passive, observable object.[69] When we establish this difference, we create distance between a subject and object. This separation allows us to simplify the environment into an ecology of objects where animals become 'deterministically adapted to a set of objective conditions.'[70] Lestel understands distance primarily as a product of an anthropocentric distinction between detached human subjects and nonhuman object. But there is also a spatial element to this distance. While Lestel does not explicitly address the formative role of space, he does, however, reflect on the changes in spatial meanings resulting from the double reduction. For example, Lestel describes the scenario in which the animal-machine loses all sense of social relation as a 'simple juxtaposition of behaviours in a space devoid of all meaning.'[71] Lestel will go on to call for the need to rethink territory, 'not as the generalised space on a map, but the collection of greater and lesser intensities and rhythms formed by meaningful inhabitation and activity'.[72] These remarks treat space as, at best, an accompaniment to the double reduction and, at worst, a reality to be evaluated after the reduction has been performed. Consequently, Lestel's solution to mechanomorphism stays within the objectives of a nonhuman turn.

A nonhuman *spatial* turn can add nuance to Lestel's explanation, adding a spatial dimension to his anthropocentric critique. We achieve this by reframing spatial meaning as more than just a consequence of anthropocentric biases, but as an instigator of the double reduction. By retracing the trajectory of the double reduction, I explore how the positing of life in objective space renders mute the internality of life and supports the reduction of movement and internal volition according to mechanism. If we can show how spatial meaning is complicit in the mechanomorphism, we have reason to incorporate alternative spatial meanings in our encounter with nonhumans. By critiquing and re-evaluating the spatial presuppositions operative in the realist-Cartesian paradigm, we can demonstrate to the law how adopting alternative spatial presuppositions can change the way it encounters wildlife.

3.3.1. A Nonhuman Spatial Analysis of Lestel's First Reduction

Lestel's double reduction begins with the reduction of life to behaviour. Objective space is complicit in this reduction because placing life *in* space

[69]Dominique Lestel, Jeffrey Bussolini, and Matthew Chrulew, 'The Phenomenology of Animal Life' (2014) 5 *Environmental Humanities* 127.

[70]Ibid 127.

[71]Ibid 140.

[72]Ibid 143.

qualifies our access to it. Objective space denies access to subjectivity. We do not locate conscious experience *in* space. Objective space confines nonhuman life to conditions that conceal subjectivity. Human and nonhuman life become separated in terms of how we access them. On one hand, I can directly experience my own subjectivity and observe myself in space. On the other hand, I can only observe nonhumans before me *in* space, that is, through their exteriority or behaviour.

This becomes problematic when we conflate a difference of access with a difference of being. Lack of access is not an appropriate justification for assertions of unreality. Even when we recognise the reality of our interior worlds, the commitment to objective space as a necessary feature of the world 'out there' has a way of diminishing our ability to imagine beyond the conditions set by objective space. As a result, we tend to adopt a positivist stance that denies what cannot be directly observed in space. Instead of committing to a method or encounter that strips life of its interiority by positing it 'in' space, we should focus on how different interpretations of space set limits on what features of life are allowed in. From this perspective, spatial meanings have always already conditioned our interpretation of nonhuman life. If we want to move away from reducing life to behaviour, we must articulate new ways of spatialising the world in which we place nonhuman life.

3.3.2. A Nonhuman Spatial Analysis of Lestel's Second Reduction

The second reduction builds on the first. After reducing life to behaviour, we explain this behaviour in terms of mechanical causation. As Lestel notes, mechanical explanations 'secure the monotony [of behaviour] to a series of hidden instruments.'[73]

Objective space also has a role to play in this reduction. As soon as we posit life as *in* space, we invoke the need to explain how life functions within that space. Objective space limits explanation to the observable, leading to a mechanical description akin to classical mechanics. Interestingly, the mechanical causation we use to explain the interactions between bodies also applies to the interior of the body. But this interior retains the conditions of objective space. It may not be directly observed but we can imagine the interior space of the body and its parts and how they comply with the same physical laws as things exterior to the body. The internal volition (that we attribute to ourselves) is explained through a mechanical structure.

[73]Lestel, Bussolini, and Chrulew (n69) 127.

3.4. A Turn to Phenomenology

Lestel's primary concern with the realist-Cartesian paradigm and the double reduction is the way this 'atrophies our zoological imagination' with respect to nonhuman capabilities.[74] Lestel's solution is to reach for methods of inquiry that can enrich our imagination. This involves temporarily suspending our commitment to the realist-Cartesian paradigm, a move that Lestel refers to as adopting the 'phenomenological posture'.[75]

Phenomenology was developed by Husserl as a method for critiquing the established meanings of science by returning to and describing the experiences from which those meanings are derived.[76] Since its inception, phenomenological critiques of scientific knowledge and practice have gained considerable traction in general, [77] and, more specifically, in relation to the animal sciences.[78]

From a nonhuman spatial perspective, there are two areas where phenomenology has been applied to the animal sciences that are of particular note. First is the turn to phenomenology to provide accounts of animal health and suffering.[79] Second is the examination of how phenomenology clarifies the role of scientists in the study of animal behaviour by highlighting their involvement in the research process.[80] These developments are significant for the nonhuman spatial turn because (1) they attempt to articulate the nonhuman perspective, and (2) they challenge the disembodied status of the human subject and their ability to simply impose meaning on the observed object.

Regarding the former, attempts to provide phenomenological accounts of animal suffering are based on the notion that nonhumans possess subjective capacities traditionally reserved for humans. For the latter, the emphasis on the active involvement of investigators in their research encounters directly challenges the independent and impartial status of

[74]Ibid.128.

[75]Ibid 128.

[76]For a detailed analysis of how Husserl's phenomenological method was developed in response to the perceived decline of scientific inquiry, see D Moran, 'Husserl and the Crisis of the European Sciences' in MW Stone and J Wolff (eds), *The Proper Ambition of Science* (Routledge 2000).

[77]J Reynolds and R Sebold (eds), *Phenomenology and Science: Confrontations and Convergences* (Palgrave Macmillan 2016).

[78]C Painter and C Lotz (eds), *Phenomenology and the Non-Human Animal. Contributions to Phenomenology: At the Limits of Experience* (Springer Dordrecht 2007).

[79]W Veit and H Browning, 'Phenomenology Applied to Animal Health and Suffering' in S Ferrarello (ed), *Phenomenology of Bioethics: Technoethics and Lived-Experience* (Springer Charm 2021) 73–88.

[80]E Ruonakoski, 'Phenomenology and the Study of Animal Behavior' in Painter and Lotz (n78) *Phenomenology and the Non-Human Animal: Contributions to Phenomenology* (Springer 2007) 75–84.

the observer, which is primarily informed by the assumed distinction between the inquiring human subject and the object of inquiry. In doing so, they challenge the idea that nonhumans lack the ability to produce meaning and that the imposition of human meanings is the exclusive method of understanding the world. As I elaborate below, a nonhuman spatial turn can and should build on this phenomenological critique of the animal sciences to confront the anthropocentric and spatial presuppositions that hinder the conception of nonhumans as beneficiaries of spatial justice.

To return to Lestel: He turns to the phenomenological methods for two reasons. First, phenomenology offers a method for enriching rather than replacing scientific knowledge by way of the 'phenomenological reduction'.[81] The phenomenological reduction posits a distinction between what we immediately perceive and the preconceived ideas we use when interpreting these perceptions. The reduction asks that we suspend our belief in these preconceived ideas in order to earnestly attend to what is immediately given.

Lestel performs the phenomenological reduction to suspend our belief in the realist-Cartesian paradigm. What follows is a conceptual reset. We do not wipe the slate clean of assumptions but perform what phenomenologists call 'bracketing'. In this case, we bracket our belief in the double reduction and the commitment to objective space. To bracket ideas is to suspend their influence on our interpretation of experience. In doing so, we open ourselves up to an alternative world. When Lestel brackets the realist-Cartesian paradigm he is confronted by a 'lively admixture of inter-subjective communities'[82] presented through his experience of and with nonhumans.

Second, the phenomenology offers a new starting point for understanding the production of spatial meaning through the notion of 'intentionality'.[83] Intentionality is a structure we arrive at when we reduce the act of experience to its formal constituents. It describes the fundamental structure of experience as composed of two poles and the relation between them: the subject that intends towards the object and the object of intention. By reducing the act of experience to its essential structure, phenomenology seeks to eliminate any unwarranted claims or interpretations that may implicitly shape our understanding of what or how we experience. A reduction provides the phenomenologists with a clean slate on which

[81]D Moran, *Introduction to Phenomenology* (Routledge 1999) 124–163.

[82]Lestel, Bussolini, and Chrulew (n69) 129.

[83]For a detailed overview of intentionality, see D Woodruff Smith and R McIntrye, *Husserl and Intentionality: A Study of Mind, Meaning and Language* (Reidel 1982).

they can rebuild the essential components of experience by engaging with and describing various types of intentional acts.

Intentionality serves the nonhuman spatial turn because it stretches the practice of deploying or producing spatial meaning beyond the anthropocentric confines of consciousness acts. It challenges the limited view of spatialisation as a mental act that interprets the world according to a particular concept of space. Consider, for example, the title plan of a property understood as being 'in' an objective space. The intentional relation is between the law and the property, but the property (and its nonhuman inhabitants) are made to conform to a concept of space imposed on them by the law. When we return to intentionality, we divest ourselves of the pre-conceived opinions that accompany this form of spatialisation. We suspend our belief in the authority of the detached legal system, the necessary and sufficient status of objective space, and the passive status of the nonhumans who live on the property. Instead, intentionality allows us to reimagine the act of spatialising the world not from the perspective of the law but from that of inter-relation between wildlife that live on and, in some respects, contribute to and form part of the property. Instead of thinking of wildlife as occupying *our* interpretation of space, we can ask if and how they are sources of their own meaning-making activities.

In summary, reflecting on how the law encounters wildlife reveals a profound inter-relation with the sciences. Not only does the law utilise scientific knowledge and practices in pursuit of its specific goals, but it also relies on scientific expertise for interpreting and developing meaning and decision-making. Therefore, the nonhuman spatial turn cannot overlook scientific encounters with wildlife. In fact, as Gilbert et al. observe, it can be argued that radical shifts in the way the law encounters wildlife, such as the rights of nature approach, may depend on an increase in inter-disciplinary and trans-disciplinary projects.[84] This is why a turn to scientific encounters, specifically ethology, is of interest to the nonhuman spatial turn.

Lestel's critique of traditional ethology discloses how the realist-Cartesian paradigm and the double reduction to mechanomorphism shape ethological encounters with nonhumans. For Lestel, this double reduction is influenced by anthropocentric biases that affirm our separation from and epistemological superiority over nonhumans. Lestel's turn to phenomenology as a remedy to these anthropocentric biases, therefore, remains a nonhuman turn. I develop Lestel's anthropocentric critique of traditional ethology to include a spatial dimension. This reframes Lestel's

[84]Gilbert et al (n55).

phenomenological analysis to include a consideration of the spatial. By demonstrating how a commitment to objective space is operative in the double reduction that leads to mechanomorphism, I claim that any phenomenological critique of the realist-Cartesian paradigm must include a critique of objective space.

In the next section, I explore how Merleau-Ponty's phenomenological inquiry into bodily space offers a critique of anthropocentric and spatial presuppositions. Merleau-Ponty is shown to develop the idea of bodily intentionality, in contrast to conscious intentionality, highlighting the difference between occupying a pre-conceived space and inhabiting one's own space. We will see how this intentional body has its own way of relating to the world that involves its own form of spatialising. This body will not only offer alternative accounts of spatialisation to the law, but will also serve as a site of shared intentionality for both humans and nonhumans, informing new ways of encountering and understanding wildlife.

4. Merleau-Ponty, Space, Nonhumans and Bodies

4.1. Why Merleau-Ponty?

We turn to Merleau-Ponty's brand of embodied phenomenology because it, like the nonhuman spatial turn, challenges the assumed necessities of objective space and more-than-human meaning. In the *Phenomenology of Perception,* Merleau-Ponty's analysis of space builds from the following claim:

> there is not one truth of reason which does not retain its coefficient of facticity: the alleged transparency of Euclidean geometry is one day revealed as operative for a certain period in the history of the human mind, and signifies simply that, for a time, men were able to take a homogeneous three-dimensional space as the 'ground' of their thoughts, and to assume unquestioningly what generalized science will come to consider as a contingent account of space.[85]

This 'homogeneous, three-dimensional space' bears properties very similar to the objective space as discussed above.[86] Merleau-Ponty reveals his own spatial scepticism when he describes this interpretation of space as operative in a 'certain period in the history of the mind.' As we will see below, Merleau-Ponty's phenomenological examination of the experience of one's bodily space signals his own attempt to bracket this interpretation of space in favour of discovering alternative spatial meanings.

[85]Merleau-Ponty (n2) 458.

[86]Ibid 6.

Merleau-Ponty was also distrustful of the ontological divide we commonly enforce between humans and the rest of nature. In the *Nature* lectures, Merleau-Ponty draws on and critiques ethological data to explore the intertwining of the human and nonhuman to develop what he calls 'animal culture'.[87]

In the *Phenomenology of Perception* Merleau-Ponty's interest in the body—both as an agent that perceives and as an object of perception—reveals a less-than-human body: a depersonalised, anonymous body that has yet to give itself up to human specification.[88] It is this body with its capacity for a pre-conceptual form of intentionality, or bodily intentionality, that serves as a site of commonality with nonhumans and a subject of inquiry that can disclose nonhuman modes of intentionality. As Toadvine notes, reinterpreting animal behaviour according to the structure of intentionality reveals 'meaningful relations rather than merely causal or mechanical interactions' between animals and their environment.[89]

The key point that makes Merleau-Ponty's analysis of the body especially relevant to the nonhuman spatial turn is how his retreat to the body as a site of intentionality challenges the notion that meaning is only ever imposed on the world by the human mind. Instead, meaning is the product of the intentional relation between bodies. This opens the process of meaning making up to other bodies, including nonhumans. For Merleau-Ponty, the higher cognitive abilities that distinguish humans from nonhumans are continuous with the 'lower' bodily functions because they share in the fundamental tendency to 'surge towards objects to be grasped and perceive them.'[90] This new interpretation of the body, both human and nonhuman, serves as the foundation for a new approach to meaning. The body does not possess a repository of meanings to impose on the world, but produces meaning in and through its relation with other bodies. As Chouraqui observes, 'instead of saying that the body has the ability of meaning-making, we should rather say that it *is* the ability to make meaning.'[91] As I develop below, this new interpretation of the body as a site of intentionality stems from an analysis of one's own bodily space. It is rethinking the body as a site of spatial inhabitation—not of occupying an objective space but actually producing space through its relations with

[87]M Merleau-Ponty, *Nature: Course Notes from the Collège de France* (R Vallier tr, Northwestern University Press 1995) 198.

[88]Merleau-Ponty (n2) 97.

[89]T Toadvine, *Merleau-Ponty's Philosophy of Nature* (Northwestern University Press 2009) 79.

[90]Ibid 121.

[91]F Chouraqui, *The Body and Embodiment* (Rowland & Littlefield 2021) 110.

other bodies—that can equip the law with a new understanding of the body within the context of rethinking wildlife as bodies capable of contributing to the meaning of property.

4.2 Merleau-Ponty and Bodily Space

In the *Phenomenology of Perception*, Merleau-Ponty's phenomenological inquiries into space include an analysis of one's own bodily space.[92] An inquiry into one's own bodily space is difficult to begin because it requires bracketing our belief in the body as being 'in space' in favour of focusing our attention on the actual experience of bodily space. The difference is subtle but significant. Moving from the perspective of the observer of the body to the experience of the body itself requires a reduction, a suspension in what Lestel describes as the realist-Cartesian paradigm that prescribes a strict distinction between the observing subject and the observed object.

This is why Merleau-Ponty asks that we 'look beneath the explicit meaning of definitions to the latent meaning of experiences.'[93] Merleau-Ponty advocates for the epistemological primacy of perception, where 'the perceived world is the always presupposed foundation of all rationality, all value and all existence.'[94] This means concepts such as objective space are reflected accounts or interpretations of our perceptual experience of the world. By calling for a return to latent meanings of experience, Merleau-Ponty wants us to consider how the definition and subsequent commitment to the concept of objective space develops from our immediate perception of the world. In doing so, Merleau-Ponty concludes that 'experience discloses beneath objective space, in which the body eventually finds its place, a primitive spatiality of which experience is merely the outer covering and which merges with the body's very being.'[95] When we turn our attention to the spatiality of one's own body, we discover an altogether unique experience of space—one very different from the body as conceived by objective space.

For Merleau-Ponty, his own bodily space presents a 'frontier which ordinary spatial relations do not cross.'[96] His body does not present itself as a 'mosaic of spatial values', nor does it appear like an 'assemblage of

[92]Merleau-Ponty (n2) 112.

[93]Ibid 116.

[94]Maurice Merleau-Ponty, *The Primacy of Perception and Other Essays on Phenomenological Psychology, the Philosophy of Art, History and Politics* (Northwestern University Press 1992) 13.

[95]Merleau-Ponty (n2)170.

[96]Ibid 112.

organs juxtaposed in space'.[97] This is a phenomenon we can only test by engaging with and describing our own bodily space. For example, when I direct my attention to my crossed legs, I do not clearly distinguish between the parts of my lower body as I might grasp the floor plan of a house. I am aware of the pressure my left shin exerts on the sole of my right foot, but they are not clearly delineated areas of sensation. I can think of the body by placing it in an objective space and then carving it up into sections, but in doing so, I have departed from the immediate experience of the body. Instead, bodily space is a vague overlapping of feelings and intentions. As Merleau-Ponty notes, 'they [the parts of the body] are not spread out side by side, but enveloped in each other.'[98]

Merleau-Ponty claims that bodily space and the external space of objective space form a 'practical system'.[99] The meanings we deploy in our conception of space derive from our immediate experience of our own bodies. Merleau-Ponty gives the example of prepositional descriptions such as 'besides' and 'against.' They operate in objective space, but from where do they derive their original meaning? For Merleau-Ponty, the objective space we suppose the world to be in is an explicit expression of our more primitive bodily orientation in the world.[100] Prepositions that sit neatly in objective space are derived from my bodily experience of orientated space. More importantly, the very notion of an objective space in which bodies occupy is not possible were it not for the body's primary experience of its own space. In Merleau-Ponty's words, 'far from my body's being for me no more than a fragment of space, there would be no space at all for me if I had no body.'[101]

4.3. Occupation and Inhabitation

It is this distinction between our experience of bodily space and our conception of bodies as being in space that leads Merleau-Ponty to conclude that before we think of ourselves as occupying space, we inhabit space.[102] Occupation and inhabitation describe two interpretations of the relational aspect of intentionality. The former is the kind of conceptual intentionality that describes a relation between concept and object, of

[97] Ibid.

[98] Ibid.

[99] Ibid 117.

[100] Ibid.

[101] Ibid.

[102] Ibid 161.

imposing the concept of objective space onto things, or thinking of things as being in objective space. When we conceive of things in terms of objective space, objective space serves as the container that things occupy.

The latter is a kind of bodily interpretation of relationality that understands the body as producing spatial meaning through the way it 'surges towards'[103] other bodies. This 'surging towards' is a new interpretation of the relational element of intentionality, one that is inscribed in the body itself and not a mode of thinking or conceptualising the body and its place in the world. Perceived space is not a concept or container in which things are placed; rather, it is the ever-changing and renewed relationships between bodies as they intend towards each other. To spatially inhabit the world is, first and foremost, to intend towards other bodies. Consequently, occupation and inhabitation offer two different ways of spatialising the world. We can either think of the body as occupying an objective space or apprehend the body as it inhabits space in and through its relational activity with other bodies.

Merleau-Ponty uses the experience of bodily motility to illustrate this difference. According to Merleau-Ponty, 'inhabitation is not limited to passively submitting to space and time, it actively assumes them, takes them up in their basic significance which is obscured in the common places of established situations.'[104] This active form of bodily spatialisation is what Merleau-Ponty is pointing at when he claims that 'space is not the setting (real or logical) in which things are arranged, but the means whereby the position of things becomes possible.'[105] In such moments of 'making the position of things possible', the body does not first need to present itself with a 'theatre of action'[106] in which to plot its own movements; it simply acts.

Bodily intentionality is more than just a way of interpreting how the body relates to the world. It is a real function of the body that precedes and informs how observing subjects take up and deploy objective space. Merleau-Ponty gives the example of a patient with severe brain injuries to simulate the reduction he asks us to perform ourselves. The patient in question is asked to locate and point to a particular part of their body. Although the patient cannot mentally locate and point to the desired body part, they can gradually identify it through a series of bodily movements. Merleau-Ponty explains this discrepancy by

[103]Ibid 121.

[104]Ibid 117.

[105]Ibid 284.

[106]Ibid 122.

differentiating between abstract and concrete movements. Abstract movements involve visualising the body existing in space, locating the relevant body part, and then directing oneself to point to that imagined location. In contrast, concrete movements are not led by the conceptualisation of the body, but through a series of tactile exchanges between the body and itself. Through a sequence of preparatory movements, the patient makes an object of their own body in the same way that I might wiggle my toe while in a cross-legged position to become more aware of its place.

Abstract movement is an example of treating the body as occupying a specific location *in* space. It conforms to the type of conceptual spatialisation that a nonhuman spatial turn seeks to bracket and enrich. Concrete movement demonstrates what Merleau-Ponty describes as an experience of the body spatialising. The body's tactile navigation of the world illustrates a non-conceptual approach to spatial significance. Bodily spatiality is not a new interpretation of what space is, but a different way of how space comes to be. It does not impose a preconceived idea of space, but produces and inhabits space through its own bodily activity.

Bodily intentionality is useful for the nonhuman spatial turn for two reasons. First, by expanding the meaning of spatialisation beyond conceptual acts to include bodily actions, Merleau-Ponty discovers a source of meaning-making activity that is not mind-dependent and therefore not confined to anthropocentric definitions of thought, rationality and agency. This is essential for any project that seeks to challenge the belief that the world is and will always be understood according to human-specific meanings. One of the issues with ushering in a post-anthropocentric world is the problem of how we access or disclose nonhuman meanings. This problem of stems from an assumption that humans and nonhumans possess their own repository of meanings, which they then impose on the world in their own ways. Bodily intentionality challenges the heart of this claim. We do not harbour meanings within us, but generate meaning through our relation with other bodies. If meaning is the product of a relation between beings, we are no longer condemned to the impossible task of assessing the interior world of the other. We disclose meanings not through representations of nonhumans, but by forming relationships with them.

Second, the body Merleau-Ponty describes as inhabiting space is not necessarily restricted to the human body.[107] Merleau-Ponty describes this body as a 'given, general and pre-personal existence of my sensory

[107]For a detailed analysis of how Merleau-Ponty's notion of the body implicates animality, see Toadvine (n89).

functions'.[108] This body serves as a shared site of intentionality and source of meaning-making, opening Merleau-Ponty's analysis up to more-than-human discourse. Merleau-Ponty hints at the idea of the body as a site shared of intentionality when describing the multi-functionality of the body: 'Sometimes it is restricted to the actions necessary for the conservation of life … at other times, elaborating upon these primary actions and moving from their literal to a figurative meaning, it manifests through them a core of new significance.'[109] Merleau-Ponty rightly notes the difference between humans and nonhumans in terms of advanced faculties of signification, but does not go as far as to rely on these differences to affect a strict divide. Instead, advanced faculties 'elaborate upon these primary actions'. What makes a human human builds on the same bodily intentionality that makes a nonhuman nonhuman.

Insofar as humans and nonhumans are embodied, Merleau-Ponty's analysis of bodily intentionality keeps us open to the possibility that humans and nonhumans share in their inhabitation of space, albeit in their own ways.

4.4. Potential Issues With Bodily Intentionality

Merleau-Ponty's account of bodily intentionality and its relation to spatial meaning broadens our analysis of other bodies, including nonhuman bodies, as co-producers of spatial meanings. It is at this point that we can revisit the above critique of the nonhuman turn as outlined above: the issue of reducing the human-nonhuman relationship to a flat ontology.[110] This critique is also pertinent to the nonhuman spatial turn because recognising the body as a site of shared bodily intentionality capable of producing spatial meaning has the potential to dissolve any meaningful differences between human and nonhuman spatialisations. In order for the law to recognise wildlife as a beneficiary of spatial justice, it has to be able to identify if and how wildlife contributes to the meaning of property. But how do we defer to the body as a shared site of intentionality for both humans and wildlife without dissolving the difference between them?

Drawing on Merleau-Ponty's discussion of space in his short lecture series titled *The World of Perception*, I demonstrate how Merleau-Ponty offers a way to at least begin addressing this issue. It involves shifting

[108]Merleau-Ponty (n2) 385.

[109]Ibid 169.

[110]See s. 24.

away from a commitment to conscious intentionality that *imposes* meaning onto the world in favour of a bodily intentionality that recognises meaning as the *production* of bodily relations. Predicating meaning on the relation between different bodily relations instead of the conceptualisation of a detached observer allows for different meanings to appear depending on different bodies and their relations. Merleau-Ponty illustrates this shift by exploring how changes in our understanding of space influenced the move from classical painting to modern painting.

In the second lecture on space, Merleau-Ponty describes the shift from a classical to modern interpretation of space as follows:

> the notion of a single unified space entirely open to a disembodied intellect has been replaced by the idea of a space which consists of different regions and has certain privileged directions; these are closely related to our distinctive bodily features and our situation as beings thrown into the world.[111]

The concept of space, here, is shown to be operative in two senses. First, it shapes our understanding of the world. Second, it informs our relationship with the world. The world qua objective space observed by a disembodied subject is replaced with a world qua regional space of privileged direction that is closely related to the body and its situation in the world. For Merleau-Ponty, this change in our understanding of space influenced the transition from classical to modern painting. Specifically, the transition from a disembodied observer detached from the world to an embodied being intimately connected to a regional space had a profound impact on how artists approached the question of being in and representing the world.

According to Merleau-Ponty, classical painting understands space in similar terms as objective space, describing it as 'the unform medium in which things are arranged in three dimensions and in which they remain the same regardless of the position they occupy.'[112] This interpretation of space informs how classical painters relate to the world, how they understand the relation between the artwork and the observer, and by what principles they seek to represent it. Merleau-Ponty describes this spatial context as a 'medium of simultaneous objects capable of being apprehended by an absolute observer who is equally close to them all, a medium without a point of view, without body and without spatial position—in sum, the medium of pure intellect.'[113]

[111]M Merleau-Ponty, *World of Perception* (O Davis tr, Routledge 2004) 56.

[112]Ibid 50.

[113]Ibid 54.

Similar to the way the realist-Cartesian paradigm relies on objective space to affirm the status of the independent and impartial subject, Merleau-Ponty's characterisation of the classical painter seems to describe a similar reliance on a classical interpretation of space to affirm the (non-) perspective of the disembodied subject. This understanding of their relationship with the world informs their methods of representation. Classical painters seek to replicate the non-perspective of the pure intellect by remaining at a distance and not involving the viewer.[114] They achieve this by incorporating principles of perspective and geometry in their methods of representation. [115] The problem with this method is it denies what is actually perceived in favour of a world conceived by a pure intellect. The commitment to the idea of space as a uniform medium that contains things becomes a dictate on how one should perceive the world. Classical painters are engaged in imposing meaning on the world, on the artwork, and on the observer of the artwork.

In contrast, modern Impressionist painters resist the implications of classical space. They 'refuse to follow the law of geometrical perspective' because they have 'sought to recapture and reproduce before our very eyes the birth of the landscape.'[116] They do not paint from a (non-)perspective of the pure intellect, nor do they impose the same non-perspective onto the observer. Instead, they engage with and represent the world as they perceive it. They recognise themselves as involved in the world they seek to represent and create artworks that make a similar demand for practical involvement on the observer. Space is not a structure one adheres to or that which is imposed on the observer, but a reason to explore where 'different areas of their paintings are seen from different points of view'.[117] In other words, its entire meaning cannot be grasped from a single perspective but rather depends on the movement of the observer to interrogate the artwork from all angles. Bodily involvement is necessitated.

From a nonhuman spatial perspective, the key difference between classical and modern painters can be explained in terms of the difference between conceptual or bodily intentionality. Classical painters rely on conceptual intentionality. They impose a concept of objective space onto the world they perceive, the world they represent, and as a rule of how to observe the artwork. They try to eliminate the value of the relation between the observer and the artwork by painting from the perspective

[114]Ibid 53.

[115]Ibid 52.

[116]Ibid 53.

[117]Ibid 54.

of a pure intellect. In contrast, modern painters try to replicate the experience of producing meaning in and through bodily relation with the world. Merleau-Ponty describes Cézanne as being in the business of 'giving birth to the outline and shape of objects in the same way that nature does when we look at them.'[118] They predicate the meaning of their work on the observer's ability to relate to the artwork, disclosing new meanings through their relational participation with it. Classical painters impose meaning on the object and force the observer to do the same. They subscribe to a form of conscious intentionality that the nonhuman spatial turn seeks to expand upon. Modern painters do not impose meaning on anything, but recognise that meaning is produced through the bodily relation between the artwork and the observer. Their artworks are invitations for observers to experience the act of producing meaning with another body.

This appeal to either imposing meaning on the artwork or allowing meaning to emerge from our bodily relation to the artwork is reflected in their respective methods of representation. Classical painters appeal to pure intellect via the principles of geometry and perspective. Modern painters appeal to the embodied reality of the observer by interpreting space as that 'in which we are too located, space which is close to us and with which we are organically connected.'[119] Merleau-Ponty describes the ideal reaction to modern art as follows:

> The lazy viewer will see 'errors of perspective' here, while those who look closely will get the feel of a world in which no two objects are seen simultaneously, a world in which regions of space are separated by the time it takes to move our gaze from one to the other, a world in which being is not given but rather emerges over time.[120]

This idea that the world is not given but emerges over time speaks directly to the point that meaning is not imposed but is the product of bodily relations. This shift in our understanding of meaning can address the charge of creating a flat ontology because it opens meaning to any and all bodily relations. Ethological accounts of animal behaviour can learn from this shift in our approach to meaning. When we recognise the mutual relation between the observer and the observed and how these relations generate novel meanings, we can start to engage with nonhumans as co-producers of meaning, as inhabitants of space that relate to us rather than as passive occupants that offer no resistance to our conceptual

[118]Ibid 53.

[119]Ibid 54.

[120]Ibid.

impositions. This opens a new way of thinking about both the law's encounter with property and the very nature of property.

5. The Politics of Inhabitation

So far, we have explored how the body's unique form of spatial inhabitation marks a departure from the traditional way of spatialising the world. To occupy space is to be placed 'in' space. To inhabit space is to be actively involved in the spatialisation of the world. Occupation is a trap; inhabitation a calling. This section asks what spatial inhabitation looks like when applied to the practice of wildlife law. Specifically, how spatial inhabitation manifests in the political arrangement of and between bodies known as a politics of inhabitation. It is through this new politics of inhabitation that the law can notice and attend to spatial injustices in relation to wildlife.

Politics can be interpreted as a set of activities generally concerned with the phenomenon of power in society, including the conditions of power, how power is distributed within a society, and ultimately how power is controlled.[121] One area of particular interest to a nonhuman spatial turn is Foucault's notion of biopolitics, which he describes as 'a power that exerts a positive influence on life, that endeavours to administer, optimize, and multiply it, subjecting it to precise controls and comprehensive regulations.'[122] Who or what counts as a living body and how they are encountered and managed within any political arrangement is of particular interest to the nonhuman spatial turn. In terms of spatial occupation and spatial inhabitation, these reflect two types of biopolitical arrangements. It is by outlining these arrangements, specifically the politics of inhabitation, that we can begin to ground the law and its encounter with wildlife within a nonhuman spatial perspective.

The 'in' of objective space describes a politics of occupation, of things 'in' space subordinate to the conceptualising subject or the law that governs. In this political arrangement wildlife are placed in a preconceived world and treated primarily as things at our disposal. This is reflected in the law's tendency to reduce wildlife to property. In contrast, the 'in' of Merleau-Pontean inhabitation describes a politics of inhabitation, of agential subjects who, in their bodily action, co-construct the topography of the land of which they are a part. In a politics of inhabitation, wildlife are no longer placed in a pre-spatialised world and subsequently treated as

[121]HD Lasswell, *Politics: Who Gets What, When, How* (Pickle Partners Publishing 2018).

[122]M Foucault, The Will to Knowledge: The History of Sexuality Volume 1 (R Hurley tr, Penguin 1998) 137.

empty things *for us*. The body is no longer an object *in* space, but a subject *of* space.

Political arrangements decide where power comes from and who or what has access to it. The main difference between the politics of occupation and inhabitation is where and how they locate and control power. Transitioning from a politics of occupation to inhabitation is one possible way of enacting a nonhuman spatial turn in the practice of wildlife law because it signals a shift away from treating power as separate from the things it organises. In this case, adopting a politics of inhabitation challenges the notion that wildlife are only ever recipients of spatial meanings imposed by us, instead of producers of their own spatial meanings. A politics of inhabitation implicates the body with power, effectively redistributing meaningful action between human and nonhuman bodies. The act of spatialising the world is no longer understood according to the narrow model of conceptual intentionality. Instead, adopting a politics of inhabitation commits us to the idea that beneath the objective space of property there exists a dynamic arrangement of human/nonhuman bodily spatialities that have always already been implicated in each other as co-constitutive agents in the production of real and legal interpretations of the land.

The remainder of this article explores the practical implications of adopting a politics of inhabitation in our encounters with and analysis of property. I examine how a politics of inhabitation reveals the reality of spatial injustice against wildlife and also creates opportunities to address these injustices. I focus on a specific issue: the legal practice of netting trees.

5.1. The Spatial Injustice of Netting Trees

In the UK, it is illegal to disturb or remove nesting birds in trees.[123] As a result, nesting birds now function as a restriction on the use or development of land. One unintended consequence is the increase in the practice of netting trees to prevent birds from nesting.

Netting trees is entirely legal. This is because UK[124] and international law[125] focuses mainly on prohibiting the disturbance or damage to nesting birds while omitting any consideration of how netting precludes nesting. The approach is reactive and emphasises the regulation of human activity

[123]Wildlife and Countryside Act 1981 s 1.

[124]Wildlife and Countryside Act 1981 s 1.

[125]See for example, Birds Directive and International Convention of the Protection of Birds Article 4.

rather than empowering the rights of wildlife. This creates a loophole for landowners. Netting trees prevents nesting and eliminates any accompanying restrictions on their use of land. In 2019, it was reported that the increase in the use of netting was partly fuelled by a rise in house building.[126] Given the current demand for new housing, one can reasonably expect another uptick in the netting of trees.

Netting is an inherently spatial activity because it restricts wildlife from accessing certain areas. Despite its legality, netting trees is a blunt instrument for a nuanced situation. It can harm wildlife in ways that make the law's silence on the matter seem unjust. For example, netted trees still displace migratory birds from their traditional nesting sites. They also obscure the ecological role of trees as breeding sites, thereby justifying their destruction in the eyes of the law. Additionally, nets can cause physical damage to trees and other plants, trap and injure birds, and obstruct the movement of wild animals between properties. However, these harms are often overlooked in a legal framework that does not directly address the practice of netting. It can be argued that the law, through its tacit permission of netting, has facilitated a variety of spatial injustices against wildlife.

The remainder of this article explores how adopting a politics of inhabitation can facilitate the recognition and delivery of spatial justice with respect to netting trees. I approach the issue of the spatial injustice of netting in two ways. First, I demonstrate how adopting a politics of inhabitation can supplement the law's encounter with wildlife to enrich its understanding of their needs and requirements. Drawing on Braverman's immersive ethnography, I demonstrate why thinking of ourselves as spatial inhabitants is an essential feature of adopting a politics of inhabitation, and argue why both landowners and the planning system can and should think of themselves as bodies that inhabit space.

Second, I demonstrate how adopting a politics of inhabitation can help us rethink property to include wildlife as more than passive things on it. In the context of netting trees, I show how we can deliver spatial justice to wildlife by rethinking property as a site of spatial inhabitation where human and nonhuman bodies form a network of spatial relations akin to a pedestrianised space. This reframes the issue of netting as one that already implicates the landowner in delivering spatial injustice to wildlife through their control over and organisation of space. This perspective opens up the possibility of redressing the balance, and delivering spatial

[126]S Laville, 'Property Developers row back on netting used to stop birds nesting' (5 April 2019) <https://www.theguardian.com/environment/2019/apr/05/use-of-netting-to-stop-birds-nesting-before-housebuilding-rebuked>.

justice to wildlife by reconfiguring the physical controls of property that either facilitate or hinder nonhuman forms of spatial inhabitation.

5.2. The Politics of Inhabitation in Practice: Braverman's Immersive Ethnography and 'Being-With' Wildlife

One recent example of the politics of inhabitation in action can be found in Braverman's immersive ethnography.[127] Braverman's immersive ethnography recognises that we adopt two main stances when encountering nonhumans: primordial immersion and ethnographic immersion.[128] Primordial immersion describes our direct encounters with nonhumans in their natural environments. To primordially immerse oneself with coral reefs, one has to meet them under the sea. In contrast, ethnographic immersion refers to the contact we have with other scientists, researchers, and legal scholars when we talk about nonhumans. For Braverman, these two forms of immersion constitute a 'breathing methodology' of mutual interaction.[129] Similar to the way Merleau-Ponty's bodily space and external space form a practical system, primordial immersion serves as the experiential ground that informs the meanings deployed in ethnographic discourse.

The problem with ethnographic discourse is its ignorance or blindness to the fact that the meanings we use when talking about nonhumans are ultimately derived from our immediate experiences in our primordial immersion with the world. Failure to acknowledge this relationship has a detrimental effect on our ability to assess the veracity of these meanings. For example, Braverman describes how terrestrial biases inform our legal conception of sea life. Ethnographic discourse on nonhumans typically values 'large, terrestrial vertebrate, and, generally, more-like-us beings, rather than the oceanic, invertebrate, and symbiotic life.'[130] Our understanding of what it means to be a living being is distorted by our primordial immersion in terrestrial life. These unattended incongruences between the meanings used in discourse and the nonhumans they are meant to represent amounts to their own type of injustice. Categorical exclusion inevitably slides into systematic neglect.[131] In response, Braverman's

[127]Irus Braverman, 'The Life and Law of Corals: Breathing Meditations' in V Brooks and A Philippopoulos-Mihalopoulos (eds), *Handbook of Research Methods in Environmental Law* (Edward Elgar Publishing 2017) 458.

[128]Ibid 460.

[129]Ibid.

[130]Ibid 458.

[131]Consider, for example, how in the UK cephalopods such as octopuses have been granted the status of 'honorary vertebrate' as a way of extending greater legal protections over them.

solution, like Lestel's, is to enrich our understanding of sea life by primordially immersing oneself in their world.

If a weakness of ethnographic discourse is its tendency to restrict itself to established definitions without considering their origins in experience, then one possible remedy is to follow Merleau-Ponty in his call to 'look beneath the explicit meaning of definitions to the latent meaning of experiences.'[132] In fact, Braverman's account of primordial immersion is replete with allusions to the phenomenological method. Braverman describes the ocean we must return to as 'encompassing a sea of perceptions.'[133] She asks that we 'tune in to the sensorial dimension of the coral reef'[134] and emphasise our 'being-with' rather 'analysing from afar'.[135]

This notion of 'being-with' demands more than simply relocating to the ocean. It involves a radical shift in how we perceive ourselves in relation to others. In light of the above discussion on spatial inhabitation, one way to interpret this notion of 'being-with' is by returning to our understanding of the body. When Braverman states that 'immersing ourselves with corals allows us to step back and recognize the multiple assumptions that underlie biopolitical projects,'[136] she can be understood as advocating for a retreat from a politics of occupation to a politics of inhabitation. Emphasis on spatial inhabitation plays a role in primordial immersion insofar as this 'being-with' demands the practical engagement of the body in ways that a politics of occupation denies. It calls for us to rethink ourselves as a sites of bodily intentionality that generate spatial meanings through our relation with others. The primordiality that Braverman advocates for can be interpreted as Merleau-Ponty's pre-conceptual form of bodily intentionality. In essence, to primordially immerse oneself in the lives of others requires rethinking our own bodies as spatial inhabitants rather than mere occupants of space.

This shift in our understanding of our own bodies is what we may need to embrace in order to do justice to the victims of netted trees. To primordially immerse ourselves in the lives of nesting birds does not necessarily mean we must migrate with them. Methodologically speaking, this involves relevant stakeholders such as landowners and those involved in the planning system, reconsidering themselves not as mere occupants of space but as spatial inhabitants. In doing so, they open themselves to their role as a co-producers of meaning through their bodily interactions.

[132]Merleau-Ponty (n2) 116.

[133]Ibid 4.

[134]Ibid 3.

[135]Ibid.

[136]Ibid 6.

A number of practical implications follow. Just as the modern painter retires the non-perspective of the pure intellect, the landowner or planning officer must abdicate their position as a detached observer. They must reconceive themselves as co-inhabitants with wildlife that co-produce meaning in their bodily interactions. Day-to-day activities such as site visits, monitoring and assessing land use, and the management of land take on a whole new significance. Instead of merely retreading the predetermined meanings of objectified area of property, these activities become generative events that co-produce meaning with nonhuman inhabitants. The meanings derived from the perceived needs and contributions of wildlife take on a dynamic form because they are not imposed by thought but produced through bodily interactions. Property loses its passive status as a mere thing; its meaning comes alive and is sustained by our continued embodied interactions with the property by regularly visiting nesting areas throughout the year, understanding their patterns of behaviour, asking how they affect the living world around them, and asking what kind of human interventions help or hinder their forms of inhabitation.

5.3. The Politics of Inhabitation in Practice: Pedestrianising Property

The politics of inhabitation can also help enrich the meaning of property. When we recognise wildlife as spatial inhabitants of property, the real and legal topography of property changes. Instead of landowners lording over nonhuman 'occupants', property becomes a community of inhabitants in which the landowner is one-of-many (albeit one still substantially more powerful than the others). This perspective is particularly relevant to the phenomenon of netting trees. It reframes property as a site of co-habitation between the landowner and wildlife, but it also challenges the authority of exclusionary rights of possession. The challenge is, how do we include wildlife perspectives and open a dialogue between them and landowners without dispossessing landowners of their property?

One concept of particular relevance to this dilemma is the notion of pedestrianisation. Traditionally, pedestrianisation is understood as a means of regulating rights of access and mobility over property, especially concerning vehicles and pedestrians.[137] Pedestrianisation is significant to the nonhuman spatial turn for two reasons. First, it traditionally concerns itself with negotiating competing *human* interests of access and mobility. Secondly, it largely operates according to the presupposition of *objective space*. It is an inherently spatial practice that does not solely rely on legal

[137]For a detailed history and analyse of the development of the idea of the pedestrian and pedestrianisation, see C Hass-Klau, *The Pedestrian and the City* (Routledge 2015).

intervention to change in behaviour, but also involves physical alterations to land. By adopting politics of inhabitation, by rethinking property as a site of co-habitation between various bodily spatialities, proponents of a nonhuman spatial turn can broaden the scope of pedestrianisation to include nonhumans as beneficiaries of spatial justice.

One could argue that pedestrianisation already subscribes to an anthropocentric form of spatial justice. Successful pedestrianisation depends on recognising all stakeholders as agents of meaningful action that contribute to the functioning of the whole ecosystem. [138] People and vehicles are more than passive entities in space; they are going somewhere and doing something. Any reconfiguration of space will disrupt the ecosystem of relations and interactions of which they are an integral part. Pedestrianisation is a means of delivering spatial justice because there is always a balance to be struck. Restricting vehicle access may inconvenience the delivery of goods to a store, but it might also increase the footfall of potential customers. From a Merleau-Pontean perspective, the value we attach to specific configurations of space is predicated on the interaction of bodies. For pedestrianisation to enact its own nonhuman turn, it must include nonhumans in the analysis it already undertakes between humans and vehicles. It must treat nonhumans as spatialising bodies that are going somewhere, doing something. It must judge how to organise space by also recognising that nonhumans produce meaning through their interactions with other bodies.

For example, Ojalammi and Blomley explore how the perceived presence and roaming patterns of Finnish wolves contribute to the making and regulation of legal territories.[139] Reflecting on the geographical tension between human and wolf populations and how it contributes to shifting territorial boundaries, they conclude that 'wolves are geographers too, enacting space through forms of mobility and territoriality.'[140]

Interestingly, Ojalammi and Blomley stop short of explaining what it means for wolves to 'enact space through their mobility and territoriality.' This, I would argue, is where adopting a politics of inhabitation can be of value. From a Merleau-Pontean perspective, the enactment of space *through* mobility suggests a form of bodily intentionality where the spatial meaning of territories is partly produced by the actual or perceived bodily presence of wolves. When we think property from the perspective of a

[138]S Nikhil and S Neetishree, 'Benefits of Pedestrianisation and Warrants to Pedestrianise an Area' (2016) 57 *Land Use Policy* 139.

[139]S Ojalammi and N Blomley, 'Dancing with Wolves: Making Legal Territory in a More-than-Human World' (2015) *Geoforum* 51.

[140]Ibid 56.

politics of inhabitation, we include nonhuman bodies and their spatial interactions as valid contributors to and recipients of the meaning of legal territory. Consequently, any reconfiguration or control over that property cannot ignore wolves as co-producers of the meaning and therefore legitimate beneficiaries of spatial justice.

This approach to property through a politics of inhabitation offers a new way to engage with and add nuance to the practice of netting. It introduces nonhuman spatial perspective to netting by shifting the law's exclusive focus on its proprietary nature to the idea that netting also functions as an act of pedestrianisation, configuring space to safeguard the interests of landowners against those of wildlife. This perspective allows us to view property as a site of interspecies relationships without dispossessing the landowner. When we treat wildlife as spatial inhabitants we are able to open productive discussions between landowners and the law to establish more nuanced compromises that do not necessarily lead back to whether the landowner can or cannot exercise a property right. Instead, the concept of pedestrianisations is well-established and intuitive, providing both landowners and the law with a new method to articulate the various ways wildlife inhabit space, add nuance to human–wildlife interactions, and balance their needs and contributions to the land against those of landowners.

6. Conclusion

This article explores if and how the law can recognise wildlife as beneficiaries of spatial justice. It is premised on the notion that spatial justice begins with recognition. As long as the law encounters wildlife as passive entities associated with property, their status as beneficiaries of spatial justice is denied. This article claims that the law denies the beneficiary status of wildlife in two interconnected ways. First, the law is anthropocentric. It tends to act as if humans are the exclusive source of meanings that contribute to the production of legal entities such as property, implying that spatial meaning is something we impose on wildlife. Second, it adheres to a particular interpretation of space—objective space—and imposes this interpretation on wildlife, reducing them to passive entities incapable of contributing to the production of property. A nonhuman spatial turn challenges these presuppositions. It asks if and how the law can rethink wildlife as producers of their own spatial meanings that contribute to the real and legal production of property. Only then can they be deemed beneficiaries of spatial justice.

Reflecting on how the law encounters wildlife and the presuppositions that inform these encounters, the nonhuman spatial turn finds itself at a crossroads: it can either directly challenge the property status of wildlife, reframing them as patients or subjects of the law, or it can seek to reform

the scientific encounters that play an essential role in the law's overall encounter with wildlife. While both are valid courses of action, I follow the latter route. I explore how supplementing scientific encounters with Merleau-Ponty's brand of embodied phenomenology can equip the law with a new understanding of the body, not as a passive thing that occupies a preconceived space, but as an active, productive body that creates spatial meaning in and through its relation with other bodies. Rethinking the body as a site of spatial inhabitation lays the foundation for a new bio-politics, a politics of inhabitation, where humans and nonhumans, by virtue of being embodied beings, co-exist and co-produce spatial meanings through their relationality. This shift—from treating meaning as originating from a disembodied mind that imposes itself on the world, and towards meaning as the product of interspecies bodily relations—may prove instructive for the law's ability to encounter wildlife as co-producers of property and, therefore, beneficiaries of spatial justice.

I conclude by exploring how a politics of inhabitation would affect legal practice and knowledge with respect to the law's action (or inaction) in relation to the phenomenon of netting trees to prevent the nesting of wild birds. First, I demonstrate how rethinking humans as bodies that inhabit space and produce meaning through our relationships with other bodies adds a dynamic element to existing approaches to the management of land and enforcement of legal regulations. Predicating meaning on bodily relations pluralises the sources of meaning-making agents insofar as it denies that meaning is predetermined and imposed on property, but is instead continually discovered and rediscovered in the relations formed between humans, nonhumans, and property. Secondly, rethinking property as a site of spatial inhabitation broadens the scope of pedestrianisation to include wildlife as fellow pedestrians. This shift alters our approach to netting. Rather than viewing it solely from the perspective of the exercise of proprietary rights of use, we adopt a context that interprets netting as a form of pedestrianisation that prioritises human interests over those of wildlife. It is in and through the language of pedestrianisation that we can add nuance to this predicament, using a familiar mechanism of spatial regulation to foster a dialogue between human and nonhuman needs without dispossessing individuals of their property.

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