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Animals as Legal Beings: Contesting Anthropocentric Legal Orders by Maneesha Deckha
Book Review by Jodi Lazare¹

Scholarship on animal rights has long been dominated by the widely held idea that justice for nonhuman animals will not be achieved until they are granted legal personhood.² In *Animals as Legal Beings: Contesting Anthropocentric Legal Orders*, Maneesha Deckha provides an alternative legal classification for nonhuman animals. “Beingness,” rooted in relational feminism, post-colonial theory, and critical animal studies, recognizes nonhuman animals’ inherent value, while avoiding some of the downsides to legal personhood, namely, its embeddedness in the imperialist liberal individualism that characterizes western legal systems. Given its anthropocentric nature, personhood must be displaced as the aspirational classification for animals. Beingness is a “new legal subjectivity” that Deckha theorizes is a “solution to evading the impasse that currently encapsulates the core debate in animal law circles”—³ that is, the debate between animal welfare and animal rights.

Deckha begins by setting out three problematic aspects of liberal legalism: First, drawing on feminist and postcolonial legal theories, its exaltation of legal personhood, is grounded in faith in existing western legal structures and a mistaken belief in the law as an emancipatory force for all. Second, liberal legalism, and thus personhood, is “decidedly anthropocentric,”⁴ centred around an understanding of “human” shaped by “racism, colonialism, sexism, and other entwined structural exclusions.”⁵ Third, in the context of animal law and advocacy, it privileges sameness logic (i.e., that some animals have the same characteristics as the paradigmatic liberal humans and therefore are deserving of legal status),⁶ and creates a resulting hierarchy of animals.⁷ Thus, personhood, as defined by liberal legalism, with its “human benchmarks” and corresponding othering of vulnerable humans and nonhumans alike, works a “form of anthropocentric violence,”⁸ which cannot be displaced within western, liberal legal frameworks.

In addition to a novel legal status for nonhuman animals, *Animals as Legal Beings* therefore offers a comprehensive comment on the many shortcomings of western liberal legal orders. Indeed, Deckha’s insight into the flaws of the sameness logic that characterizes liberal animal law—that is, animal law and the personhood project’s tendency to rely on parallels between

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² The literature is dominated by, but is not exclusively devoted to, appeals for legal personhood. See e.g. Angela Fernandez, “Not Quite Property, Not Quite Persons: A Quasi Approach for Nonhuman Animals” (2019) 5 Can J of Comparative & Contemporary L 155. Fernandez proposes a middle ground legal classification, sitting somewhere between and incorporating aspects of both property and personhood.

³ Maneesha Deckha, *Animals as Legal Beings: Contesting Anthropocentric Legal Orders* (Toronto: University of Toronto Press, 2021) at 9.

⁴ *Ibid* at 8.

⁵ *Ibid* at 12.

⁶ See e.g. Steven Wise, “Legal Personhood and the Nonhuman Rights Project” (2010) 17:1 Animal L 1.

⁷ See Deckha, *supra* note 3 at 14.

⁸ *Ibid*.

certain animals and people, and, relatedly, between the animal rights movement and other social movements—⁹ is likely to be one (but not the only) of this book's lasting contributions.

Deckha's analysis challenges the assumption behind sameness logic, according to which, the formation of gender, race, and species have followed "separate historical trajectories."¹⁰ Instead, "beingness" is grounded in "an intersectional intellectual worldview,"¹¹ that understands the "constructs of anthropocentrism [as] deeply racialized and frequently mediated by other cultural understandings of difference," and recognizes that most justice-seeking groups experience(d) a common racist/sexist/colonialist oppression. Here, Deckha challenges the common assumption of "separate historical trajectories of formation between gender, race, and species" and rejects the "'silo' approach to social axes of difference."¹² Indeed, one of the book's central preoccupations is "how we can steer the law's basic tenets toward a less anthropocentric, less humanist, and generally less oppressive outlook."¹³ In making that move, Deckha works to dispel the common misconception among progressive scholars that animal rights are a "privileged white issue and that advocating on behalf of animals necessarily endorses ethnocentric culturally imperialist and/or racist discourses,"¹⁴ potentially bridging the difficult gap between animal rights legal advocacy and progressive leftist politics.¹⁵

Part I is composed of three chapters. Chapter 1, "No Escape: Anti-Cruelty Laws' Property Foundations," examines Canadian anti-cruelty laws as an illustration of "the law's dismal treatment of animals due to their animals' categorization as property."¹⁶ Deckha's book is in substantial part a theoretical project, but this chapter will be of interest to scholars, practitioners, and students of animal law alike, as it clearly lays out the positive law around animals in Canada—including the limits of federal and provincial animal protection legislation, the relevant case law, and amendments (both failed and successful) to that legislation in recent decades. Chapter 1 lays bare how "the institutionalized exploitation of animals is perceived as legitimate violence or not violence at all."¹⁷ And it does so while remaining true to Deckha's theoretical commitments, by "elucidating the racialized and imperial origins of the legal welfarism's anthropocentrism and their particular dynamics in the Canadian legal system."¹⁸

⁹ See *Ibid* at 13.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid* at 15.

¹⁴ *Ibid* at 17.

¹⁵ See Will Kymlicka & Sue Donaldson, "Animal Rights, Multiculturalism, and the Left" (2014) 45:1 J Soc Philosophy 118, cited by Deckha, *ibid.*

¹⁶ Deckha, *supra* note 3 at 39.

¹⁷ *Ibid* at 40.

¹⁸ *Ibid.* For Deckha, "legal welfarism," as contrasted with an approach to animals grounded in their interests and, typically, the abolition of animal use, represents "the notion ... that animals, which are the property of people, may be treated solely as means to ends by humans as long as this exploitation does not result in the infliction of 'unnecessary' pain, suffering, or death" citing Gary L Francione, *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995) at 18.

Chapter 2 expands on the problems with liberal legalism and its paradigmatic binary: persons and property. Using a critical theory lens, Deckha illustrates why animal lives cannot be improved as long as they are characterized as property, and that personhood is not the answer. Further, by setting out the limitations of property status for animals, even where that status might be expanded to include so-called “living property,”¹⁹ this chapter reviews the development of personhood as a legal status and its implications for animals. Notably, the focus here is on personhood’s exclusionary nature, the othering of marginalized groups, and the resulting intensification of existing social and legal hierarchies. As in her introduction, Deckha’s clear unpacking of personhood goes beyond the animal question and serves as a compelling critique of colonialist western legal systems.

Chapter 3 introduces the focal point of the book, “beingness” as a new legal status. An alternative to both property and personhood, beingness rejects the “rational, independent, and autonomous” legal person in favour of a definition based on “embodiment, relationality, and vulnerability.”²⁰ The chapter provides the theoretical groundwork for thinking about beingness as a legal status, by drawing on three post-anthropocentric thought traditions: the feminist animal care tradition and the related concept of entangled empathy;²¹ call and response ethics and its focus on relationality;²² and “thick embodiedness,” or, “topographies of the flesh.”²³ These feminist philosophical approaches provide the theoretical frame for reconceiving animals as legal beings.

Part II gets to the heart of things, with a detailed exposition of “beingness.” Deckha explains how beingness avoids the exploitative nature of property, as well as the inherent anthropocentrism of personhood, by “[undercutting] the traditional account of who counts in law.”²⁴ Before centring its organizing principles, Chapter 4 contrasts beingness with personhood, highlighting the limits of the latter, and its promotion of the disembodied, independent, autonomous, and rational legal subject. The recognition of beingness as a legal status, through its organizing principles, would create a legal system that values “embodiment and relational experience” and would “recognize that these attributes of living experience create vulnerability to which the law must respond.”²⁵ Thus, beingness creates a much bigger tent, so to speak, by making room for subjects that liberal legalism and its personhood model necessarily exclude.

¹⁹ See David Favre, “Living Property: A New Status For Animals Within the Legal System” (2010) 93:3 Marquette L Rev 1021, cited in *ibid* at 83.

²⁰ Deckha, *supra* note 3 at 97.

²¹ See Josephine Donovan, “Attention to Suffering: A Feminist Exploration” in Carol J Adams & Josephine Donovan, *The Feminist Care Tradition in Animal Ethics* (New York: Columbia University Press, 2007) 198; Lori Gruen, *Entangled Empathy: An Alternative Ethic for Our Relationship with Animals* (New York: Lantern Press, 2015).

²² See Kelly Oliver, *Animal Lessons: How They Teach Us to Be Human* (New York: Columbia University Press, 2009); Cynthia Willett, *Interspecies Ethics* (New York: Columbia University Press, 2014).

²³ See Jennifer McWeeny, “Topographies of the Flesh: Women, Nonhuman Animals, and the Embodiment of Connection and Difference” (2014) 29:2 *Hypatia* 271.

²⁴ Deckha, *supra* note 3 at 121.

²⁵ *Ibid* at 122.

The remainder of Chapter 4 unpacks the concepts of embodiment, vulnerability, and relationality. Embodiment encompasses a rejection of legal liberalism's "negative discursive construction and reception of the body," and an embracing of animal bodies, in the same way that the "majority of critical theory" does with respect to marginalized human bodies, thus adding "species" to the list of characteristics that liberal legalism typically excludes.²⁶ This move entails the rejection of "reason" as the paradigmatic liberal justification for inclusion, with the body receiving a "higher valuation in the law," resulting in a legal system that recognizes the experience of physical pain as an ethical criterion for legal status. That recognition will go a long way toward eliminating the immense violence experienced by animals in industrial exploitation systems, illustrating how Deckha's ideas would have immediate and meaningful practical impacts for animals.

A focus on relationality, like embodiment, involves the displacement of the liberal values of individualism and autonomy. Drawing on feminist relational theory, Deckha suggests that a legal status that understands animals as being in relationships makes visible the "enormous damage" done to them when animals are denied their relationships through their exploitation.²⁷ Finally, beingness recognizes the vulnerability of legal subjects, their dependence on others, and their consequent capacity to suffer.²⁸ Again, beingness as legal status enables a meaningful response to the violence and suffering that characterizes the lives of so many animals. Indeed, as Deckha argues in response to anticipated critiques, the legal recognition of animal vulnerability would "bring animals onto our legal horizons as their own subjects."²⁹

Chapter 5 responds to the predictable critiques, necessarily weighing in on the well-known problem in animal law and especially in discussions around legal status: the question of line drawing, or establishing the border for attributing legal status between animals and other non-humans, *e.g.*, plants or rivers. Deckha answers this question by offering a broad definition of animals and a conception of beingness that does not depend on sentience, lest beingness operate to exclude in the same way as personhood. Instead, the focus should be on relationality, and the idea that "all living beings in the relational web of life must count."³⁰ Further, beingness, as a response to vulnerability, considers and responds to capacities.³¹ Ultimately, beingness, as a response to the capacity to be vulnerable, "highlights our responsibility to respond to suffering."³² Thus, Deckha accepts that while other living things, like bodies of water, might meet the criteria for beingness (embodied, relational, vulnerable), she suggests it is legitimate, at present, to draw the line at "animals, which are vulnerable to intense levels of pain and suffering and to death, and which see to avoid such states."³³ In other

²⁶ See *Ibid* at 125.

²⁷ See *Ibid* at 130.

²⁸ See *Ibid* at 131.

²⁹ *Ibid* at 139.

³⁰ *Ibid* at 146.

³¹ See *Ibid* at 151–52.

³² *Ibid* at 152, citing Oliver, *supra* note 21.

³³ Deckha, *supra* note 3 at 162.

words, beingness might help prevent the pervasive animal suffering facilitated by liberal legalism and personhood.

Deckha's work is primarily a theoretical intervention. But this project is not only a contribution to the theoretical debates around the legal status of animals. It is also unabashedly instrumentalist in its clear evocation of the violence that characterizes our relationship with animals in the liberal legal paradigm, and the urgent response that this violence requires. In her concluding chapter, Deckha does not mince words: "To say that humans and corporations are at war with animals ... is not to engage in hyperbole. By almost any metric or angle we adopt ... the escalating levels of violence to which animals are subject is undeniably obscene."³⁴

The remainder of her concluding chapter maintains this instrumentalist thread, setting out the ways in which beingness might be implemented in the Canadian legal system. Deckha outlines three steps for implementing beingness: codification of prohibitions and new legal principles; designing models for decision-making that takes animal interests into account—just as Canadian law currently requires the consideration of environmental interests, where relevant; and listening to animals in order to understand their needs, practically exercised, for example, by taking judicial notice of animal suffering.³⁵

Deckha is not unrealistic; she recognizes that the kind of "sea change" that beingness represents will not happen overnight,³⁶ and makes that very clear in detailing the numbers and economic values associated with intensive animal agriculture.³⁷ While it is urgent that we do away with the "death sentence of billions of animals trapped in ... the confines of the animal industrial complex" imposed through the property classification, the classification is also deeply legally, culturally, and socially entrenched. But there is hope for Deckha in listening to animals—that is, in "paying emotional attention, taking seriously – caring about – what they are telling us."³⁸ The law must bear witness to the "routine violence and trauma animals experience" in order to usher in a "new era of post-anthropocentric, multispecies legalism and interspecies justice"—an era of beingness and not thingness—of meaningful lives, love, and remembrance for animals past.

³⁴ *Ibid* at 163, citing (in part) Dinesh Wadiwel, *The War against Animals* (Leiden: Brill Publishers, 2015).

³⁵ See Deckha, *supra* note 3 at 172.

³⁶ See *Ibid* at 164.

³⁷ See *Ibid* at 176.

³⁸ *Ibid* at 178, citing Donovan, *supra* note 20. The call to bear witness is all the more significant in the context of the rise of legislation, in Canada, aimed at suppressing animal rights activism, including the activities of members of the Animal Save Movement, who document the brutal treatment of animals farmed in agriculture and share their messages with the public in the hope of effecting political change. See Maneesha Deckha, "The Save Movement and Farmed Animal Suffering: The Advocacy Benefits of Bearing Witness as a Template for Law" (2019) 5 Can J Comparative & Contemporary L 77; Jodi Lazare, "Ag-Gag Laws, Animal Rights Activism, and the Constitution: What is Protected Speech?" (2020) 58:1 Alberta Law Review 83.